

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED
CIVIL PROCESSING

2020 OCT 28 P 2:02

JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

John C. Depp, II,)
)
Plaintiff,)
)
v.)
)
Amber Laura Heard,)
)
Defendant.)
_____)

Civil Action No.: CL-2019-0002911

**PLAINTIFF’S OPPOSITION TO REASONABLENESS OF DEFENDANT’S
ATTORNEYS’ FEES AND COSTS**

Plaintiff John C. Depp, II (“Plaintiff”), by and through his undersigned counsel, hereby opposes the reasonableness of Defendant Amber Laura Heard’s (“Defendant”) request for attorneys’ fees and costs. Defendant’s request for \$22,509.60 in attorneys’ fees and costs in connection with a short, simple motion to compel is excessive and unreasonable.

ARGUMENT

I. Mr. Depp timely paid the costs.

Pursuant to paragraph 2 of the Court’s Order, entered on October 15, 2020 attached hereto as **Exhibit A**, Plaintiff reimbursed Defendant on October 14, 2020 the full \$650.20 appearance charges for the court reporter and videographer.

II. Defendant’s request for attorneys’ fees and costs is unreasonable and should be reduced in light of the circumstances of the motion and the case.

A. The Court denied half of Defendant’s motion.

Ms. Heard’s September 23, 2020 Motion to Compel the Deposition of John C. Depp, II and Production of Documents in Response to Defendant’s Ninth Request for Production of Documents, and for Sanctions (“Motion to Compel”), as the title indicates, pertains to two

simple, discrete issues – compulsion of Mr. Depp’s deposition and the production of documents. The motion was only four and a half pages and was followed by a short 15-minute oral argument before the Court. Ms. Heard did not cite a single case, statute, code provision, or court rule in the memorandum in support of her motion. The fact that there was no research component to the motion further evidences the simplicity of the legal issues. Despite the simple and limited nature of the motion, Ms. Heard’s counsel apparently spent nearly 40 hours preparing, including 27.6 hours by her most senior counsel, and now seeks more than \$22,000 in attorneys’ fees and costs. Ms. Heard’s request is excessive and unreasonable. Because the proper measure under the Virginia rules is the “*reasonable expenses* incurred in obtaining the order,” and because the hours spent by Defendant’s counsel on the motion are unreasonable, Defendant’s fee request should be substantially reduced.

Setting aside the exorbitant number of hours by a very senior attorney spent on the motion, Ms. Heard’s request fails to consider that half of her motion was *denied*. See **Exhibit A** (“Defendant’s Motion to Compel responses to Nos. 1-5 of the Ninth Request for Production of Documents is denied.”). Indeed, Ms. Heard’s request to compel production on her ninth set of RFPs was denied, with the Court holding “Your request as to the ninth request for production of documents, request to compel that is denied. I don’t think it was really appropriate.” See **Exhibit B** at 33. Virginia Supreme Court Rule 4:12(a)(2)(4) provides that when a motion to compel is denied, “the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney’s fees...” Defendant’s fee award should be reduced in light of the fact that Mr. Depp successfully defended against half of her motion.

B. The amount is unreasonable in light of the record.

Indeed, a number of Ms. Heard's motions to compel have been denied either summarily, as on August 21, 2020, when the Court declined to consider Defendant's motion to compel for her failure to meet and confer prior to filing, or in large part. "[T]he key to a proper award of counsel fees [is] reasonableness under *all of the circumstances revealed by the record.*" *Khakee v. Rodenberger*, No. 0990-18-4, 2019 WL 1522963, at *4 (Va. Ct. App. Apr. 9, 2019) (quoting *McGinnis v. McGinnis*, 1 Va. App. 272, 277 (1985)) (emphasis added); *see also* VA S. Ct. R. 4:12. Here, reduction is particularly appropriate considering "all of the circumstances revealed by the record" where Mr. Depp has expended significant resources successfully defending against Mr. Heard's serial motions to compel, including motions where the Court found that Ms. Heard failed to properly meet and confer and also brought motions *in limine* eight months in advance of trial.

As such, Defendant's fee award: (1) should be reduced so that it is reasonable in light of the simple nature of the motion to compel; (2) should be reduced in light of the fact that half of Defendant's motion was denied and found not "appropriate"; and (3) should be reduced in light of "all the circumstances revealed by the record" which includes the Court's denial of many of Ms. Heard's prior motions to compel, which successful defenses came at significant expense to Mr. Depp.

Conclusion

For all of these reasons, Defendant's fee award should be reduced from the \$22,509.60 sought by Ms. Heard.

Respectfully submitted,



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*Counsel for Plaintiff and
Counterclaim Defendant John C. Depp, II*

Dated: October 28, 2020


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of October 2020, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

Elaine Charlson Bredehoft (VSB No. 23766)
Carla D. Brown (VSB No. 44803)
Adam S. Nadelhaft (VSB No. 91717)
David E. Murphy (VSB No. 90938)
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Counsel for Defendant Amber Laura Heard



Benjamin G. Chew

Exhibit A

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JOHN C. DEPP, II,

Plaintiff,

v.

AMBER LAURA HEARD,

Defendant.

Civil Action No.: CL-2019-0002911

ORDER

THIS MATTER CAME TO BE HEARD upon Defendant Amber Laura Heard's ("Defendant" or "Ms. Heard") Motion to Compel Deposition of John C. Depp II, Production of Documents in Response to Defendant's Ninth Request for Production of Documents, and for Sanctions, pursuant to Rules 4:5, 4:8 and 4:12 of the Virginia Supreme Court, and upon consideration of the briefs, exhibits and argument of counsel, it is hereby

ORDERED that Defendant's Motion is **GRANTED** in part and **DENIED** in part; and it is further

ORDERED as follows:

- 1) Plaintiff John C. Depp, II shall, pursuant to Rule 4:5(a)(i), appear for three successive days in counsel for Defendant's offices in Virginia at 11260 Roger Bacon Drive, Suite 201, Reston, VA 20190, or at such other place in Northern Virginia designated by counsel for Defendant, from November 10-12, 2020, beginning at 10:00 a.m. each day; and
- 2) Plaintiff shall, pursuant to Rule 4:5(g)(1), pay to Defendant the amount of \$650.20, the costs incurred for the appearances of the court reporter and videographer and the transcript for Plaintiff's properly noticed deposition on October 5, 2020;
- 3) Counsel for Defendant shall submit to the Court a Declaration of fees and costs associated with bringing this Motion before the Court and appearing at the deposition, within 7 days; and Plaintiff may submit any Opposition to the reasonableness of the fees and costs within 7 days thereafter, and the Plaintiff shall, pursuant to Rule

10/15/2020
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4:5(g)(1) and Rule 4:12 (d), pay to counsel for Defendant the amount set by the Court within 7 days after receipt of the Court's ruling on reasonableness.


Defendant's Motion to Compel responses to Nos. 1-5 of the Ninth Request for Production of Documents is denied.

SO ORDERED.

Dated: October 15, 2020


Hon. Bruce D. White
Chief Judge, Fairfax County Circuit Court

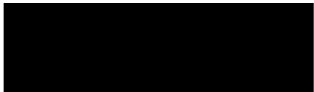
Compliance with Rule 1:13 requiring the endorsement of counsel of record is modified by the Court, in its discretion, to permit the submission of the following electronic signatures of counsel in lieu of an original endorsement or dispensing with endorsement.


Elaine Charlson Bredehoff (VSB No. 23766)
Adam S. Nadelhaft (VSB No. 91717)
David E. Murphy (VSB No. 90938)
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Counsel to Defendant Amber Laura Heard

SEEN AND EXCEPTED TO IN PART AND AGREED TO IN PART:


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Counsel for Plaintiff John C. Depp, II

Exhibit B



Planet Depos
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Transcript of Hearing

Date: October 9, 2020
Case: Depp, II -v- Heard

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Phone: 888.433.3767
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V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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JOHNNY C. DEPP, II, :

Plaintiff, :

v. : Case No. CL-2019-0002911

AMBER LAURA HEARD, :

Defendant. :

- - - - -x

HEARING

BEFORE THE HONORABLE BRUCE D. WHITE

Conducted Virtually

Friday, October 9, 2020

11:00 a.m. ET

Job No.: 323813

Pages: 1 - 35

Reported By: Victoria Lynn Wilson, RMR, CRR

1 HEARING BEFORE THE HONORABLE BRUCE D. WHITE,
2 conducted virtually.

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9 Pursuant to docketing, before Victoria Lynn
10 Wilson, Registered Merit Reporter, Certified
11 Realtime Reporter, E-Notary Public in and for the
12 Commonwealth of Virginia.

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A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

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(703) 318-6800 J.

1 A P P E A R A N C E S C O N T I N U E D

2 O N B E H A L F O F T H E D E F E N D A N T :

3 B E N J A M I N R O T T E N B O R N , E S Q U I R E

4 W O O D S R O G E R S , P L C

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1 MR. CHEW: November 11 and 12 -- 10, 11,
2 and 12 appear to be available for me, your Honor.

3 THE COURT: All right. The reason I ask
4 is I'm looking at the proposed order and paragraph
5 one that said that it would be at dates and times
6 agreeable to counsel for defendant, which
7 essentially would give defense counsel the
8 absolute authority to pick any date they want
9 between now and then, and I do not order that.
10 But if the dates of November 10th, 11th, and 12th
11 work as well as any other days between now and
12 then, that's -- that's (indecipherable).

13 Your request as to the ninth request for
14 production of documents, request to compel that is
15 denied. I don't think it was really appropriate.

16 The request to pay the court reporter cost
17 of \$650.20 is granted. The defense can submit to
18 the Court a declaration of attorney's fees
19 associated with bringing this motion and the
20 deposition that did not go forward.

21 Mr. Chew should have an opportunity to
22 file an opposition to the reasonableness of that.