



**MEMORANDUM**

Moore, J.

On July 23, 2003 the magistrate judge ordered the parties to engage in factual discovery regarding the destruction of the plaintiffs' MacIntosh computer, set a briefing schedule to allow each side to address whether Hornby had been prejudiced by the destruction of the computer, and set a hearing on the issue for October 8, 2003. Despite the fact that the magistrate judge has the undeniable authority to issuing such routine discovery orders, the plaintiffs found it necessary to further and frivolously delay this litigation by filing a groundless objection to the magistrate judge's order.

The plaintiffs argue that the magistrate judge's order was clearly erroneous and contrary to law<sup>1</sup> because, they assert, the magistrate judge mistakenly believed he did not have discretion under footnote one of my June 17, 2003 memorandum to decline to hold an evidentiary hearing. (Pls.' Reply Br. at 1-2; Pls.' Objection to Magistrate Judge's Order at 2-3.) The plaintiffs assume that the magistrate judge would not have ordered the

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<sup>1</sup> A magistrate judge's ruling on a nondispositive matter may be reversed only if the order is "clearly erroneous or contrary to law." Fed. R. Civ. P. 72(a); LRCi. 72.1; see also *Haines v. Liggett Group, Inc.*, 975 F.2d 81, 92 (3d Cir. 1992). Under this standard, I should affirm the magistrate judge's findings of fact unless I am left with "the definite and firm conviction that a mistake has been committed." Fed. R. Civ. P. 72(a); *Harrison V. Bornn, Bornn & Handy*, 200 F.R.D. 509, 513 (D.V.I. 2001).

evidentiary hearing had he not incorrectly believed he was without discretion. The plaintiffs also assume that "this Court did not intend to require Judge Resnick to order such a hearing if upon consideration of the undisputed evidence he found it unnecessary." (Pls.' Reply Br. at 3.)

Contrary to the plaintiffs' assumptions, my June 17, 2003 memorandum clearly did require such a hearing, as it stated in the margin: "If the MacIntosh has in fact been disposed of, Hornby shall be entitled to an evidentiary hearing to determine whether he has suffered any prejudice." (June 17, 2003 Mem. at 4 n.1 (emphasis added).) Whether the magistrate judge felt he was without discretion to schedule briefing and a hearing on the matter is completely speculative. Despite the absence of any expression in the magistrate judge's order that he felt compelled to schedule briefing and a hearing, the plaintiffs have wilfully asserted the following completely inaccurate description of his order: "Significantly, Judge Resnick did not find that an evidentiary hearing was warranted; rather, only that it was required under the June 17 Order." (Pls.' Objection to Magistrate Judge's Order at 2-3 (emphasis in original).)

Plaintiffs' false statement that the magistrate judge found that an evidentiary hearing was "required" under my June 17, 2003 order is a clear and blatant violation of Rule 3.3(a)(1) of the

American Bar Association's Model Rules of Professional Conduct that govern attorneys practicing before this Court.<sup>2</sup> Rule 3.3(a)(1) states that "a lawyer shall not knowingly make a false statement of fact or law to a tribunal . . . ." The magistrate judge explicitly stated he was acting in accordance with my June 17, 2003 order and accompanying memorandum, but said absolutely nothing about whether he felt "required" or compelled to act in this manner.<sup>3</sup>

Moreover, this entire appeal of the magistrate judge's order is frivolous and has served only to waste the precious judicial resources of this Court and caused defendant Hornby to incur unnecessary expenses. Whether the magistrate judge felt he was without discretion to subsequently schedule briefing and a hearing on the matter is utterly irrelevant as it has no bearing on his power to order such a hearing.

Accordingly, I will deny the plaintiffs' motion and *sua sponte* award to defendant Hornby the costs and attorneys fees he

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<sup>2</sup> See Local Rule of Civil Procedure 83.2.

<sup>3</sup> In their reply brief, the plaintiffs allege that at an August 27, 2003 scheduling conference the magistrate judge "again reiterated his position that he felt obligated to order an evidentiary hearing into this matter, not because it would be productive or warranted, but rather, because he felt the language of footnote 1 of this Court's June 17 Order did not provide him discretion." (Pls.' Reply Br. at 2 n.1.) The plaintiffs have not provided a transcript of the magistrate judge's alleged statement and, given the plaintiffs' flagrant mis-characterization of his July 23, 2003 order, I give their claim regarding the August 27, 2003 scheduling conference absolutely no credit.

incurred in defending against this frivolous appeal. I will order defendant Hornby to file with the Court his costs and attorneys fees related to this issue by Monday, September 20, 2004. The plaintiffs shall file any objection to the defendant's filing no later than Thursday, September 30, 2004. An appropriate order follows.

**ENTERED this 10th day of September, 2004.**

**For the Court**

\_\_\_\_\_/s/\_\_\_\_\_  
**Thomas K. Moore**  
**District Judge**

**ATTEST:**  
**WILFREDO MORALES**  
**Clerk of the Court**

By:\_\_\_\_\_/s/\_\_\_\_\_  
**Deputy Clerk**

**Copies to:**  
Hon. G.W. Cannon  
Daryl Barnes, Esq.  
Douglas C. Beach, Esq.  
John A. Zebedee, Esq.  
Mrs. Jackson  
Jeffrey Corey



**ORDER**

Moore, J.

For the reasons stated in the accompanying memorandum of even date, it is hereby

**ORDERED** that the plaintiffs' objection to the magistrate judge's July 23, 2003 order is **denied**; it is further

**ORDERED** that defendant Hornby is awarded costs and attorneys fees that he incurred in defending this matter; it is further

**ORDERED** that defendant Hornby shall file documentation of his costs and attorneys fees no later than Monday, September 20, 2004; the plaintiffs shall file any objection to the defendant's fee request by Thursday, September 30, 2004.

**ENTERED this 10th day of September, 2004.**

**For the Court**

\_\_\_\_\_/s/\_\_\_\_\_  
**Thomas K. Moore**  
**District Judge**

**ATTEST:**  
**WILFREDO MORALES**  
**Clerk of the Court**

**By:**\_\_\_\_\_/s/\_\_\_\_\_  
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