

IN THE CIRCUIT COURT  
TWENTIETH JUDICIAL CIRCUIT  
ST. CLAIR COUNTY, ILLINOIS

LW SYSTEMS, LLC, )  
 )  
 Plaintiff, )  
 )  
 v. ) Case No. 13-L-15  
 )  
 CHRISTOPHER HUBBARD, )  
 )  
 Defendant. )

**CHARTER COMMUNICATIONS, LLC'S MOTION FOR SANCTIONS**

Respondent Charter Communications, LLC ("Charter"), by and through its undersigned counsel, pursuant to Illinois Supreme Court Rule 219(c), hereby moves this Court for an order requiring Plaintiff LW Systems, LLC ("LW Systems") to fully comply with the Court's August 7, 2013 Order, and for an entry of sanctions against LW Systems and/or its counsel due to its noncompliance with the August 7, 2013 Order. In support of its motion, Charter states as follows:

1. On July 11, 2013, Charter filed its Motion for Costs and for Protective Order, in which it requested:
  - Charter's costs associated with producing information in response to an invalid subpoena issued by LW Systems; and
  - A protective order compelling LW Systems to return any and all materials, including copies, produced by Charter to LW Systems in response to the invalid subpoena.

2. On July 23, 2013, prior to ruling on Charter's Motion for Costs and for Protective Order, the Court granted LW Systems' request for voluntary dismissal and dismissed this action with prejudice. The Court ordered each party to pay its own court costs and attorneys fees.

3. On August 7, 2013, while this Court still retained jurisdiction over this matter, the Court heard Charter's Motion for Costs and for Protective Order. The Court instructed LW Systems to comply as follows within 10 days of the Court's Order:

- Pay Charter in the amount of \$1,292.80; and
- Certify via sworn writing, by Paul Duffy and all counsel of record, that: (A) all information relating to Charter subscribers has been destroyed or returned, and (B) no further or additional use of said information will take place, nor will Plaintiff or its counsel contact Charter subscribers.

4. On August 30, 2013 – *thirteen days after it was due* – counsel for Charter received a letter from LW Systems' counsel that included sworn statements from Paul A. Duffy, John L. Steele and Kevin T. Hoerner. The letter certified that all information relating to the Charter subscribers earlier disclosed in this case had been destroyed or returned, and otherwise complied with the Court's Order regarding certification. The letter also stated that, to the knowledge of LW Systems' counsel, none of the subscriber identifying information was produced to Kevin T. Hoerner.

5. However, neither Charter nor its counsel has received LW Systems' payment to Charter in the amount of \$1,292.80, as ordered by this Court. On September 3, 2013, counsel for Charter sent an email to LW Systems' counsel inquiring as to when Charter would be receiving payment. *See* Email from Steven M. Sherman to Paul Duffy and Kevin Hoerner, dated 9/3/13, attached as Exhibit A. Charter's counsel has yet to receive any response to this email.

6. Charter's costs in the amount of \$1,292.80 were incurred providing notification to customers of the subpoena, which Charter was obligated to do under federal law.

7. Under Illinois law, "court rules and orders are not merely suggestions to be complied with if convenient. Instead, they constitute obligations that counsel disregard at their *personal* peril and that trial courts must enforce." *Clymore v. Hayden*, 278 Ill. App. 3d 862, 869, 663 N.E.2d 755, 759 (1996) (emphasis in original).

8. Pursuant to Illinois Supreme Court Rule 219(c), if a party unreasonably fails to comply with a court order:

[The court] may impose upon the offending party or his or her attorney, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred as a result of the misconduct, including a reasonable attorney fee, and when the misconduct is wilful, a monetary penalty. . . Notwithstanding the entry of a judgment or an order of dismissal, whether voluntary or involuntary, the trial court shall retain jurisdiction to enforce, on its own motion or on the motion of any party, any order imposing monetary sanctions, including such orders as may be entered on motions which were pending hereunder prior to the filing of a notice or motion seeking a judgment or order of dismissal.

Ill. Sup. Ct. R. 219(c).

9. In addition, a trial court has inherent authority and discretion to control its docket and impose sanctions for the failure to comply with court orders, and sanctions are appropriate when noncompliance is unreasonable and the order entered is just. *Cronin v. Kottke Assocs.*,

*LLC*, 2012 IL App (1st) 111632, 975 N.E.2d 680, 690, *appeal denied*, 981 N.E.2d 996 (Ill. 2012); *Ruane v. Amore*, 287 Ill. App. 3d 465, 471, 677 N.E.2d 1369, 1374 (1997); *see also Polk v. Cao*, 279 Ill.App.3d 101, 664 N.E.2d 276 (1996) (“In determining whether noncompliance is unreasonable, the court should consider whether the offending party’s conduct was the result of a deliberate and pronounced disregard for court rules.”).

10. In refusing to remit payment to Charter, LW Systems and its counsel have ignored a prior Court Order that was just and fair in its rulings. LW Systems’ noncompliance is unreasonable and explicitly subjects it to sanctions. LW Systems and/or its counsel has burdened this Court and Charter with additional motion practice and court hearings, and has unnecessarily increased Charter’s costs of litigation, despite the fact that this action was dismissed with prejudice on July 23, 2013.

11. As a result of LW Systems’ willful failure to comply with the prior Court Order, Charter requests that sanctions be imposed on LW Systems and/or its counsel in an amount of \$1,292.80 for each day that LW Systems and/or its counsel fails to remit payment to Charter in compliance with the Court’s August 7, 2013 Order.

12. Charter’s requested relief is reasonable based on the circumstances of this case.

WHEREFORE, for the foregoing reasons, Charter Communications, LLC respectfully requests that this Court enter an order, pursuant to Illinois Rule of Civil Procedure 219(c):

- a) requiring Plaintiff LW Systems, LLC and its counsel to fully comply with the Court’s August 7, 2013 Order;
- b) requiring LW Systems and/or its counsel to pay Charter in the amount of \$1,292.80 as instructed in the Court’s August 7, 2013 Order;

- c) imposing sanctions against LW Systems and/or its counsel (Paul A. Duffy and John L. Steele), in a cumulative amount of \$1,292.80 for each day that LW Systems and/or its counsel fails to remit the \$1,292.80 payment to Charter, to begin accumulating as of the date of entry of this order;
- d) for Charter's attorneys' fees and costs associated with this Motion; and
- e) for such other and further relief as this Court deems just and equitable.

Respectfully submitted,

By 

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OF COUNSEL:  
THOMPSON COBURN LLP

*Attorneys for Respondent  
Charter Communications, LLC*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing document was mailed postage prepaid to the following attorneys of record this the 12th day of September, 2013.

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-----Original Message-----

From: Sherman, Steven M.  
Sent: Tuesday, September 03, 2013 3:36 PM  
To: 'Paul Duffy'  
Cc: Kevin Hoerner; [rsprague@spragueurban.com](mailto:rsprague@spragueurban.com)  
Subject: RE: signature

Paul,

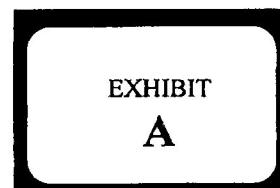
When is Charter going to get its costs, per the Court's order in LW, and per rule in Peg Leg?

Steve

Steven M. Sherman  
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-----Original Message-----

From: Paul Duffy [mailto:[pduffy@pduffygroup.com](mailto:pduffy@pduffygroup.com)]

Sent: Tuesday, September 03, 2013 3:30 PM

To: Sherman, Steven M.

Cc: Kevin Hoerner

Subject: Fwd: signature

Here is the Steele signature. It was attached to my copy of what I mailed to you but maybe it was inadvertently left off of the copy. Sorry for any inconvenience

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