

2007 WL 1518632

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United States District Court, S.D. New York.

GORDON PARTNERS, et al., Plaintiffs,
v.
George S. BLUMENTHAL, et al., Defendants.

No. 02 Civ. 7377(LAK).

|
May 17, 2007.

ORDER

LEWIS A. KAPLAN, District Judge.

*1 Defendant PTV, Inc. ("PTV"), formerly known as NTL Europe, Inc., objects to the January 30, 2007 opinion and order of Magistrate Judge Andrew Peck which found that PTV was guilty of spoliation of evidence and granted plaintiffs' motion for an adverse inference spoliation sanction plus attorneys' fees in an amount to be determined. PTV objects. In view of the grant of defendants' motion for summary judgment dismissing the complaint, so much of the objection as relates to the adverse inference instruction is moot. What remains is the award of attorneys' fees.

PTV objects to the ruling principally on two bases. It first argues that plaintiffs failed to show that they were prejudiced by any destruction of evidence that may have occurred. Its fallback position is that PTV, which it confusingly refers to as "Old NTL," did not control New NTL.

The Magistrate Judge's ruling must be affirmed in the absence of a showing that it is "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A).

The holding that PTV had control over the relevant documents was not erroneous for the reasons set forth by Judge Peck (Op.33–39), by this Court in its May 3, 2006 order, and for reasons alluded to in *United States v. Stein*, No. 05 Crim. 0888(LAK), 2007 WL 1258926, at *7–9 (S.D.N.Y. May 1, 2007) (discussing legal standard and somewhat analogous facts).

Nor is PTV correct in arguing that the order appealed from was erroneous because plaintiffs were not prejudiced. What is required is evidence that the destroyed evidence would have been relevant. *Residential Funding Corp. v. DeGeorge Fin. Corp.*, 306 F.3d 99, 107 (2d Cir.2002). Relevance, for purposes of an adverse inference instruction, may be inferred from culpable destruction of evidence. *Id.* at 109. In view of Judge Peck's finding, unchallenged here, that PTV was "at least grossly negligent" (Op. at 42), a finding that rested not only on such an inference but also on extrinsic evidence (*id.* at 45–46), the evidence was more than sufficient to warrant his finding of relevance. Moreover, it is at least arguable that the standard for imposing an adverse inference sanction is more demanding than that for awarding lesser sanctions such as attorneys' fees, and attorneys' fees are all that remain at issue here.

I have considered PTV's other arguments and found them wanting. The order appealed from, insofar as it has not been mooted by the grant of defendants' motion for summary judgment, is affirmed.

SO ORDERED.

All Citations

Not Reported in F.Supp.2d, 2007 WL 1518632