

Exaggerated Allegations Based on Essentially No Evidence Equals Rule 11 Sanctions: *Heller v. Cepia L.L.C.*

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The **U.S. Court of Appeals for the Ninth Circuit** affirmed the imposition of Rule 11 sanctions of \$5,000 on a plaintiff's attorney for exaggerating allegations in a complaint. As the court explained, the mere "presence of some supported allegations in a pleading does not necessarily shield from sanctions an attorney who also includes unsupported allegations." *Heller v. Cepia L.L.C.*, Case No. 12-15083 (Mar. 4, 2014) (non-precedential, memorandum opinion).

Heller is a toy designer who had a prototype for a toy robotic hamster. After entering into non-disclosure agreements with two Hong Kong toy companies, A-Tech/The Bean and Ying Leung, Heller shared information, including trade secrets, with the two toy companies in order to get a price quote for his toy hamster idea. According to the complaint, the two companies built a prototype for the toy and Heller then began pitching his idea to larger toy companies, namely Hasbro and Mattel. Later, while at a 2009 Dallas Toy Fair, plaintiff discovered Cepia selling what appeared knock-off toy hamsters that exhibited the same features as the prototype he shared with the two Hong Kong companies. Plaintiff filed suit against Cepia for developing a toy based on trade secrets he provided to the two Hong Kong toy companies.

In an effort to show that Cepia misappropriated trade secrets, the plaintiff alleged that the absence of sign-in sheets for a particular week confirmed that representatives of Cepia were, in fact, on the premises of A-Tech/The Bean in September 2008, that Cepia had a business relationship with the two Hong-Kong toy companies and that when plaintiff confronted A-Tech/The Bean and Ying Leung with the suggestion that they had given Cepia access to plaintiff's trade secret confidential information, the toy companies refused to cooperate.

Cepia moved for sanctions against plaintiff on the grounds that plaintiff had no factual support for his allegations. Cepia requested sanctions, including dismissal of the complaint and attorneys' fees and expenses. The district court agreed in part.

Because the complaint contained both allegations that were supported with evidence and allegations that were not, the district court did not dismiss the complaint as a sanction, noting that the complaint was not "completely baseless." Rather, the district court placed blame on plaintiff's counsel since "the nature of these unsupported allegations stem[med] from exaggerations for which [plaintiff's] counsel is culpable. He is the one who drafted the complaint and the allegations at issue." The

district court imposed a sanction on plaintiff's counsel of \$5,000. Heller's counsel appealed.

In a short, non-precedential opinion, the 9th Circuit affirmed holding that "[s]uch a sanction is hefty, especially given that the district court did not conclude that the complaint was baseless, but the amount is not so unreasonable that it constitutes an abuse of discretion."

Practice Note: Under *Twombly/Iqbal*, a complaint must allege enough facts to state a claim to relief that are plausible on its face. However, the allegations must be supported by credible facts, and not exaggerations or extrapolations. Sanctions may be imposed where an attorney makes allegations without factual basis or supporting of evidence.

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