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Global Aerospace Inc., Order on Motions for Sanctions

Elizabeth E. Long

Fulton County Superior Court, Judge

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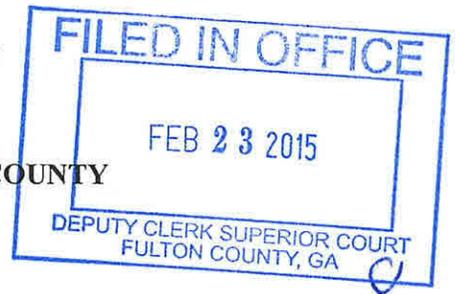
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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

GLOBAL AEROSPACE, INC.,)
)
 Plaintiff,)
)
 v.)
)
 LIMA DELTA COMPANY, et al.,)
)
 Defendants.)

Civil Action File No.
2012CV214772

ORDER ON MOTIONS FOR SANCTIONS

This matter is before the Court on (1) Defendants’ Amended Motion for Sanctions for Plaintiff’s Fraud Upon the Court and Other Wrongful Acts filed on January 9, 2015; (2) Defendants’ First Supplement to Their Previously Filed Motion for Sanctions filed January 30, 2015; (3) Defendants’ Second Supplement to Their Previously Filed Motion for Sanctions filed February 11, 2015; and (4) Defendants’ Third Supplement to Their Previously Filed Motion for Sanctions filed February 18, 2015. Upon consideration of the briefs, arguments made at the hearing held on February 19, 2015, and the record of the case, the Court finds as follows:

(1) Defendants’ Amended Motion for Sanctions for Plaintiff’s Fraud Upon the Court and Other Wrongful Acts.

Defendants allege an ongoing pattern of misrepresentations, obstruction, deceptive practices, and ethical violations by Global’s Counsel and they seek the ultimate sanction, dismissal of the Complaint, under O.C.G.A. § 9-11-37 and § 9-11-41(b).

First, Defendants allege that Global’s foreign counsel, Pierre Fruhling and Jules Mandono, under the supervision of Global employees Doctor and Alfson, had improper contact with the representative of Defendant SokiCat, Madame Carine Katumbi Nahayo, following the accident. Defendants argue that these two attorneys failed to warn Ms. Nahayo that they were representing Global in an adverse capacity, and did not advise her to seek her own counsel. The

Court is not persuaded that this contact was unethical. The evidence shows that these two attorneys were retained by Global to “protect the interests of our insureds” and to investigate the accident that occurred in the Democratic Republic of the Congo. Ms. Nahayo avers that they sought information about subjects such as “the accident, the status of passengers, the way the Aircraft was operated and the types of passengers typically carried, and seeking documents related to the Aircraft.” Communication such as these between the insured and the insurer are to be expected after a catastrophic accident such as the one at issue in this case.

Next, Defendants argue that have made critical misrepresentations to this Court and ultimately to the Court of Appeals regarding whether Global misrepresented its home base and whether the Policy was negotiated in Atlanta. The aircraft’s purported and/or actual base is a fact question and will be resolved at trial. As to the issue of whether the contract was “negotiated” in Atlanta, that issue was resolved by the Court of Appeals, and this Court will follow that ruling.

Third, Defendants allege that Global’s employees continue to testify at depositions that the underwriting process was not flawed despite documentation to the contrary. Defendants also allege that witnesses have also offered interpretations of the term “worldwide” that are contrary to its commonly understood meaning. Defendants suggest that the inconsistent testimony is due to improper witness coaching. The Court has reviewed the testimony called into question, and will leave issues of fact and credibility to the finder of fact.

Fourth, Defendants allege that Global has concealed information related to a meeting between Global and Wells Fargo employees held on February 29, 2012, or have misrepresented

that the meeting was not about this accident. After reviewing the testimony, it appears that some witnesses did not recall the meeting, and others testified that the meeting was about the professional relationship and expectations between Global and Wells Fargo in light of certain events, including the accident at issue in this case. Again, the credibility of witnesses is the province of the finder of fact, and so these fact issues are best dealt with at trial.

The Court concludes that the alleged conduct does not merit the ultimate sanction of dismissal and the Motion for Sanctions is therefore **DENIED**.

(2) Defendants' First Supplement.

In their First Supplement to the Motion for Sanctions, Defendants allege that Global misrepresented the integral role of Steven Walsh and Nick Brown earlier in the litigation but that subsequent review of documents disclosed that they were indeed involved in the response to the claim post-accident. Despite its assertion that Mr. Walsh did not have any first-hand knowledge of either the underwriting process or the claims handling, Global offered him for deposition for a day and a half. Global also provided an affidavit from Mr. Brown in which he declared that he was not actively involved in negotiating or underwriting the policy, investigating, managing, or handling the accident or claim, or deciding to file the lawsuit. Instead, as a high-level Global executive, he received limited reporting from other Global employees. The Court concludes that the alleged conduct does not merit the ultimate sanction of dismissal and the Motion for Sanctions is therefore **DENIED**.

(3) Defendants' Second Supplement

In Defendants' Second Supplement to the Motion for Sanctions, Defendants argue that

Bruno critiqued the underwriting process in documents drafted shortly after the accident. Later, in his deposition, however, Mr. Bruno repudiated his negative assessment of the underwriting process but could not point to any new evidence that led him to change his opinion. Defendants allege that Mr. Bruno was coached in deposition prep sessions to change his story. As the Court previously noted, witnesses can change their minds and any inconsistencies can be weighed by the ultimate finder of fact. The Court concludes that the alleged conduct does not merit the ultimate sanction of dismissal and the Second Supplement to the Motion for Sanctions is therefore **DENIED**.

(4) Defendants' Third Supplement

Lastly, Defendants argue that Global was delinquent in producing the personnel file of Vickie Adams after repeated requests, and then misrepresented to the Court that all of the file was produced when, in fact, only portions had been produced. Global noted that only certain portions of her personnel file were requested, and the documents in her personnel file responsive to the request were produced. The Court concludes that the alleged conduct does not merit the ultimate sanction of dismissal and the Third Supplement to the Motion for Sanctions is therefore **DENIED**.

SO ORDERED this 23rd day of February, 2015.


ELIZABETH E. LONG, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

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