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How Motorola Ruined an Honest Business Partner

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By Hera Moon

The most exciting thing in law study is, speaking for myself of course, reading the court rulings and opinions in high-profile cases. Over my short career as a law student, I have read scores of court decisions and have learned, while having fun, more about statute and case law and legal way of thinking than from reading textbooks and statutes. With my reasoning and analyzing capacity gradually growing, I am beginning to compare the different tendencies and approaches of individual judges and courts of different countries. With varying degrees, I agree with some and disagree with others, but I always learn something useful and applicable. It was not until I read the 977 F.2d 798 case (ELSCO v three Motorola attorneys, 3d Cir. 1992) and its sequel in 1998 that I felt a deep disgust over the jungle law dominating in business world and, quite unexpectedly, even in court rooms to justify the judicial misconduct.

Denial of Remedies for a Wrongful Seizure Done in Bad Faith

To make a long and complicated story short and simple, Motorola unjustly caused ELSCO considerable material and moral damages through a wrongful seizure of its inventory and business records relying on a vindictive witness statement and concealing the facts which should free ELSCO of its alleged guilt, and all that after ELSCO's President Jack Snyderman had cooperated in good faith during its investigations to find the proofs of ELSCO's allegedly illegal trading of the scrap electronic parts purchased from Motorola. Under 15 U.S.C. § 1116(d)(11) (1988), which constitutes a cause of action for seeking remedies for the damages suffered by reason of a wrongful seizure, ELSCO moved for summary judgment. I thought that this was a textbook example of a case worthy of the application of this all too just provision. Wide of the mark! ELSCO, which unjustly suffered the seizure of most of its inventory and loss of reputation, not to mention the unspeakable shame and emotional distress (fifteen persons including federal marshals appearing out of the blue and moving van company employees taking away the inventory and business records!), went out completely empty-handed. By virtue of the statutory provision, ELSCO was in fact entitled to just compensation for economic damages and attorneys' fees as well as considerable punitive damages for having suffered a wrongful seizure done in bad faith.

Victim of a Downright Outrageous Legal Injustice

1. Prelude: bad faith plaintiff causes damages to good faith defendant
Motorola, discovering early in 1988 that some of its scrap semiconductors were being sold in Hong Kong, suspected ELSCO, one of its contracting smelting companies, and conducted investigation trying to find the proof that ELSCO did not smelt all the scrap material and resold some devices with its logo on them. Two auditors who independently conducted the investigation reported that 98.5% of the scrap material was either already smelted or still found in the company premises. ELSCO cooperated exemplarily all the while and showed a responsible conduct by firing the employee whom it held responsible for the missing 1.5% of its stock. Despite the two inspection reports verifying ELSCO's innocence, Motorola sued ELSCO. The ex parte seizure order engineered by Motorola's three attorneys was based on a false witness [a malicious perjury and a prima facie lie] of a fired employee, as well as the concealment of the reported facts. Motorola paid the ELSCO's former employee $700 for his “time in preparing his affidavit” [in reality, for his willingness to lie under oath].
2. First Act: the innocent victim seeks remedies for the damages suffered

In June 1988 ELSCO filed a complaint against Motorola and its attorneys relying on the Lanham Act, 15 U.S.C. § 1116(d)(11): "A person who suffers damage by reason of a wrongful seizure under this subsection has a cause of action against the applicant for the order under which such seizure was made, and shall be entitled to recover such relief as may be appropriate, including damages for lost profits, cost of materials, loss of good will, and punitive damages in instances where the seizure was sought in bad faith, and, unless the court finds extenuating circumstances, to recover a reasonable attorney's fee." (my emphasis). After two years [!] the district court granted summary judgment in favour of ELSCO [they must have left no stones unturned to avoid it, but they are judges after all], dismissing Motorola's trademark infringement claims. Motorola and ELSCO afterward reached a settlement [the good man must have wanted peace rather than justice]. ELSCO’s claims against the three defendant attorneys were preserved [The brave man challenged the legal guild].

3. Interlude: the responsible successfully deny their responsibility

The three attorneys responsible for the wrong seizure moved for summary judgment arguing that attorneys are not "applicant" under 15 U.S.C. § 1116(d)(11). The district court granted their motion [this time, not losing much time]. ELSCO moved for reconsideration on the grounds that defendants could be liable as aiders and abettors, which the district court promptly refused.

4. Second Act: the Third Circuit newly defines “applicant” and the “aider and abettor”

In order to decide whether the attorneys were "applicant" within the meaning of the Lanham Act § 1116(d)(11), the court rightly sought answer in § 1127 which defines the term "applicant" to be embracing the “legal representatives” of applicants. Despite this statutory definition and a confirming precedent case (Skierkewiecz v. Gonzalez, 711 F.Supp. 931, 934 (N.D.Ill.1989)), the Court reached the conclusion [after 24 long paragraphs of Machiavelli arguments] that the attorneys were not the legal representatives of applicants. To justify its holding that “an attorney is not an ‘applicant’ under 15 U.S.C. § 1116(d)(11) and that there is no aiding and abetting liability under that statute,” the Court brought forward similar sounding arguments in 15 long paragraphs.

5. Third Act: the Superior Court of Pennsylvania denied the victim the right to a lawsuit

The Court, while acknowledging at last that the Appellees were “proper defendants in Appellants’ wrongful use of civil process action,” denied the cause of action for ELSCO against the attorneys on the grounds that the attorneys were not the principal agents of the original suit, and affirmed the summary judgment for the attorneys which overruled the initial dismissal of the summary judgement by the same court on the basis of a “new” evidence, the settlement agreement which was not new to any parties involved and furthermore upheld the lawsuit against the attorneys, thus denying the victim of judicial injustice the right to find justice by trial.

6. Postlude: the victim succumbs to the legal blow

Driven by the earnest wish to see the revival of my sympathetic hero, I googled in search of Jack Snyderman and his company (Electronic Laboratory Supply Company, Inc.). The great part of the scanty hits only related to the lawsuit itself. This seemingly low-profile case, despite its keen peculiarity in terms of legal injustice, has not even inspired any journalist’s or blogger’s pen. I merely found some indices which led me to believe that the company did not survive the coup and the good old man just faded away.
In my desperate efforts to find any good reasons for the apparently absurd court decisions which were assiduously and over-professionally reached by the highly honourable judges, I have gone in vain through the toil and torture of analyzing all those 39 paragraphs of the appeal court decision and reading the 20-page arguments of the superior court decision which focused on denying ELSCO’s right to bringing its offenders to the court for a just trial.

The Superior Court Judge Johnson, in his dissenting opinion [at least one legal conscience], pointing to the “unique facts that are presented in this case,” called into question the Court’s “determination that the trial court properly granted summary judgment in favour of the attorney defendants.” He said, “I would vacate the judgment and remand this action for trial.” Very rightly [in this evident case, it was just natural to be right] he pointed out that the settlement agreement, which was acknowledged by the trial court as a new evidence to justify the overruling of the previous judgement of the same court against the dismissal of the summary judgement for the attorneys, was the very basis for ending the litigation with Motorola and reserving the right to continue the claim against the attorney defendants. Judge Johnson added that “[a]ny assertion by the attorney defendants to the contrary is, in my view, disingenuous. I simply cannot agree that the settlement agreement entered into in May 1991, could possibly be a 'new fact' in 1997”.

In the trial court’s summary of the case, it reads: “Motorola then conducted two audits of ELSCO’s operation, and concluded that ELSCO was the source ... filed suit ... that ELSCO was “passing off” inferior Motorola scrap as first-quality Motorola parts ...” Everybody who reads this would think that the audits provided a solid ground to sue ELSCO, whereas they provided evidence just to the contrary. Nowhere did I find the mention of the contents of the audits, not to mention the affidavit on the ground of which Motorola acquired the court’s ex parte seizure order. The auditors reported namely that they had found 98.5% of the scrap material on the ELSCO premises, and the witness, who was suspected by ELSCO to have diverted the missing 1.5% and consequently fired, said that ELSCO resold up to 80% of the scrap material it purchased from Motorola. Any “normal” justice system would then turn its attention to the false witness and the concealment of evidence before the court. Neither perjury nor malpractice was the object of concern throughout these (pre-trial) proceedings. If the trial court’s entry of summary judgment had been reversed at the Superior Court on the plain evidence of an abuse of discretion or an error of law, thus giving ELSCO the chance to bring the three attorneys to trial, no court would have been able to avoid dealing with these grandly incriminating facts.

By way of small annexe, I would like to present, for reflection of anybody interested, the issues raised by ELSCO before the Superior Court and denied point by point (to learn how, you may wish to read the opinion): “(1) Did the Court err in entering summary judgment in favor of defendants after defendants’ motion for summary judgment raising the same issues had previously been denied by another judge? (2) Did the Court err in finding that settlement of the underlying claims between plaintiffs and the Motorola parties released plaintiffs’ claims against those defendants as a matter of law, notwithstanding the express language to the contrary in the settlement agreement? (3) Did the proceedings in the United States District Court terminate in favor of plaintiffs so that an action under the Dragonetti Act, 42 Pa.C.S.A. § 8351, et seq., could be maintained by plaintiffs?”