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Case No. 2019-0722-NAC

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SLINGSHOT TECHNOLOGIES, LLC,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 2019-0722-NAC
	:	
ACACIA RESEARCH CORP., ACACIA RESEARCH GROUP, LLC, MONARCH NETWORKING SOLUTIONS LLC, KATHARINE WOLANYK, and TRANSPACIFIC IP GROUP, LTD.,	:	
	:	
Defendants.	:	

DEFENDANT TRANSPACIFIC IP GROUP LIMITED'S
MOTION FOR SANCTIONS/ATTORNEYS' FEES

Pursuant to Rules 3(aa) and 37, prevailing party Transpacific IP Group Limited ("Transpacific") moves this Court for an award of attorneys' fees incurred in defending a meritless case premised on knowingly false verified allegations, in violation of Rule 3(aa). Further, Slingshot abused discovery to extend the life of its claim, warranting Rule 37 sanctions and fee-shifting.

PRELIMINARY STATEMENT

Slingshot Technologies, LLC ("Slingshot") asserted a claim against Transpacific that was premised on allegations that it introduced Transpacific to Burford's Managing Director, Katharine Wolaynk ("Wolanyk"), as a potential

funding source for a potential transaction.[1] (D.I. 56, SAC ¶¶4, 50, 63, 106, 176). Slingshot knew its claim against Transpacific was frivolous and premised on false allegations, but violated this Court's Rules in pursuit of a nuisance settlement. Specifically, the following allegations were knowingly false:

- "Slingshot introduced Transpacific to… Burford and, ***specifically, Burford's Managing Director…***, ***Wolanyk***." (*Id.* ¶4)
- "Burford ***and*** its Managing Director ***Wolanyk*** were plainly 'funding sources' that ***Slingshot introduced to Transpacific***…." (*Id.* ¶106).
- "Slingshot introduced Transpacific to Burford ***and Wolanyk*** as a funding source for the transaction." (*Id.* ¶176).
- "Slingshot introduced Transpacific to multiple funding sources, including Burford. ***Wolanyk***, Burford's Managing Director, ***led the discussions for Burford***…." (*Id.* ¶50).
- "Slingshot disclosed its discussions with Burford ***and Wolanyk*** to Transpacific, introducing it to Burford and Wolanyk as a potential funding source." (*Id.* ¶63).

[1] Slingshot—and its two principals—Keith Machen and York Eggleston—litigate under several aliases, including YE Ventures, LLC, Catapult IP Innovations, IP Commercialization Labs, Kroy IP Holdings, LLC, Quartz Auto Technologies, LLC, Stone Interactive, CloudRock LLC, Marble VOIP Ventures, Rock Teletech Ventures, and Jawbone Innovations. *See* *https://www.mondaq.com/unitedstates/patent/1333996/claiming-breach-of-contract-catapult-ip-seeks-to-unwind-blackberrys-patent-sale-to-malikie*.

- "During December 2018, Slingshot, Transpacific and Burford continued to negotiate potential terms...." (*Id.* ¶63)
- "Transpacific could not enter into a sale agreement with funding sources introduced by Slingshot (***e.g., Wolanyk***….)." (*Id.* ¶89).

To disprove these fabricated allegations ("False Allegations"), Transpacific incurred significant legal fees and expenses and now seeks sanctions.

BACKGROUND

Slingshot filed this lawsuit in 2019, seeking relief against several defendants arising from the sale of a patent portfolio ("Orange Portfolio" or "Portfolio") that Slingshot once had an exclusive option to purchase. (D.I. 1). Despite several extensions, Slingshot's exclusivity expired and it never obtained funding to close. After wasting months on Slingshot, Transpacific was a motivated seller and sold the Portfolio to co-defendant Acacia Research Group, LLC ("Acacia"). Rather than conceding that its own commercial failures caused its lost opportunity, Slingshot concocted a false narrative that Acacia, Burford Capital, LLC ("Burford") and Transpacific conspired against it, and threatened to litigate if it could not cut a side deal.

Slingshot's Shakedown Fails

Slingshot began extorting Acacia, threatening to challenge "Acacia's ability to monetize [the Orange Portfolio]," pushing for a "business solution" to resolve Slingshot's threats. (Exhibit 1). Slingshot paraded a draft complaint before Acacia and Burford, threatening "to assert claims" unless Acacia "resolved" them "through a full sale, joint venture or a division of the assets." (Exhibits 2, 3). Acacia's CEO was firm: "I don't believe there can be any claims against us, and we haven't seen anything from you that supports any claims. I actually know what was involved in our acquisition of the… Portfolio, so I am confident in this." (*Id*.). Nevertheless, Slingshot filed its meritless lawsuit, naming Acacia, Transpacific and Wolaynk, as defendants.

This Nuisance Suit

After three rounds of motions to dismiss, Slingshot settled on its allegations in its Second Amended Complaint ("SAC" or "Complaint"). (D.I. 56). The Complaint alleged three claims against Transpacific, all relating to its sale of the Portfolio to Acacia. The narrative Slingshot advanced was that it was "robbed" of its opportunity to purchase the Portfolio because, after Slingshot's exclusivity lapsed (and it declined to pay for an extension), Transpacific sold the Portfolio to Acacia. Slingshot contrived that this sale was improper because Acacia purportedly acquired inside information about the Portfolio from its parent company's outside director,

Wolanyk, who was also an agent of Burford, which previously vetted the Orange Portfolio with Slingshot. But Slingshot's "story" was nothing more than coincidences and possibilities artfully woven together to create "reasonably conceivable" circumstances that never actually occurred.

Slingshot drew in Transpacific, alleging it breached a "non-circumvention" provision in the Patent Sale Agreement between the parties, which prohibited Transpacific from entering "into any sale transaction regarding the Patents with any funding source introduced to [Transpacific] by [Slingshot] for a period of one year" after Slingshot's failed exclusivity period (the "Non-Circumvention Provision"). (SAC ¶174; Count V). In accusing Transpacific of breaching the Non-Circumvention Provision, Slingshot made—and verified—False Allegations. Slingshot backstopped its express breach of contract claim with an implied covenant claim, alleging the Non-Circumvention Provision should be extended by the covenant to prohibit "a transaction with a separate entity … that recently named a key executive from a funding source." (*Id.* ¶191; Count VII). Finally, Slingshot alleged Transpacific breached the terms of a services agreement that was never operative. (SAC ¶¶181-187, Count VI). Each of these claims lacked legal and factual merit and Transpacific moved to dismiss them. (D.I. 57, 70).

In opposing Transpacific's Motion to Dismiss, Slingshot relied upon its False Allegations to clear its pleading hurdle and proceed to discovery:

- "Among the funding sources to whom ***Slingshot introduced Transpacific*** … was Burford… ***and its Managing director, Kathryn Wolanyk***." (D.I. 81 at 2).
- "***Slingshot introduced Transpacific to Wolanyk***, Burford's Managing Director…." (*Id.* at 9).
- "As pled in the SAC… Slingshot introduced Transpacific… to Burford and Wolanyk." (*Id.* at 22).
- "Slingshot ***repeatedly*** identified Wolanyk as a funding source." (*Id.* at 23).
- "Slingshot ***introduced*** Transpacific to Burford and Wolanyk." (*Id.* at 24).
- "***Wolanyk was the funding source that Slingshot introduced to*** the Orange Portfolio and ***Transpacific***." (*Id.* at 28)
- "Acacia['s] new board member had been introduced to Transpacific by Slingshot." (*Id.* at 45).

Slingshot leveraged the False Allegations to survive the Motion to Dismiss, and, at the hearing, affirmed: "the allegations are clear on the Burford end, that [Transpacific] knew of [Wolanyk] at Burford. ***We expressly say Slingshot introduced Transpacific to Wolanyk. We say that she led the discussion for Burford***." (Exhibit 4, p.106) (emphasis added).

The Court Dismissed Slingshot's Breach Claims and Trimmed Count VII

Ultimately, this Court dismissed both breach of contract claims (Counts V and VI), ruling Slingshot's proposed interpretations of the contracts were not reasonably conceivable. (Exhibit 5 at ¶¶5-8). The Court determined Transpacific had not breached any contractual obligation in selling its patents to Acacia. (*Id.* ¶5(d)).

Slingshot's implied covenant claim was allowed to proceed based on the plaintiff-friendly pleading standards and favorable inferences: "all that is required is some reason to ***infer*** that Transpacific ***could have*** known that Acacia was using knowledge gained from Burford," (*Id.* ¶6(g)) (emphasis added).

The Court implied a specific term concerning "indirect competition" and provided Slingshot with a roadmap as to the ***only*** avenue to a possible remedy from Transpacific: "Slingshot [must] prove that Transpacific knew that Acacia was using knowledge gained from Burford in connection with its acquisition of the Orange Portfolio." (*Id.* ¶6(b) and (f)). "Absent ***evidence*** that Transpacific ***knew*** that Acacia was using knowledge gained from Burford, Slingshot will not be able to establish a breach of the implied covenant." (*Id.* ¶6(h)).

In resolving the Motion, the Court relied on the False Allegations, concluding, "Slingshot ***introduced*** Transpacific to Burford, bringing Burford withing the [Non-Circumvention] Provision." (*Id.* ¶2(d)). (*See id.* ¶5(c) ("Burford was a funding source ***introduced to*** Transpacific by Slingshot")).

Discovery Confirmed Slingshot's Allegations Were Fabricated

With the MTD Order in hand, Slingshot knew what it needed to prove. It also knew, however, that it never introduced Transpacific to Wolanyk. Instead of retracting its False Allegations, Slingshot pressed forward, causing Transpacific to expend significant funds on attorneys and discovery.

Discovery took place from May 2021 through October 2022. Slingshot propounded 29 interrogatories and 59 requests for production on Transpacific. (D.I. 119-120). Transpacific retained DLS Discovery to forensically collect its data and assist with document discovery, costing over $16,000. Transpacific produced two witnesses for deposition and attended six others.

During discovery, Slingshot continued to obscure the truth. In response to targeted interrogatories, Slingshot made baseless objections and gave evasive answers. For example, when asked to identify the dates Slingshot introduced Burford and Wolanyk to Transpacific, Slingshot evaded, merely referencing the date "it entered into the first non-disclosure agreement with Burford" but providing no information regarding the alleged introduction – ***because it never happened***. (Exhibit 6 at Interrogatories 9, 10). Transpacific also requested Slingshot identify "discussions You allege Wolanyk led in connection with Slingshot's introduction of Burford as a Funding Source to Transpacific," which was tied to its most central False Allegation. (SAC ¶50; Exhibit 6 at

Interrogatory 15). Slingshot provided ***no response***.

Slingshot also improperly ***denied*** certain of Transpacific's Requests for Admission, refusing to admit there were no communications wherein Slingshot identified Burford or Wolanyk as funding sources or introducing them to Transpacific. (Exhibit 7 at Responses 7-8, 11-12). Transpacific—through a complete discovery record—proved these denials were false and there was no evidence supporting Slingshot's False Allegations.[2]

Summary Judgment Ruling

Transpacific moved for summary judgment, as no evidence supported Slingshot's claim. (D.I. 158). Slingshot should have dismissed its claim, but filed an Answering Brief instead, seeking to distance itself from its False Allegations and re-write the Non-Circumvention Provision to change its scope and ignore the law of the case. (*See* D.I. 170; D.I. 176 at 8). At argument, Slingshot's counsel lacked answers to the Court's pointed questions about whether there was ***any*** evidence supporting its claim, conceding it had only "a web of circumstantial evidence from which the Court can infer" supportive facts. (Exhibit 8 at 33).

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[2] If anything, discovery revealed ***Slingshot*** transacted unethically, lying to Transpacific to extend its exclusivity period by orchestrating a sham call between Transpacific and a purported funding source: "I haven't looked at [the Portfolio] since that time except to fulfill your request to essentially ***feign support and interest on a call with Transpacific*** to, as I understood it, push back your closing date." (Ex. 31) (emphasis added). Eggleston disputes this account.

This Court granted summary judgment in Transpacific's favor, finding Slingshot attempted to use the implied covenant claim "to achieve the benefits of a transaction Slingshot could not consummate." (Exhibit 9 at 14). "Slingshot was given a full and fair opportunity to discover the facts [the Court] would need" but "fail[ed] to present any substantial evidence on an essential element of [its] case." (*Id*. at 11, 14). "The only reasonable inference to draw from the record is that after Slingshot repeatedly failed to close on the Orange Portfolio,[3] Transpacific became a motivated seller, seeking a buyer who could close on the Orange Portfolio quickly. Acacia fit that mold... Slingshot has not discovered any evidence suggesting Transpacific took acts to frustrate the purpose of the option agreement." (*Id.* at 13-14).

Transpacific prevailed in full and established there was never any truth to Slingshot's False Allegations. While Transpacific has been vindicated, the harm it suffered through ***four years*** of litigation against Slingshot took its toll. Transpacific was forced to expend over $385,000 in attorneys' fees and $30,000 in litigation costs and expenses to clear its name. Transpacific's harms cannot be doubted: throughout this litigation, Slingshot itself made clear that "[t]he IP

[3] This Court concluded, "[d]espite multiple opportunities to acquire the Orange Portfolio, Slingshot failed to raise the funds to do it. The record suggests that even if available to today, Slingshot still would lack the capital to acquire the Orange Portfolio." (Exhibit 9 at 4-5).

community in this space [in which Transpacific and Acacia operate] is pretty small," (Exhibit 8 at 44), and "[t]he bedrock of Slingshot and Acacia [and Transpacific's] industry is confidentiality." (Exhibit 10 at 16). Thus, Slingshot knew its allegations against Transpacific would be particularly damaging, but was undeterred in its shakedown campaign.[4]

Transpacific seeks sanctions—including fee-shifting—for Slingshot's abuses of process.

ARGUMENT

"[I]t is much more difficult (and, thus, time consuming) to defend against a series of specious allegations than it is simply to lob such allegations into the fray. The Plaintiffs' conduct, for little immediate cost to them, caused a great deal of consternation for the Defendants. It takes much more effort to disprove a falsehood than it does to make a false accusation." *Soterion Corp. v. Soteria Mezzanine Corp.*, 2013 WL 869353, *6 (Del. Ch.).

These maxims are central to this Motion: Slingshot recklessly publicized

[4] Slingshot also falsely verified allegations that "Slingshot shared with Transpacific certain confidential information, which Transpacific, in turn, shared with Acacia" and that Transpacific "shar[ed] work product" to assert a false violation of contractual confidentiality provisions, which were false and later dismissed by the Court. (SAC ¶¶185-186; *see* D.I. 81 at 34 ("Slingshot alleges Transpacific breached . . . the confidentiality provision")). Knowing the import of these allegations in Transpacific's "small community," the Court should have no sympathy for Slingshot's False Allegations.

serious allegations of purported wrongdoing against Transpacific, knowing they were untrue and would damage Transpacific's reputation. In so doing, Slingshot disregarded this Court's procedural safeguards—Rule 3(aa)—by verifying False Allegations that it later emphasized in case-dispositive briefing and argument, and relied upon to extend the life of its ill-fated claim. Slingshot must be held accountable for its violations.

A. Slingshot Violated Rule 3(aa)

Rule 3(aa) requires that "[e]very pleading… be verified… under oath or affirmation by the party filing such pleading" and averring that "the matter contained therein insofar as it concerns the party's act and deed is true, and so far as relates to the act and deed of any other person, is believed by the party to be true." Verifying false allegations is a violation of Rule 3(aa), sanctionable under the bad faith exception to the American Rule. *See Charter Communications Operating, LLC v. Optymyze, LLC*, 2021 WL 1811627, *27 (Del. Ch.) (shifting fees to party who falsified allegations); *ASX Investment Corp. v. Newton*, 1997 WL 178147, *2 (Del. Ch.) (when "it is determined that the improper suit was brought on the basis of misleading or inaccurate information," parties may be sanctioned, including under Rule 11).

Slingshot verified False Allegations that it introduced Transpacific to Wolanyk. (SAC ¶¶4, 50, 63, 106, 176). Slingshot's General Counsel, Keith

Machen, knew the gravity of making misrepresentations to the Court and was not merely negligent or reckless: Slingshot refined its allegations ***three times***. (D.I. 56). And throughout discovery, Slingshot prolonged the lifespan of its specious allegations by evading targeted interrogatories and improperly denying requests for admission without basis.[5]

B. The Bad Faith Exception to the American Rule Applies

The Court may award Transpacific all or a portion of its attorneys' fees and costs in defending this action through the bad faith exception to the American Rule, because Slingshot knowingly asserted frivolous claims and unnecessarily prolonged baseless litigation. "The bad faith exception to the American Rule applies in cases where the court finds litigation to have been brought in bad faith or finds that a party conducted the litigation process itself in bad faith, thereby unjustifiably increasing the costs of litigation." *Optymyze,* 2021 WL 1811627, *27. *See Beck v. Atlantic Coast PLC,* 868 A.2d 840, 843 (Del. Ch. 2005) (When litigants "file[] false and misleading complaints with this court that misrepresent[] factual circumstances at the core of [the] case," it

[5] Slingshot's baseless denial of Transpacific's Requests for Admission warrant reimbursing Transpacific for reasonable costs and attorneys' fees in disproving the false denials. Rule 37(c) permits Transpacific to "apply to the Court for an order requiring [Slingshot] to pay the reasonable expenses… including reasonable attorneys fees," which resulted from Slingshot's improper failure to admit facts, like the lack of documents reflecting that Slingshot introduced Burford or Wolanyk to Transpacific. (Exhibit 7 at Requests 11, 12).

results in the "unnecessary incursion of costs" on both the defendants "but also by this court," requiring a "substantial, but fair, sanction of fees and costs against them.").

Shifting fees will "deter abusive litigation …[and] protect[] the integrity of the judicial process," while penalizing Slingshot for "unnecessarily prolong[ing]…litigation" and "knowingly assert[ing] frivolous claims." *Kaung v. Cole Nat. Corp.*, 884 A.2d 500, 506 (Del. 2005) (cleaned up).

In *DG BF, LLC v. Ray*, 2022 WL 1618799, *3 (Del. Ch.), this Court shifted fees because plaintiff's "litigation conduct" revealed "they knew that claim was frivolous all along," as evidenced by a "refus[al] to answer several core questions" regarding their claim. Here too, Slingshot knew its claims were false all along, having never introduced Transpacific to Wolanyk or Burford. Slingshot evaded targeted interrogatories on the specifics of its claim and opposed summary judgment even after discovery proved its False Allegations lacked merit. *See Nichols v. Chrysler Group LLC*, 2010 WL 5549048, *5 (Del. Ch.) (bad faith includes "where a plaintiff continues to prosecute an action even after learning… her allegations no longer have a colorable basis.").

Slingshot's misrepresentations were not a close call—they were made in bad faith by a serial litigant that never suffered a legitimate injury, but attempted to procure a litigation-based deal, while causing Transpacific significant

economic and reputational damage. "When awarding expenses… for bad faith litigation tactics, this Court takes into account the remedial nature of the award," and should "make whole the party who was injured by the other side's contumely." *DG BF*, 2022 WL 1618799, *5 (cleaned up).

CONCLUSION

For the foregoing reasons, this Court should sanction Slingshot for verifying False Allegations, and award Transpacific its reasonable attorneys' fees incurred in disproving them.

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Dated: February 26, 2024

CERTIFICATE OF SERVICE

I, Jamie L. Brown, hereby certify that on February 26, 2024, copies of Defendant Transpacific IP Group Limited's Motion for Sanctions/Attorneys' Fees were served electronically upon the following counsel:

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