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## 2nd Circuit Revives Motion Seeking Sanctions, Citing Trial Courts' Inherent Power

The ruling made no findings of bad conduct, and was careful to note that the panel was not "prejudging whether sanctions should be imposed in this case." It did, however, remand the case for renewed consideration.

By Tom McParland | March 16, 2021



***Judge Richard J. Sullivan of the U.S. Court of Appeals for the Second Circuit. Photo: David Handschuh/NYLJ***

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The U.S. Court of Appeals for the Second Circuit on Tuesday revived ([https://www.ca2.uscourts.gov/decisions/isysquery/78c363a5-bfbe-4438-ad1a-1a5a6fde10f5/2/doc/19-1031\\_opn.pdf#xml=https://www.ca2.uscourts.gov/decisions/isysquery/78c363a5-bfbe-4438-ad1a-1a5a6fde10f5/2/hilite/](https://www.ca2.uscourts.gov/decisions/isysquery/78c363a5-bfbe-4438-ad1a-1a5a6fde10f5/2/doc/19-1031_opn.pdf#xml=https://www.ca2.uscourts.gov/decisions/isysquery/78c363a5-bfbe-4438-ad1a-1a5a6fde10f5/2/hilite/)) a motion for sanctions against an information technology firm and its attorneys for allegedly pushing a frivolous claim in a long-running and troubled contract suit that invoked the court's inherent power to punish parties for misconduct.

A three-judge panel of the appeals court held that a Manhattan federal judge had improperly denied defendant Verint Systems inc.'s motion for sanctions on the basis that a single alleged misrepresentation by the plaintiff, International Technologies Marketing Inc., and its now-withdrawn counsel had not impeded "the ability of the court to adjudicate the issues presented in the case."

In an 18-page ruling, Judge Richard J. Sullivan of the U.S. Court of Appeals for the Second Circuit said it was clear from Second Circuit precedent that the only prerequisites for a court to impose sanctions under its inherent power were that a party had advanced a "colorless claim and did so for improper reasons."

The trial court, though, had "grafted" additional requirements that, "while perhaps relevant considerations, should not have been given dispositive effect," Sullivan said.

"So, by primarily considering the effect of the misrepresentation, rather than the motive behind it, and by focusing on the quantity of misrepresentations, rather than on their 'quality,' the district court committed legal error," the judge wrote.

"Indeed, the district court appeared to assume that it could not sanction ITM unless ITM committed 'fraud on the court,'" Sullivan said. "While a finding that a litigant has successfully defrauded the court would no doubt be sufficient grounds for imposing monetary sanctions, it is not necessary."

The ruling made no findings of bad conduct, and was careful to note that the panel was not "prejudging whether sanctions should be imposed in this case." It did, however, remand the case for renewed consideration on the request.

ITM had sued Verint, an Israeli software company, for breach of contract in 2015, alleging that Verint had reneged on an agreement to pay a commission for ITM's work in helping it find partners to expand the company's footprint in Brazil. The lawsuit, which originally sought \$350,000 under ITM's theory of unjust enrichment, was later amended three times to ultimately include a sole surviving claim for unpaid work that Verint had rendered.

U.S. District Judge Gregory H. Woods of the Southern District of New York had limited ITM's quantum meruit claim only to alleged expenses after the contract between the two firms had expired. Despite that, ITM still sought the exact same amount as its original claims preceding the expiration of the deal.

According to court documents, when asked directly by the court whether there was evidence to support the claim, ITM's previous counsel, Christopher Hinton, affirmed that there was. It soon became apparent, however, that the charges ITM cited in support of its claim were unrelated to work the company had done in the relevant time period.

Verint's motion claimed alleged that ITM "has lied, and lied repeatedly, about central issues in this case."

"This is not a typical case where a party loses a lawsuit fair and square. This is something more nefarious," attorney Howard Elman, now of Elman Freiberg, wrote at the time. "The critical allegations pled by ITM to satisfy the elements of quantum meruit were lies. Together they constituted a fraud on the court."

The motion requested attorney fees and costs from ITM, Hinton and Anthony Schehtman, ITM's principal.

Hinton, who was not a party to the appeal, did not respond to a request for comment Tuesday.

ITM's current attorney, James Mahon of Becker & Poliakoff, said the panel's ruling with regard to the inherent power doctrine was a "well-reasoned decision by a distinguished panel," and noted that the Second Circuit separately affirmed Wood's earlier ruling denying Verint's Rule 11 sanctions motion.

"Somebody always comes in second before the Second Circuit," he said.

Elman, who represents Verint, declined to comment on the decision.

The case is captioned *International Technologies Marketing v. Verint Systems*.

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