Federal Judge Sanctions Plaintiff, Cautions Defense about Bypassing Arbitration in Patent Infringement Case

Plantation lawyer Andrew S. Rapacke improperly filed a patent infringement case that should have gone straight to arbitration, according to U.S. District Judge Cecilia M. Altonago in Southern District of Florida, who awarded some — but not all — attorney fees and costs to the defense.

By Raychel Lean | January 08, 2019

Federal Judge Cecilia M. Altonaga in the Southern District of Florida awarded sanctions against the plaintiff in a patent infringement case on Monday, ruling that the company improperly sued and filed

U.S. District Judge Cecilia Altonaga,

three motions in a dispute that should have instead gone straight to arbitration.

Southern District of Florida. Photo: J. Albert Diaz/ALM.

Now, under Federal Rule of Civil Procedure 11, the plaintiff will pay attorney fees and costs for ignoring binding arbitration clauses in three different agreements. The rule applies only to papers filed in the court, such as pleadings and motions, not attorney misconduct.

But the defense didn't get everything it asked the court, losing out on fees incurred doing "wasteful work" during the earliest stages of the lawsuit. According to the court order, rather than focusing on refuting claims in the suit by litigating a motion to dismiss, the defense should have simply pushed for arbitration from the start.

South Carolina-based rifle and ammunition developer CheyTac USA LLC brought the federal lawsuit (https://drive.google.com/file/d/1PuIljvx7AiEh5A8rWo0t8XuuCETN-ftC/view?usp=sharing) in May 2017 against rival company Nextgen Tactical LLC and its manager Dennis Omanoff, who led CheyTac before creating a spin-off company.

The plaintiff sought damages and a jury trial over allegations Nextgen ripped off the designs of its rifle barrels and copied its ballistic flight technology for ammunition — patents Omanoff maintained he owned.

The case was ultimately dismissed and directed to arbitration, where it settled confidentially.

Arbitration aims to resolve a dispute with an impartial adjudicator, whose ultimate decision on a matter is final and binding. CheyTac had argued that the arbitration provisions in the contracts varied and conflicted with one

another. However, as the defendant was a spin-off entity —not a regular company — the plaintiff argued it might be exempt from the arbitration clause.

But CheyTac was wrong to file its complaint, along with a motion for temporary restraining order and two motions for preliminary injunctions, according to Altonga's order, which held the plaintiff was "flouting the arbitration provisions, the black letter of the Federal Arbitration Act, Supreme Court precedent and the American Arbitration Association's Commercial Rules."

Instead, the judge found CheyTac should have first sought advice from an arbitrator about whether its argument had merit.

Plaintiffs counsel Andrew S. Rapacke (https://arapackelaw.com/learn-more/the-team/andrew-rapacke/) of the Rapacke Law Group in Plantation declined to comment.

'Fruitless exercise'

Counsel to the defense, John Da Grosa Smith (http://www.lawsgr.com/attorney/john-da-grosa-smith/) of Spector Gadon & Rosen's Philadelphia office, moved for the sanctions

John Da Grosa Smith of Spector Gadon & Rosen's Philadelphia office.

(https://drive.google.com/file/d/10xBtn2GjjX5sFpvUEpOoidysYZ58lAsT/view?usp=sharing) in October 2017 and referred to the entire case as "a fruitless exercise."

"There was a harm that was incurred as a result of that frolic and detour," Smith said. "That journey never should have happened."

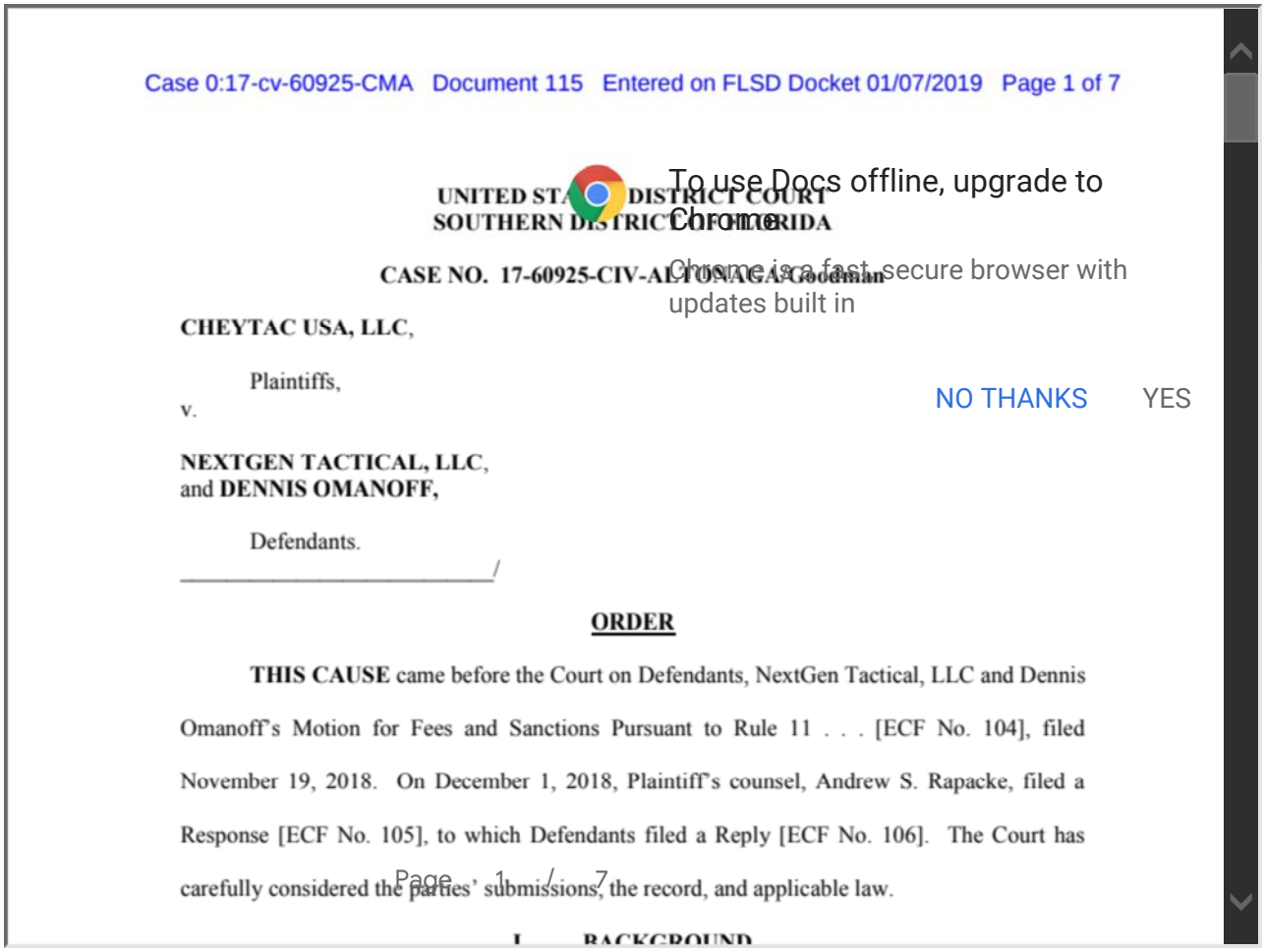
It's not yet clear how much the sanctions will cost the plaintiff, but according to Smith it won't be cheap.

"The complexity of federal court and federal procedure comes with a great deal of expense," Smith said. "One of the main reasons to have arbitration is to have a forum that's more efficient, more confidential and less costly, so if you traveled through one of the most complex and expensive forums on your way to it, it totally defeats the purpose."

In Smith's view, it's a simple case of actions meeting consequences.

"When you enter into a contract and you agree to arbitrate any dispute, you are agreeing in connection with that entire contract to resolve the dispute in arbitration," Smith said. "That's part of the bargain for exchange of whatever your agreement is."

Read the full court order:



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NO THANKS YES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 17-60925-CIV-ALTONAGA/Goodman

CHEYTAC USA, LLC,

Plaintiffs,

v.

NEXTGEN TACTICAL, LLC, and DENNIS OMANOFF,

Defendants.
_____/

ORDER

THIS CAUSE came before the Court on Defendants, NextGen Tactical, LLC and Dennis Omanoff's Motion for Fees and Sanctions Pursuant to Rule 11 . . . [ECF No. 104], filed November 19, 2018. On December 1, 2018, Plaintiff's counsel, Andrew S. Rapacke, filed a Response [ECF No. 105], to which Defendants filed a Reply [ECF No. 106]. The Court has carefully considered the parties' submissions, the record, and applicable law.

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I. BACKGROUND

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