

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED December 31, 2024 2:54 PM FILING ID: AE8C1B44FE6D0 CASE NUMBER: 2023CV226
<p>WILLIAM MONTGOMERY,</p> <p>Plaintiff,</p> <p>v.</p> <p>BEST BUY, L.P.,</p> <p>Defendant.</p>	<p>▲ COURT USE ONLY ▲</p>
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Stephanie Boutsicaris, Reg. No. 51297 Montgomery Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com sboutsicaris@mac-legal.com	Case No.: 2023CV00226 Division: 6
<p align="center">BEST BUY’S MOTION FOR ATTORNEYS’ FEES</p>	

Best Buy Stores L.P. (“Best Buy”), by and through its attorneys of record, Montgomery | Amatuzio, hereby submits this Motion for Attorneys’ Fees, pursuant to C.R.S. § 13-17-102 and C.R.C.P. 11(a). As grounds, Best Buy states as follows:

CERTIFICATE PURSUANT TO C.R.C.P. 121 § 1-15

Undersigned Counsel conferred with Plaintiff concerning this motion. Plaintiff is opposed to the relief requested herein.

LEGAL STANDARD AND AUTHORITY

Under C.R.C.P. 11(a), a party's signature on pleadings certifies that the party conducted a reasonably inquiry into the fact and law relating to the pleading and that, based on this investigation, the signer reasonably believes the pleading is well grounded in fact. *See Maul v. Shaw*, 843 P.2d 139 (Colo. App. 1992). Furthermore, a party's signature certifies that the pleading was not filed for the purpose of causing delay, harassment, or an increase in the cost of litigation. *E.g., Stearns Mgmt. Co. v. Missouri River Servs., Inc.*, 70 P.3d 629 (Colo. App. 2003). Rule 11 focuses primarily on conduct prior to a pleading being filed. *See Switzer v. Giron*, 852 P.2d 1320 (Colo. App. 1993). If a pleading is signed in violation of Rule 11, the court, upon motion or upon its own initiative, shall impose an appropriate, which may include an order to pay the other party's reasonable attorney's fees. C.R.C.P. 11(a).

C.R.S. § 13-17-102(4) states in relevant part that a court "shall assess attorney fees" if a party brings or defends an action, or any part thereof, "that lacked substantial justification...." As applied here, the lack of substantial justification is defined as "substantially groundless" (the other grounds of substantially frivolous or vexatious are not applicable to these facts).

Rule 11(a) as applied in this case focuses mostly on the requirement for investigation and a "good faith argument" prior to signing and filing a pleading, while C.R.S. § 13-17-102(4) only requires an action, claim or defense found to be, in hindsight, "substantially groundless." These inquiries do not require a finding of subjective bad faith but merely the disregard of either the investigation responsibilities in litigation or the actual facts supporting the asserted claims and defenses. *E.g., In re Trupp*, 92 P.3d 923, 930 (Colo. 2004). However, "[i]f an action is brought or

continued vexatiously or in bad faith, the basis for an award of fees would be even stronger.” *W. United Realty, Inc. v. Isaacs*, 679 P.2d 1063, 1069 (Colo. 1984).

Sanctions, including an award of reasonable attorneys’ fees, pursuant to C.R.C.P. 11 or pursuant to C.R.S. § 13-17-102 is a decision committed to the discretion of the trial court, whose ruling will not be disturbed on appeal absent an abuse of discretion. *E.g., Stearns Mgmt. Co. v. Missouri River Servs., Inc.*, 70 P.3d 629, 633 (Colo. App. 2003).

MOTION

I. Plaintiff had knowledge that his claims would not prevail.

After having numerous previous lawsuits thrown out based upon the same or similar facts and legal arguments, Plaintiff continues to assert the same failed arguments. **Ex. A-K**;¹ *see also*, Best Buy’s Motion for Summary Judgment. Because of the outcome of these previous lawsuits, Plaintiff had actual knowledge that this lawsuit would likewise fail, and yet, proceeded with this vexatious litigation.

Apparently, no previous litigant has requested attorney’s fees from Plaintiff, and thus, Plaintiff believes his actions are vindicated. **Ex. Q**, Plaintiff’s Deposition, 90:1-18. Plaintiff also testified that an award of attorney’s fees would potentially deter future lawsuits, provides that such an order was well-reasoned. *Id.* at 90:19-92:14. Because Plaintiff has already voiced his intent to proceed with more lawsuits against Best Buy, a strong sanction of attorney’s fees is necessary here to deter future groundless, frivolous, and/or vexatious lawsuits. **Ex. Q**, 92:15-20.

II. Plaintiff’s filing of this lawsuit was in bad faith.

¹ To avoid duplicitous submissions, Best Buy will be utilizing the same exhibits and labels for such exhibits as its Motion for Summary Judgment briefings.

Plaintiff's conduct on the date of the subject incident demonstrates that he was deliberately trying to engage Best Buy in a situation that would result in a lawsuit. To achieve this goal, Plaintiff drove more than a hundred miles over the course of about eight hours to make numerous purchases at various Best Buy locations on one of the busiest retail shopping days of the year, Black Friday. **Ex. N-O; Ex. Q**, 107:13-109:11. Many of these purchases were duplicitous, purchasing the same items over and over again in order to "audit" Best Buy and to see if Best Buy would detain Plaintiff. **Ex. Q**, Plaintiff's Deposition, 85:4; *see also*, **Ex. Q**, 110:13-111:25. In fact, Plaintiff repeatedly analogized his conduct to a police bait car trying to catch people committing auto theft. **Ex. Q**, 35:23-37:5; 45:16-46:9.

This conduct trying to stir up lawsuits was accompanied by Plaintiff's display of animosity toward Best Buy during the pendency of this litigation. **Ex. Q**, 87:5-10; **Ex. R**, Plaintiff's Emails to Best Buy. Plaintiff went as far to say that everyone else involved in the suit should "go find the nearest bridge and jump off of it." *Id.* While Plaintiff's animosity toward Best Buy is not required to grant an award of attorney's fees, this animosity and bad faith reinforce the need and the justification for an award of attorney's fees. *Isaacs*, 679 P.2d at 1069.

III. Plaintiff maintained this lawsuit in bad faith.

Plaintiff maintained this lawsuit in bad faith by deliberately failing to comply with his Rule 26(a)(1) disclosure requirements and deliberately providing evasive discovery responses. In his YouTube video that was posted prior to the filing of this lawsuit, Plaintiff plainly stated his intention of not cooperating with discovery:

"I thought showing my receipt or telling the Court that I had it after the fact was an easy way to, like, prove my innocence and therefore prove their guilt. I'm not going to be so nice next time. I've already got cases where I have it all set up a perfectly, a true sting. Where I'm not going to say I had a receipt or not, I'm not even going

to say I was a customer or not. The burden of proof ain't on me for anything, man. All I've got to show is that I was surrounded and then they have to be the ones that separate the wheat from the chaff. I'm not, I'm done doing the merchants' homework, even in a lawsuit, man. Screw that, man!"

Exhibit L, 17:15-17:55.

In keeping with his word, Plaintiff deliberately omitted his brother from Rule 26(a)(1)(A) disclosures, even though Plaintiff is now claiming in his Motion for Reconsideration that his brother was present at Best Buy during the alleged incident and made a purchase close in time to the alleged false imprisonment. *See*, Motion for Reconsideration, p. 8-10, *compare with* **Ex. S**, Plaintiff's Rule 26(a)(1) Initial Disclosures (omitting Plaintiff's brother). This failure to identify Plaintiff's brother in disclosures was not an accident or oversight. Plaintiff's discovery responses demonstrate that Plaintiff was determined to provide as little information as possible in this lawsuit by responding to most discovery requests with "I do not recall." **Ex. T**, Plaintiff's Response to Def's First Set of Discovery Requests. In fact, Plaintiff claims to not be able to recall whether or not he made a purchase at the subject Best Buy, and then – suddenly – in his Motion for Reconsideration, Plaintiff can remember the occasion and vehemently denies making the purchase. *See*, Plaintiff's Motion for Reconsideration, p. 9-10.

Prior to filing this lawsuit, Plaintiff verbalized that he had no intention of cooperating in good faith with court procedure. Thereafter, his actions spoke even louder than his words, as his conduct demonstrated no intention to cooperate in good faith by feigning a lack of memory of the incident in sworn responses to written discovery. **Ex. T**. As such, the Court is required under both Rule 11 and C.R.S. § 13-17-102(4) to impose appropriate sanctions, and the Court should impose reasonable attorney's fees.

Wherefore, for the forgoing reasons, Best Buy respectfully requests that this Court grant this Motion and award reasonable attorney's fees to Best Buy.

Filed on December 31, 2024.

MONTGOMERY | AMATUZIO

By: s/ Stephanie E. Boutsicaris
Lori K. Bell
Stephanie E. Boutsicaris

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on December 31, 2024, a true and correct copy of the foregoing **BEST BUY'S MOTION FOR ATTORNEYS' FEES** was prepared for service to the following in the manner indicated below:

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s/ Samantha Trujillo
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