

Masimo Corporation v. The Vanderpool Law Firm
(2024) 2024 DJDAR 3754

A law firm can run, but can't hide, from sanctions for discovery misuse.

FACTS

This case arose from the alleged misappropriation of funds by an employee from his employer. Masimo Corporation employed John Bauche, and at his request, granted him permission to engage an outside vendor to assist him in his duties. Bauche engaged BoundlessRise, LLC, of which he was the sole member. Bauche then embezzled nearly \$1 million from Masimo. When his fraud was discovered, he agreed to transfer the money back. Instead, he transferred most of it to Skyward Investments, LLC, again of which he was the sole member.

Masimo fired Bauche and referred the matter to law enforcement. A federal grand jury indicted Bauche for mail fraud, money laundering, and related crimes. In July 2019, Masimo sued Bauche, Boundless, and Skyward for misappropriation of corporate funds. All three defendants were represented by The Vanderpool Law Firm in the civil action.

In the fall of 2019, Masimo served interrogatories and document requests on the defendants. The responses included boilerplate objections with no substantive responses such as Bauche's place of birth, current residence, educational history, etc. Defendants filed an anti-SLAPP motion which the court ruled was frivolous and granted attorneys fees to Masimo. Defendants appealed, which stayed discovery until the spring of 2021. Discovery was again stayed until December 2021 while the federal criminal case was pending against Bauche. The court appointed a discovery referee and Vanderpool represented at a conference in February 2022, that it would "promptly" provide further responses. Later that month, Vanderpool served supplemental responses. The responses to both the special interrogatories and document requests consisted solely of the same and additional objections; only the responses to form interrogatories included minimal substantive responses.

In March 2022, Vanderpool withdrew as counsel for all three defendants despite Masimo's objected on the grounds that Bauche as a non-lawyer could not represent the corporate defendants. Masimo attempted to meet and confer with Vanderpool and Bauche on discovery. Bauche stated he stood by Vanderpool's objections and wouldn't provide further responses. Vanderpool dodged letters and emails before stating its refusal to meet and confer in an email: "Your remedy is elsewhere, and an attorney with your billing rate should know that. We are not here to educate you."

In April 2022, Masimo also renewed its motions to compel and requested \$17,500 in sanctions. In response, Vanderpool's principal attorney sent Masimo's counsel an email entitled "You are joking right?" which went on to state: "In 30 years of practice this may be the stupidest thing I've ever seen. Robert is this really why you went to law school? Quit sending us paper. you know we are out of the case so just knock it off and get a life. Otherwise we're going to be requesting sanctions against your firm for even bothering us with this nonsense."

Vanderpool specially appeared and asked that sanctions be issued against Masimo and its counsel. It argued that because it had substituted out as counsel before the motions to compel were filed, discovery sanctions could not be awarded against it. The discovery referee disagreed on the grounds that Vanderpool "put all of these events into motion" while representing the defendants. The referee also chastised Vanderpool for "shamefully" including material attacking Masimo in its

opposition in an effort to inappropriately prejudice the referee. The referee recommended that the motions be granted and \$10,000 be awarded in discovery sanctions against Vanderpool and the three defendants.

The trial court entered the order and Vanderpool appealed.

FOURTH APPELLATE DISTRICT'S RULING

On appeal, Vanderpool raised three arguments: (1) discovery sanctions could not be awarded against it because it was not counsel of record when the motions were filed in April 2022; (2) the trial court failed to independently review the referee's findings; and (3) Masimo failed to meet and confer before filing the motions.

The Court rejected all three arguments and affirmed the trial court's order issuing sanctions. Regarding the first argument, the trial court correctly determined that Vanderpool and the defendants committed discovery abuse, and it is not necessary to be counsel of record to be liable for monetary sanctions for such. An order imposing discovery sanctions is reviewed for an abuse of discretion and factual findings are upheld if supported by substantial evidence. Statute provides:

The court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process, or any attorney advising that conduct, or both pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct. The court may also impose this sanction on one unsuccessfully asserting that another has engaged in the misuse of the discovery process, or on any attorney who advised that assertion, or on both. If a monetary sanction is authorized by any provision of this title, the court shall impose that sanction unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(CCP § 2023.030(a), emphasis added.) Misuses of discovery include: "Making, without substantial justification, an unmeritorious objection to discovery" and "Making an evasive response to discovery." (CCP §2023.010(e), (f).)

Vanderpool unquestionably engaged in discovery misuses in providing both the initial and supplemental responses, especially after its representations to the referee. The Court noted that the objections in the supplemental responses were so boilerplate that the objections in the majority of the document requests stated "Responding Party objects to this interrogatory..." as opposed to a request for production. Furthermore, the statutory language does not limit imposition of monetary sanctions to counsel of record, but instead includes any attorney advising the conduct.

The Court further found that the trial court noted in a minute order that it independently reviewed the referee's findings, and that Vanderpool's argument that Masimo failed to meet and confer before filing the motions was unavailing. In particular, the Court called Vanderpool's principal attorney out by name for his incivility and issued a warning to California attorneys: "Incivility is the adult equivalent of schoolyard bullying and we will not keep looking the other way when attorneys practice like this. They will be called out and immortalized in the California Appellate Reports."