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Discovery Nightmare: Simple Request Sparked 3-Year Dispute for Miami-Dade Lawyer

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Javier Lopez, partner at Kozyak, Tropin & Throckmorton defended Coral Gables barbershop Well Groomed Gentleman. Courtesy photo.

When Kozyak Tropin & Throckmorton partner Javier Lopez agreed to defend a Coral Gables barbershop owner against accusations of tortious interference in August 2017, he had assumed the litigation would be straightforward.

But he was wrong.

Instead, Lopez said he found the case morphed into “one humongous discovery dispute that should have been resolved very, very quickly” as the plaintiff and their attorneys “seemed to be of the mind that a court’s orders are optional.”

More than three years of back-and-forth over documents ensued, culminating in multiple court-ordered sanctions, a six-day evidentiary hearing and an attorney fee award for Lopez’s client. To this day, Lopez said the plaintiff still hasn’t provided all the documents they’d promised.

“I was a newlywed with no kids and 37 years old when this started. By the time we had this hearing ... I was married with a 2-year old, another one on the way and 40 years old,” Lopez said. “In the meantime, we’re going back-and-forth to court over this, and my client’s spending a fortune just because these folks don’t want to play by the rules.”

It was a case that required Miami-Dade Circuit Judge Abby Cynamon to reach for the most draconian of sanctions, striking the plaintiff’s pleadings and dismissing the complaint with prejudice.

And for Lopez, the ordeal was a stark reminder of how crucial it is that attorneys document everything and keep their word.

“Especially when you see the other side starting to play games, you want to make sure everything’s crystal clear and clean,” Lopez said. “And I think that I’ve learned that you’ve got to say what you mean and mean what you say.”

Lopez teamed with Robert J. Neary to represent the Well Groomed Gentleman and its owner Adalberto Maulini — who was Lopez’s friend from church.

A larger and more established competitor, Razzle Dazzle Barbershop Inc., had accused Maulini and his barbers of violating a noncompete agreement and using marketing techniques to harm her business. But Maulini argued the case was meritless, claiming it was actually aimed scuppering his chances of competing.

More than three years on, Cynamon’s ruling has revealed that, from the lawsuit’s inception, the plaintiffs allowed deadlines to come and go despite months of extension offers from the defense.

The defendants’ first motion for contempt came in July 2018, according to Cynamon’s order. And the judge obliged, ordering the plaintiff to provide

certain documents and responses, and pay \$2,500 to the defendants. But that ultimately triggered a second finding of contempt, as the plaintiff didn't comply despite vowing to and was hit with a further \$1,500 attorney fee award for the defendants.

It was November 2018 by then, according to Cynamon's ruling, which said Lopez and Neary were told plaintiffs lawyer Andrew Kassier was waiting on his client and would get the discovery and fees the following day. But that didn't happen, so the defense filed a third motion for contempt of court.

Linares' attorney finally provided documents and responses one day before the hearing on that motion, but didn't fully comply with the court's order. That resulted in Cynamon ordering the plaintiff to pay a further \$8,187, with a \$100 penalty attaching every day until it was paid.

Linares fired Kassier in October 2019 and hired Albert Piantini, alleging she'd only just discovered the sanctions. However, Cynamon pointed out that Linares had received an email in April explaining the court's requests for production.

Kassier testified that the delays were his fault, telling the court he neglected the case as he was "hemorrhaging in his practice," "tied up with two other major federal lawsuits" and "was having problems financially," according to Cynamon's ruling.

And yet, the same pattern continued with new counsel. Cynamon noted the plaintiff largely failed to respond to a second discovery request, and what Linares did provide was incomplete and came during the evidentiary hearing on the issue.

That wasn't enough to justify what Cynamon found was willful noncompliance, especially considering that Kassier "has been a member of the Florida Bar since 1981, there is no basis for the court to conclude that his actions were a result of inexperience."

"While the court is sympathetic to former counsel's plight, the facts remain that in addition to the three contempt orders entered by the court, plaintiff's counsel failed to honor his discovery agreements with defense counsel on at least six separate occasions and consequently, the discovery was delayed for almost three years," Cynamon wrote.

Linares had claimed she'd assumed Kassier had everything he needed because of his involvement in a separate federal lawsuit against different barbershops, and she'd also argued the COVID-19 pandemic had caused a subsequent 10-month delay. But Cynamon was doubtful, noting it "did not affect South Florida Courts until March 2020."

And though the plaintiff argued the \$100 daily fee was an improper sanction, Cynamon disagreed.

Kassier and Piantini did not respond to requests for comment by deadline.

The ruling provides an important lesson, the way Lopez sees it, as it demonstrates how past promises can come back to haunt both lawyers and that, "Clients can't just blame everything on a lawyer if something goes wrong."

Lopez said this case was the first in his 16-year career that required him to ask a court to strike pleadings. But watching his friend go through what he felt was an injustice, it was a no-brainer Lopez

"My client was not someone that was going to be bullied," Lopez said. "I think, a lot of times, lawyers forget that OK, maybe we have 15, 20 cases, but every case is the most important case for that client. It's all-consuming. It takes over their lives. They dream about it. I dream about it too. And we've got to remember that we are helping these folks, in many instances, during some of the worst parts of their lives."