SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA, **Plaintiff,** **v.** **ULTIMATE EVENTS LLC, *et al.*,** **Defendants.**	**Case No. 2013 CA 006960 B** **Judge Robert Okun** **Calendar 10**

OMNIBUS ORDER

The following three motions are currently pending before the Court: 1) Plaintiff's Motion for Partial Summary Judgment and a Permanent Injunction ("Plaintiff's Summary Judgment Motion"), Defendants' Opposition, and Plaintiff's Reply; 2) Plaintiff's Motion for Sanctions ("Plaintiff's Sanctions Motion"), Defendants' Opposition, and Plaintiff's Reply; and 3) Defendants' Motion for Reconsideration of Order Denying Motion for Protective Order ("Defendants' Reconsideration Motion"), and Plaintiff's Opposition. Upon consideration of the Motions, the Oppositions, the Replies, and the entire record herein, Plaintiff's Summary Judgment Motion is **granted**, Plaintiff's Sanctions Motion is **denied without prejudice**, and Defendants' Reconsideration Motion is **denied.**

RELEVANT PROCEDURAL HISTORY

On October 15, 2013, Plaintiff filed its Complaint against Defendants Ultimate Events LLC ("Ultimate Events") and William Loiry ("Loiry") d/b/a United States Leadership Forum, U.S. Leadership Forum, and World Leadership Forum. Plaintiff alleged that Defendants had conducted business in the District of Columbia (the "District") while unregistered, in violation of D.C. Code §§ 29-105.02-03 (Count I), that Defendants failed to file a biennial report, in violation of D.C. Code § 29-105.11 (Count II), and that Defendants made misrepresentations that justify

equitable relief pursuant to D.C. Code § 29-105.12 (Count III). This Court granted Defendants' Motion for Partial Judgment on the Pleadings on August 22, 2014, dismissing Count III of the Complaint.

Defendants filed a Motion for Protective Order on January 7, 2015, requesting that the Court enter a protective order prohibiting Plaintiff from conducting a deposition of Loiry because it would be unduly burdensome and expensive for Loiry to travel to the District. On January 30, 2015, this Court denied Defendants' Motion, agreeing with Plaintiff that Loiry's deposition was relevant to the claims and remedies sought by Plaintiff in this case, and that Loiry had not established good cause for the Court to issue a protective order.

On April 28, 2015, Plaintiff filed its Sanctions Motion and its Summary Judgment Motion. In its Sanctions Motion, Plaintiff stated that Loiry continued to refuse to submit to a deposition in violation of this Court's January 30, 2015 Order. Plaintiff also requested that this Court enter an order finding that Defendants' violations of Title 29 are likely to recur unless enjoined and prohibiting Defendants from introducing evidence to rebut Plaintiff's evidence of the scope and duration of Defendants' unlawful conduct. In its Summary Judgment Motion, Plaintiff argued that it was entitled to summary judgment on Counts I and II of the Complaint and a permanent injunction against Defendants that would prohibit them from doing business in the District through any entity that was not registered to do business in the District or otherwise was not in compliance with Title 29 of the D.C. Code.

On May 15, 2015, Defendants filed their Oppositions to Plaintiff's Sanctions Motion and Summary Judgment Motion. In their Opposition to Plaintiff's Sanctions Motion, Defendants argued that Loiry was too sick to travel to the District for a deposition and that he had offered to be deposed by telephone or Skype and that Plaintiff had refused the offer. In their Opposition to

Plaintiff's Summary Judgment Motion, Defendants argued that Plaintiff lacked the authority under Title 29 to obtain a permanent injunction or to recover the fees, penalties, and charges Defendants allegedly owed for their violations of Title 29.

On May 22, 2015, Plaintiff filed its Replies to Defendants' Oppositions. In its Reply concerning its Sanctions Motion, Plaintiff argued that Defendants had failed to establish good cause for Loiry's failure to attend the depositions that Plaintiff had noticed and asserted that it had attempted to accommodate Loiry's health concerns by offering to conduct his deposition by a videoconference at locations that were only one to two hours from Loiry's house in Florida. In its Reply concerning its Summary Judgment Motion, Plaintiff argued that Defendants had not contraverted its statement of material facts, and that it was authorized to seek a permanent injunction and fees, penalties and charges under Title 29.

Finally, on May 13, 2015, Defendants filed their Reconsideration Motion, requesting that this Court vacate its January 30, 2015, Order denying their Motion for Protective Order. In this Motion, Defendants attach three letters from one of Loiry's doctors describing the effects of Loiry's "post-concussion syndrome," which Defendants claim are newly discovered evidence showing that Loiry's health has deteriorated to such an extent that travel to and from a deposition "constitutes a threat to his physical well-being." (*See* Defs.' Reconsideration Mot. at 2) On June 1, 2015, Plaintiff filed its Opposition, pointing out that Defendants had not produced any newly discovered evidence concerning Loiry's health and that they had previously relied on this same evidence of "post-concussion syndrome" from the same doctor to argue that Loiry should not travel to an oral examination in 2013.

LEGAL ANALYSIS

I. Plaintiff's Summary Judgment Motion

A. Relevant Legal Standards

Under Rule 56(c), summary judgment is appropriate if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits" show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Super. Ct. Civ. R. 56(c); *Osbourne v. Capital City Mortgage Corp.*, 667 A.2d 1321, 1324 (D.C. 1995). "A genuine issue of material fact exists if the record contains 'some significant probative evidence … so that a reasonable fact-finder would return a verdict for the non-moving party.'" *Brown v. 1301 K St. Ltd P'ship*, 31 A.3d 902, 908 (D.C. 2011) (citing *1836 S St. Tenants Ass'n v. Estate of Battle*, 965 A.2d 832, 836 (D.C. 2009)).

The moving party has the burden of establishing the absence of any genuine issues of material facts and the right to judgment as a matter of law. *Ferguson v. District of Columbia*, 629 A.2d 15, 19 (D.C. 1993). Once the movant satisfies this burden, the burden shifts to the non-moving party to show the existence of an issue of material fact. *Id.*; *Bruno v. Western Union Fin. Servs., Inc.*, 973 A.2d 713, 717 (D.C. 2009). Theoretical speculations, unsupported assumptions, and conclusory allegations do not rise to the level of a genuine issue of material fact. *Ferguson*, 629 A.2d at 19 (internal quotation and citation omitted). Instead, the non-moving party "must produce at least enough evidence to make out a prima facie case in support of his [or her] position." *Bruno*, 973 A.2d at 717 (internal quotations and citation omitted).

The Court cannot "resolve issues of fact or weigh evidence at the summary judgment stage." *Barrett v. Covington & Burling, LLP*, 979 A.2d 1239, 1244 (D.C. 2009). Rather, the Court must consider the evidence in the light most favorable to the opposing party and grant

summary judgment only if no reasonable juror could find for the opposing party as a matter of law. *Biratu v. BT Vermont Ave., LLC*, 962 A.2d 261, 263 (D.C. 2008).

Finally, a court may enter an injunction if a plaintiff establishes "some cognizable danger of recurrent violation" absent a court order enjoining a defendant's conduct. *Mbakpuo v. Ekeanyanwu*, 738 A.2d 776, 782 (D.C. 1999) (quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953)). Furthermore, while it is true that an injunction must be focused on future conduct, "it is equally true that 'a defendant's past conduct is important evidence – perhaps the most important evidence – in predicting [the defendant's] probable future conduct." *Id.* (quoting *Cruz-Foster v. Foster*, 597 A.2d 927, 930 (D.C. 1991)). Thus, a court may properly consider the "entire mosaic" of a defendant's past conduct, including his conduct in other cases, in determining whether an injunction should be issued. *Cruz-Foster*, 597 A.2d at 931-32 (quoting *In re S.K.*, 564 A.2d 1382, 1389 (D.C. 1989)).

B. Plaintiff's Summary Judgment Motion Will Be Granted

In this case, Plaintiff has established that there is no genuine issue of material fact concerning Defendants' liability under Counts I and II and that it is entitled to a permanent injunction enjoining Defendants from further violations. More specifically, the following material facts are undisputed.

Loiry has been the manager of Ultimate Events since its founding in November 2010. (*See* Statement of Material Undisputed Facts at ¶ 2) Ultimate Events manages events held under the business names United States Leadership Forum and World Leadership Forum. (*Id.* at ¶ 4) Ultimate Events was registered to do business as a foreign limited liability company in the District on December 8, 2010. (*Id.* at ¶ 9) However, Ultimate Events failed to file its required biennial report with the District of Columbia Department of Consumer and Regulatory Affairs

and its registration to do business in the District was revoked on November 14, 2011 as a result of its failure to file the required biennial report. (*Id.* at ¶¶ 10-11)

Loiry and Ultimate Events continued to conduct business in the District after Ultimate Events' registration was revoked. (*Id.* at ¶ 14) More specifically, Loiry and Ultimate Events held eight events in the District, and solicited registration fees for two additional events in the District from November 15, 2011, until October 21, 2013, when this Court entered a Preliminary Injunction by Consent enjoining Ultimate Events and Loiry from doing business in the District. (*Id.* at ¶¶ 15-16) Loiry and Ultimate Events also conducted business in the District before it was registered to do so, holding five events in the District between January 1, 2010 and December 7, 2010. (*Id.* at ¶¶ 18-19) Furthermore, Loiry conducted business in the District after the entry of this Court's Preliminary Injunction by Consent, advertising and soliciting payments for conferences under the names Defense Leadership Forum and United States Defense Leadership. (*Id.* at ¶ 21) In addition, from 1995 until 2010, Lowry did business in the District through a company named Equity International, even though Equity International was never registered to do business in the District. (*Id.* at ¶¶ 29-32) Finally, Lowry and Ultimate Events also conducted business in New Jersey even though Ultimate Events was not registered to do business in that state. (*Id.* at ¶ 36)[1]

As can be seen from the undisputed facts set forth above, Defendants are liable under Count I for doing business in the District while not being registered to do so, in violation of D.C. Code § 29-105.02-03, and also are liable under Count II for failing to file the required biennial

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[1] Defendants objected to certain of the facts set forth above as being immaterial. However, Defendants have not controverted the truth of any of these facts and have not produced any evidence casting doubt on any of these facts. Thus, these facts may properly be considered undisputed. *See* Super. Ct. Civ. R. 12-I(k) and 56(e); *Bennett v. Kiggins*, 377 A.2d 57, 59 (D.C. 1977) (facts may be considered undisputed unless material factual dispute is pled as required by Super. Ct. Civ. R. 12-I(k) and 56(e)).

registration report, in violation of D.C. Code § 29-105.11. Thus, the Court will enter judgment on these counts in favor of Plaintiff and against Defendants.

Furthermore, Plaintiff also has established that a Permanent Injunction should be issued against Defendants to prevent them from committing further violations of the above-cited provisions. More specifically, it is undisputed that Defendants conducted business in the District for almost two years after Ultimate Events' registration was revoked and that Loiry continued to conduct business in the District through another business entity, even after this Court entered a Preliminary Injunction that precluded him from doing so. It also is undisputed that Defendants conducted business in the District before Ultimate Events was registered to do so, and that Lowry conducted business in the District through another entity for a period of approximately 15 years even though this other entity also was not registered to do business in the District. Thus, it is undisputed that Lowry has been doing business in the District for almost 20 years through Ultimate Events or other entities, even though these entities were not registered to do business in the District. Finally it is undisputed that Defendants also have conducted business in another jurisdiction, even though Ultimate Events and Loiry's other companies were not registered to do business in that state.

In sum, Defendants have conducted business in the District and elsewhere, for an extensive period of time, even though they were not registered to do so. Therefore, Plaintiff has readily established a "cognizable danger" that Defendants will engage in future violations of Title 29 of the D.C. Code absent a Court order enjoining them from doing so. Furthermore, it is clear that the Attorney General has the authority to seek a permanent injunction against entities doing business in the District in violation of Title 29. *See* D.C. Code § 29-105.12. Accordingly,

the Court will grant a permanent injunction enjoining Defendants from conducting business in the District without being properly registered to do so, as set forth below.

II. Plaintiff's Sanctions Motion

A. Relevant Legal Standard

Under Super. Ct. Civ. R. 37, a trial court has broad discretion to impose sanctions for violations of discovery requirements. *See Walker v. District of Columbia*, 656 A.2d 722, 727 (D.C. 1995). Super. Ct. Civ. R. 37(b)(2)(B) authorizes a trial court to preclude the disobedient party from opposing certain claims or introducing certain matters into evidence, and Rule 37(b)(2)(C) authorizes a trial court to impose the sanction of judgment by default where a party fails to obey an order providing for discovery.

B. Plaintiff's Motion Will Be Denied

In this case, the Court already has granted Plaintiff's Summary Judgment Motion and is entering a permanent injunction against Defendants. Thus, there no longer is any need for this Court to enter an injunction against Defendants based on Loiry's failure to attend depositions noticed by Plaintiff, and this request will be denied as moot. Furthermore, as set forth below, the Court is denying Defendants' Reconsideration Motion and will order Loiry to attend any future deposition noticed by Plaintiff within the next forty-five days. Thus, to the extent that Plaintiff seeks to preclude Defendants from introducing any evidence concerning their monetary liability to Plaintiff based on Loiry's failure to attend depositions noticed by Plaintiff, that request will be denied without prejudice to its renewal if Loiry again fails to attend any future deposition noticed by Plaintiff within the next forty-five days.

III. Defendants' Reconsideration Motion

A. Relevant Legal Standard

Rule 60(b)(2) authorizes a party to seek relief from a final judgment or order based on "newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)." Where reconsideration is sought under Rule 60(b)(2), the movant must demonstrate that the newly discovered evidence could not have been discovered in advance of trial. *See American Continental Ins. Co. v. Pooya*, 666 A.2d 1193, 1199 (D.C. 1995). Furthermore, newly discovered evidence "does not encompass evidence not previously discovered because of 'lack of due diligence' or other evidence that 'was readily capable of being learned.'" *Id.* (quoting *Oxendine v. Merrell Dow Pharmaceuticals,* 563 A.2d 330, 334 (D.C. 1989)).[2]

B. Defendants' Motion Will Be Denied

In this case, Defendants argue that this Court should reconsider its January 7, 2015, Order denying their Motion for Protective Order based on three letters from Loiry's doctor stating that his "post-concussion syndrome" makes it difficult for him to travel. Although each of these letters was written after this Court's January 7, 2015, Order, and therefore could not have been submitted when Defendants filed their Motion for Protective Order, the substance of these letters was well known to Defendants at the time they filed their Motion for Protective Order. Indeed, as Plaintiff points out, Loiry submitted a letter from the same doctor in June 2013, more than a year and a half before Defendants filed their Motion for Protective Order in this case. In that

[2] Although Rule 60(b)(2), by its very terms, seems limited to cases where a trial has occurred and the movant seeks a new trial, the Court of Appeals has conducted a Rule 60(b)(2) analysis to a motion that did not seek a new trial. *See Pooya*, 666 A.2d at 1199 (conducting Rule 60(b)(2) analysis to motion seeking to vacate attorney fee award). Thus, without deciding whether Defendants' Motion was properly brought under Rule 60(b)(2), the Court will consider the merits of Defendants' Motion under that framework.

letter, which was submitted in a different case in this Court, Loiry's doctor indicated that Loiry should not attend an oral examination because he "continues to suffer from post-concussion syndrome." (*See* Pl.'s Opp., Ex. 1) Thus, it is clear to this Court that Defendants could have, and should have, presented their alleged newly discovered evidence in their Motion for Protective Order, and that their failure to do so reflected a lack of due diligence that precludes them from seeking reconsideration of this Court's Order under Rule 60(b)(2). Therefore, Defendants' Motion will be denied.

In addition, the Court believes that Plaintiff has offered Loiry a reasonable alternative to attending a deposition in the District, by offering to conduct the deposition by video-conference in either Mobile, Alabama, or Pensacola, Florida, each of which are less than two hours from Loiry's home in Florida. Thus, the Court will order that Loiry make himself available for a deposition within forty-five days of the date of this Order, with the location to be one of the two locations listed above as agreed upon by the parties or, if the parties cannot reach an agreement on the location, with the location to be one of the two locations listed above as chosen by Plaintiff.

Accordingly, it is this 9th day of July 2015, hereby

ORDERED that Plaintiff's Motion for Partial Summary Judgment and a Permanent Injunction is **GRANTED**; it is further

ORDERED that summary judgment as to liability on Counts I and II of the Complaint is entered in favor of Plaintiff and against Defendants; it is further

ORDERED that the Defendants are liable to Plaintiff for the amount of fees, penalties and charges that would have been due if the Defendants had registered and filed all reports required by Title 29 of the D.C. Code for the period of time during which Defendant Ultimate

Events did business in the District of Columbia, with the amount of the Defendants' monetary liability to be determined at subsequent proceedings in this case; it is further

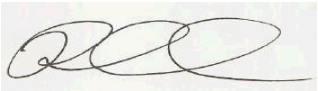
ORDERED that the Defendants and all others acting in concert or in participation with any of the Defendants shall be permanently enjoined from doing business in the District of Columbia through any entity:

1. that is not registered to do business in the District of Columbia in accordance with Title 29 of the D.C. Code;
2. whose registration has been terminated or is subject to termination due to non-compliance with the requirements of Title 29 of the D.C. Code; or
3. that owes the District of Columbia fees, penalties, or charges imposed for non-compliance with the requirements of Title 29 of the D.C. Code; it is further

ORDERED that Plaintiff's Motion for Sanctions is **DENIED WITHOUT PREJUDICE** as set forth above; it is further

ORDERED that Defendants' Motion for Reconsideration of Order Denying Motion for Protective Order is **DENIED**; and it is further

ORDERED that Defendant Loiry shall attend any deposition properly noticed by Plaintiff within forty-five (45) days of the date of this Order, with the deposition to be conducted as a video-conference deposition in either Mobile, Alabama, or Pensacola, Florida, with the location to be agreed upon by the parties or, if no agreement can be reached, to be chosen by Plaintiff.



Judge Robert Okun
(Signed in Chambers)

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