

**IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT - CHANCERY DIVISION**

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AMY JOSEPH AND ROBERT O'BRIEN,  
INDIVIDUALLY AND ON BEHALF OF ALL  
OTHERS SIMILARLY SITUATED,

Plaintiffs,

v.

BENJAMIN A. PEREZ AND DARON JACOBSON,

Intervenors.

Case No. 15 CH 13991

Honorable Franklin U. Valderrama  
Calendar 03

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**ORDER**

This matter, coming to be heard on: (1) Katrina Carroll and Lite DePalma Greenberg, LLC's Motion for Reconsideration and for Specificity Pursuant to Rule 137(d); and (2) Benjamin Perez and Daron Jacobson's Motion for Reconsideration, due notice having been given and the Court being fully advised in the premises, the Court finds as follows:

1. On August 25, 2015, Benjamin A. Perez ("Perez") filed a class action lawsuit against Monster, Inc., and Best Buy Stores, L.P., in the Northern District of California (the "California Lawsuit").<sup>1</sup>
2. Perez's counsel in the California Lawsuit was Joshua Arisohn ("Arisohn") of the law firm Bursor & Fisher, P.A.
3. On September 22, 2015, Amy Joseph filed a Class Action Complaint (the "Joseph Complaint") against defendants, Monster and Best Buy in the Circuit Court of Cook County (the "Illinois Lawsuit"). The allegations in the Joseph Complaint were similar to those in Perez's California Lawsuit.
4. On February 10, 2016, Perez filed a "First Amended Class Action Complaint" in the California Action (the "Amended California Complaint").
5. On July 12, 2016, Perez filed a Petition for Leave to Intervene and to Stay the Illinois Lawsuit (the "Petition to Intervene"). In support of, and attached to Perez's Petition to

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<sup>1</sup> The Court only recites the facts necessary for resolution of the motions. The full background can be found in the Court's May 31, 2018 Memorandum Opinion and Order.

Intervene were, among other things: (1) Arisohn's Declaration; and (2) the Amended California Complaint. Defendants opposed Perez's Petition to Intervene asserting that Perez was not a class member. The Court<sup>2</sup> granted Perez's Petition to Intervene.

6. At the time Perez filed his Petition to Intervene, he was represented by local counsel, Katrina Carroll ("Carroll") of Lite DePalma Greenberg, LLC ("LDG"), as well as Arisohn. Both Arisohn and Carroll signed Perez's Petition to Intervene.
7. On October 3, 2016, Plaintiffs<sup>3</sup> and Defendants filed separate motions to dismiss Perez from the Illinois Lawsuit based on lack of standing and for sanctions pursuant to Illinois Supreme Court Rule 137 against Perez and his counsel, Arisohn and Carroll (the "Motions for Sanctions").
8. On March 9, 2018, the Court, in a Memorandum Opinion and Order (the "March 2018 Order") found that Perez had violated Supreme Court Rule 137.
9. On May 31, 2018, the Court issued a Memorandum Opinion and Order (the "May 2018 Order"), which granted Plaintiffs' and Defendants' pending motions for sanctions against Perez's counsel. The Court found that both Arisohn and Carroll violated Rule 137 by failing to conduct an objectively reasonable investigation into the factual allegations forming the basis of Perez's intervention into the Illinois Lawsuit.
10. Thereafter, Perez and new intervenor Daron Jacobson ("Jacobson") filed a Motion to Reconsider the Court's May 2018 Order. Carroll and LDG also filed a motion for Reconsideration of the Court's May 31, 2018 Memorandum Opinion and Order and for Specificity Pursuant to Rule 137(d), both of which are before the Court.
11. The purpose of a motion to reconsider is to bring to a court's attention: (1) newly discovered evidence; (2) changes in the law; or (3) errors in the court's application of existing law. *Evanston Insurance Co., v. Riseborough*, 2014 IL 114271, ¶ 36. A motion to reconsider "is not the place to raise a new legal theory or factual argument." *Jones v. Live Nation Etm't, Inc.*, 2016 IL App (1st) 152923, ¶ 29. Courts should not allow litigants to remain silent, lose a motion or argument only to then frantically gather novel evidence and arguments to show that the court erred. *Id.*; *Vantage Hospitality Grp. Inc. v. Q Ill Dev., LLC*, 2016 IL App (4th) 160271, ¶ 55 (Emphasis added). Therefore, "legal theories and factual arguments not previously made are waived." *Jones*, 2016 IL App (1st) 152923, ¶ 29. "The allowance of [a] new matter in a motion to reconsider is subject to the trial court's discretion and should not be permitted without a reasonable explanation of why it was not made available at the time of the original hearing." *Id.* The Court addresses each motion in turn.

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<sup>2</sup> At the time of the filing of such motions, the Hon. Kathleen Kennedy presided over this case. Judge Kennedy subsequently retired and the matter was assigned to this Court.

<sup>3</sup> Joseph filed an Amended Complaint which added Robert O'Brien as a Plaintiff.

*Carroll's Motion*

12. In essence, Carroll raises four arguments in her motion: (1) the Court, contrary to Illinois law, erred in holding her and Arisohn jointly and severally liable for his investigation into the allegations in the California Lawsuit; (2) the Court overlooked numerous facts which led it to sanction her in error; (3) she did not sign any documents containing "sanctionable" statements by Perez; and (4) the Court's May 2018 Order lacked the requisite specificity under Rule 137(d) as it failed to differentiate between her and Arisohn's pre-lawsuit investigation.
13. Respondents note as a preliminary matter, that it is improper to raise new arguments in a motion to reconsider. Carroll, according to Respondents, failed to raise any of these arguments previously in the original briefing, especially with regard to her pre-intervention investigation. Instead, assert Respondents, Carroll only advanced these arguments after the Court ruled against her. Therefore, conclude Respondents, the Court must deny her motion.
14. Respondents next retort that the Court's lack of distinction between Carroll and Arisohn's conduct stemmed from Carroll's own failure to present, in a declaration or in Perez's opposition to the Motions for Sanctions, any specific information as to Carroll's own investigation. Indeed, note Respondents, Perez filed a response to the Motion for Sanctions on behalf of *all* his counsel, both Arisohn and Carroll, without any distinction between the two for which Carroll now advocates. Nevertheless, Respondents conclude, the Court's May 2018 Order clearly addressed and dismissed Carroll's contention that there were no "sanctionable statements," and expressly stated the reason for why it was sanctioning Carroll, specifically that she also signed the Petition to Intervene which included the Amended California Complaint.
15. In reply, Carroll does not address Respondents' contention that the Court previously addressed and dismissed her previous argument that there were no "sanctionable" statements contained in any pleadings in this case. Carroll also does not address the Respondents' contention that the Court never found that Arisohn and Carroll were jointly and severally liable for the Rule 137 violations.
16. Instead, Carroll maintains that her investigation was reasonable and that she was entitled to rely on Arisohn's investigation, as well as recollections from various Best Buy employees and a ruling on a motion to dismiss by the judge in the California Lawsuit, citing *Chicago Title v. Anderson*, 177 Ill. App. 3d 615 (1st Dist. 1988). Carroll further denies that she does not raise her description of review of documents in the California Lawsuit as part of her investigation, and that her investigation can be deduced from the court filings alone. Last, Carroll asserts, for the first time in reply, that the Respondents' Motion for Sanctions were directed at Arisohn and not her, and that she reserves the right to challenge any fee award pursuant to the sanctions.

17. Carroll does not specify in her motion the basis for reconsideration. The motion, however, appears to be premised on the notion that the Court erred in its application of existing law as Carroll states that the Court “overlooked” critical facts in its resolution of the previous motion for sanctions.
18. The Court agrees with Respondents that Carroll’s motion fails as it raises new arguments in the motion which could have and should have been previously advanced. See *Jones v. Live Nation Entm’t, Inc.*, 2016 IL App (1st) 152923, ¶ 29 (courts should not allow litigants to remain silent, lose a motion or argument only to then frantically gather novel evidence and arguments to show that the court erred). Carroll’s arguments and description of her individual pre-intervention investigation are raised for the first time in her Motion for Reconsideration. In addition, Rule 137 does not state—nor has Carroll cited authority in support of the argument—that the Court must raise arguments on behalf of a party that has utterly failed to do so herself. Indeed, this is antithetical to the Court’s function as an impartial decision-maker: “The trial court must not depart from its function as a judge and may not assume the role as an advocate for either party.” *People v. Dana S. (In re Tamesha T.)*, 2014 IL App (1st) 132986, ¶ 26.
19. Further, Carroll’s contention that the Court jointly and severally sanctioned Carroll and Arisohn is misplaced. The Court sanctioned Carroll specifically for her individual failure to conduct an objectively reasonable investigation into the facts which formed the basis of Perez’s Petition to Intervene. That the same facts gave rise to the claims underlying the California Lawsuit and the Illinois Lawsuit does not absolve Carroll for her responsibility under Rule 137.
20. Last, although again raised for the first time in reply, while Carroll contends that she reserves the right to challenge any fee award pursuant to the sanctions, the Court simply notes that it has not ruled on any motion for attorney’s fees in this matter. In sum, the Court denies the entirety of Carroll and LDG’s Motion for Reconsideration.
21. Nevertheless, in light of Carroll and LDG’s second motion for clarification, the Court clarifies its May 2018 Memorandum Opinion and Order as follows:
  - a. The Court sanctioned Carroll for her failure to conduct an objectively reasonable investigation prior to signing and filing the Petition to Intervene in this matter.
  - b. The Court did not sanction Carrol based on Arisohn’s conduct.

*Perez's Motion*<sup>4</sup>

22. Perez moves for reconsideration as to the Court's March 2018 Order that issued sanctions against him. Specifically, Perez contends that the Court misapplied existing Illinois law and that: (1) the Court "misread the California pleading" as it did not state that his cable was installed behind drywall; (2) Perez did not refuse to produce his cable for an inspection; (3) the Court "overlooked" aspects of Perez's counsel's investigation into the matter; (4) the Court "misread" Arisohn's Declaration; and (5) the Court "failed to consider" counsel's efforts to continue to investigate the matter once Perez filed his Petition to Intervene. Additionally, Perez asserts that the Court's conclusion that the motion for sanctions which Perez filed against Respondents was moot is incorrect.
23. Respondents counter that the motion is improper as it is being brought by Perez and Jacobson to contest sanctions which the Court imposed against his attorneys, rather than the sanctions issued against him specifically, and that the motion raises virtually the same arguments raised by Carroll in her own.
24. The Court notes that most of the arguments raised by Perez in his Motion are virtually identical to those which Carroll raised in her own Motion, which the Court has now rejected. Therefore, the Court will not address these arguments again. Thus, the two arguments which were not previously raised are that: (1) the Court misread Arisohn's Declaration and that (2) the Court erred in finding Perez's own motion for sanctions against Respondents moot.
25. As to the first argument, that the Court "misread" Arisohn's Declaration, the Court disagrees with Perez. According to Perez, the Declaration merely sought to illustrate the similarity of the cable markings and to show that Perez's cable was similar to the cable at issue in the Illinois Lawsuit. However, Perez's novel interpretation of what Arisohn's declaration means is improper and unconvincing. Not only was this argument was not previously raised in his response to the original motion for sanctions specifically against him, but there is no support for Perez's interpretation of the Declaration. The relevant statements in Arisohn's Declaration read as follows:
  2. On or about June 30, 2015, during my factual investigations of the claims underlying this matter, and prior to filing the [California Lawsuit], I purchased [sic] UltraHD Black Platinum Cable purchased [sic] from a Best Buy retail location.
  3. On or about July 6, 2015, I asked Mr. Perez to provide any identifying information on his cable. Mr. Perez sent back a photograph of his cable showing the writing on the cable jacket.

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<sup>4</sup> While the motion is brought by both Perez and Jacobson, to avoid confusion, the Court refers to the motion solely as "Perez's Motion."

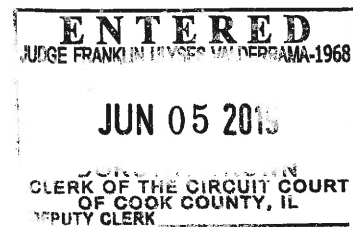
4. Thereafter, I compared the markings on Perez's cable to the markings on the UltraHD Black Platinum Cable. The markings were virtually identical. Nothing about the markings on Mr. Perez's cable indicated that his cable was not purchased in March 2014.

The Arisohn Declaration, p. 1.

26. Perez's argument fails to address the Court's separate finding as to Perez's own sanctionable conduct as discussed in the Court's March 2018 Order. The basis of Perez's argument relies on what *Arisohn's* Declaration says as to the cable, and does not provide any support to Perez's contention that the Court's issuing of sanctions against *Perez* was in error. Thus, the Court rejects this argument.
27. As to the second argument, that the Court erred in finding Perez's own motion for sanctions against Respondents as moot, the Court agrees with Respondents. Arisohn himself represented to the Court at the August 23, 2017 hearing that if the Court ruled in favor of Respondents on their Motions for Sanctions against Perez, then Perez's own motion for sanctions against respondents was essentially moot. See August 23, 2017 Tr. 7-20. In ruling on Perez's motion, the Court considered Arisohn's statements, as well as Perez's own substantive arguments, and found the motion to be moot. Thus, the Court declines to reconsider its ruling as to this issue.
28. Accordingly, the Court denies: (1) Katrina Carroll and Lite DePalma Greenberg, LLC's Motion for Reconsideration and for Specificity Pursuant to Rule 137(d); and (2) Benjamin Perez and Daron Jacobson's Motion for Reconsideration.

SO ORDERED.

ENTERED:



Franklin U. Valderrama  
Judge Presiding

Dated: June 5, 2019