

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

VICTOR STANLEY, INC.

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Plaintiff

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vs.

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CIVIL ACTION NO. MJG-06-2662

CREATIVE PIPE, INC., et al.

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Defendants

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MEMORANDUM AND ORDER

RE: APPEAL FROM ORDER OF MAGISTRATE JUDGE

The Court has before it Defendants'<sup>1</sup> Appeal from Magistrate Judge Grimm's September 9, 2010 Order [Document 383] and the materials submitted by the parties relating thereto<sup>2</sup>. The Court has conferred with counsel, conducted on the record conferences, and included a discussion of the instant matters in a hearing held this date.

A. BACKGROUND

In the Order and Recommendation [Document 378], Magistrate Judge Grimm Ordered<sup>3</sup>:

1. Pursuant to Fed. R. Civ. P. 37(b)(2)(C), Defendants shall pay monetary sanctions equivalent to Plaintiff's attorney's fees and costs, which will be awarded after further briefing by the parties, and which will include fees and costs associated with all discovery

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<sup>1</sup> All references herein to "Defendants" are to Mark Pappas and Creative Pipe, Inc.

<sup>2</sup> Defendants' Objections to Order and Recommendation Concerning Spoliation Sanctions [Document 379].

<sup>3</sup> The Magistrate Judge also made recommendations that are not the subject of the instant Order.

that would not have been untaken but for Defendants' spoliation, as well as the briefings and hearings regarding Plaintiff's Motion for Sanctions;

2. To that end, Plaintiff shall submit a bill of costs within thirty (30) days of the Court's Order, with Defendants' response, if any, to be submitted within thirty (30) days thereafter; and
3. Pursuant to Fed. R. Civ. P. 37(b)(2)(A)(vii), Defendant Pappas's acts of spoliation shall be treated as contempt of this Court, and as a sanction, he shall be imprisoned for a period not to exceed two (2) years, unless and until he pays to Plaintiff the attorney's fees and costs that will be awarded, as provided in Paragraphs (1) and (2) above.

In the defense appeal [Document 383 incorporating by reference the reasons set forth in Document 379], Defendants appeal from the portion of the Magistrate Judge's Order stating that, "as a sanction, [Defendant Pappas] shall be imprisoned for a period not to exceed two (2) years, unless and until he pays to Plaintiff the attorney's fees and costs that will be awarded, as provided in Paragraphs (1) and (2) above." Accordingly, the only issue on appeal is the propriety of a sanction of imprisonment<sup>4</sup> until Defendant Pappas pays the full amount of the monetary sanction ultimately imposed.

B. DISCUSSION

The Court states its agreement with the Magistrate Judge's Memorandum [Document 377], Order and Recommendation [Document 378] and adopts the Magistrate Judge's decision as the decision

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<sup>4</sup> Of up to two years.

of the Court except only as to the portions of Section 2(C)(5)(c) discussed herein.

1. Referral for Criminal Prosecution

The Magistrate Judge has decided not to refer the instant matter to the United States Attorney for consideration of possible criminal proceedings. On appeal from the decision of the Magistrate Judge, it is not appropriate to address the question of any possible criminal referral by the Court. Were the Magistrate Judge to have made a referral, the Court would not - perhaps could not - reverse the referral. On the other hand, the decision by the Magistrate Judge not to make a criminal referral does not preclude the possibility that the Court would do so if warranted by circumstances, including but not limited to those considered by the Magistrate Judge.

2. Nonpayment Sanction

The Magistrate Judge's Order held Defendants in contempt, imposed a monetary sanction and an additional sanction of imprisonment of Defendant Pappas until he pays the monetary sanction ultimately determined.

It is possible that Defendant Pappas will take - or already has taken - steps to evade payment of the monetary sanction being imposed upon him. However, the Court does not find it appropriate to Order Defendant Pappas incarcerated for a future possible failure to comply with his obligation to make payment

of an amount to be determined in the course of further proceedings. Certainly, if Defendant Pappas should fail to comply with a specific payment order, the Court may issue an order requiring him to show cause why he should not be held in civil contempt for failure to comply with that payment order. Also, under appropriate circumstances, criminal contempt proceedings might be considered.

C. CONCLUSION

For the foregoing reasons:

1. On Defendants' Appeal from Magistrate Judge Grimm's September 9, 2010 Order [Document 383], the said Order [Document 378] is hereby AFFIRMED IN PART AND MODIFIED IN PART.
2. Except with respect to the above discussed portions of Section 2(C)(5)(c) thereof, the Magistrate Judge's Memorandum [Document 377], Order and Recommendation [Document 378] is hereby ADOPTED as the decision of the Court.
3. The Court shall issue a separate Order in accordance herewith.

SO ORDERED, on Monday, November 01, 2010.

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/s/\_\_\_\_\_  
Marvin J. Garbis  
United States District Judge