

## Withdrawing Counsel Still Accountable Under Rule 11

***Bovinnett v. HomeAdvisor, Inc.*, 2020 WL 1330407 (N.D. Ill. Mar. 23, 2020)**

By: Barry Irwin and Chris Eggert | April 3, 2020

Plaintiff Bovinnett brought suit against Defendant HomeAdvisor and affiliated companies in August of 2017, asserting 14 claims alleging improper use of his image in a number of Defendants' advertisements, and demanding approximately \$2.8 million in damages. The Defendants moved to dismiss for lack of jurisdiction as to two entities, and on eleven of the fourteen counts under Fed. R. Civ. P. 12(b)(6). The Defendants also presented an early settlement offer, and characterized the case as brought in bad faith, frivolous, and extortionary. The Plaintiff did not accept the early settlement offer, and the district court granted the motion to dismiss in its entirety.

Plaintiff filed an amended complaint, adding new counts and reasserting counts that had been dismissed against all defendants, including those dismissed for lack of jurisdiction. Further, Plaintiff increased its demands for damages to \$4.65 million. The parties engaged in discovery, and the Defendants again filed a motion to dismiss. During discovery, Plaintiff engaged in evasive discovery and Defendants also won a motion to compel responses to interrogatories directed to Plaintiff's allegations establishing jurisdiction over the Defendants contesting jurisdiction. The court granted the second motion to dismiss as well, including on all new counts and again granting the jurisdictional motion to dismiss for one of the Defendant entities.

The Defendants filed a total of three sanctions motions against Plaintiff and his counsel on Rule 11 grounds for their actions in bringing the suit, lack of factual support for key allegations, and for the abuses of the discovery process under Rule 37. Plaintiff's counsel eventually withdrew representation, and the Defendants remaining in the case ultimately settled with Plaintiff. However, after settlement, the Court still required Plaintiff's former counsel to respond to Defendants' three sanctions motions, and later granted the motions for the former counsel's role in prosecuting the case and for the discovery abuses.

This decision represents a rarity in our court system. All too often are lawsuits filed in bad faith in an effort to elicit settlement. For large companies, it is often more economical to settle than to fight against frivolous cases. And, even though many parties threaten and move for sanctions, courts are typically hesitant to impose sanctions on individual attorneys in their personal capacities for their roles in filing and prosecuting cases. This decision represents everything going refreshingly right for a company attacked with a frivolous lawsuit. However, this decision still took three years to secure, and required perseverance as well as a commitment to pursuing bad actors. Other attorneys should take notice of decisions like this one, and think critically about the matters and clients that they take on, the allegations that they draft and put in complaints, and opportunities presented to resolve cases. This decision provides a good example of how the system should work—where bringing frivolous lawsuits and abusive discovery conduct does not go unpunished.