

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
MAYIMBA MUSIC, INC., :
:
Plaintiff, :
:
-against- :
:
SONY/ATV LATIN MUSIC PUBLISHING LLC :
and SONY/ATV DISCOS MUSIC PUBLISHING :
LLC, :
:
Defendants. :
:
----- X

**Order Denying Plaintiff's
Motion to Vacate
Judgment, and Granting
Defendants' Motion for
Sanctions**
12 Civ. 1094 (AKH)

ALVIN K. HELLERSTEIN, U.S.D.J.:

The parties contest who is the rightful owner of the song “Loca Con Su Tiguer,” a song popularized by Shakira. After a bench trial held in June and July, 2014, I held in favor of plaintiff, Mayimba Music, Inc. (“Mayimba”). I held that Ramon Arias had composed the song between 1996 and 1998, which he then assigned to J&N Publishing LLC, which in turn assigned it to Mayimba. I held that defendants Sony/ATV Latin Music Publishing LLC and Sony/ATV Discos Music Publishing LLC (collectively, “Sony”) had infringed Mayimba’s copyright, and that the testimony of their assignor, Eduard Bello Pou, that he had composed the song in 2007, was not credible. *See* Dkt. No. 104 (Findings of Fact and Conclusions of Law, August 19, 2014). I ordered discovery to proceed relevant to damages and equitable remedies.

On December 17, 2014, Sony moved for a new trial, based upon newly-discovered evidence relating to the authenticity of the digital copy of Arias’ alleged composition deposited by Mayimba in the U.S. Copyright Office in November, 2011. I had held, based on Arias’ testimony, that the original of the deposit copy was from a cassette tape that had been recorded in the Dominican Republic in 1998 in his, Arias’, presence. Sony now showed, based

on clear and convincing evidence discussed below, that the original could not have been created before 2010, raising serious doubt about the integrity of Arias' testimony and the validity of the copyright. Over Mayimba's strong objection, I suspended the finding of liability and ordered an evidentiary hearing. *See* Dkt. No. 139 at 8 (Order for Evidentiary Hearing, April 30, 2015).

In preparation for the evidentiary hearing, I ordered the parties to produce their documents to the other side, including original documents as requested, and allowed the parties to make additional document requests. *See* Dkt. No. 144 at 19-20, 24. Since the parties previously had conducted depositions, I suggested that depositions would not be necessary unless for specified purposes, and offered the court's assistance if witnesses could not obtain visas to appear at the hearing to testify. *See* Dkt. No. 148. When defendants reported that they could not obtain a visa for a particularly relevant witness, Jhoan Gabriel Gomez Gonzalez, I ordered that his deposition be taken, by video and stenographic means, in the Dominican Republic. *See* Dkt. Nos. 160, 173.

The evidentiary hearing was held from August 3, 2015, to August 6, 2015. Oral argument was heard on August 10, 2015. I issued Supplemental Findings of Fact and Conclusions of Law on August 18, 2015. *See* Dkt. No. 194. Based on the testimony and evidence presented at the hearing, I found that the tape had been fabricated in 2010 or 2011, not in 1998 as originally claimed. I then concluded that Mayimba did not have a valid copyright, as the deposit copy was not a bona fide copy. Dkt. No. 194 at 7.

Both parties have brought subsequent motions. On November 5, 2015, Mayimba moved to set aside the August 18, 2015 judgment pursuant to Fed. R. Civ. P. 60(b)(3), (6). On September 22, 2015, Sony¹ moved for sanctions and an award of attorney's fees and costs.

Mayimba argues that Sony presented perjurious testimony and fabricated evidence in the August 2015 evidentiary hearing, warranting a new trial (the third in this case), and that the psychological condition of its trial counsel, James Sheinbaum, prevented Mayimba from sufficiently investigating the issues, and fairly presenting its position, in connection with the deposit copy. *See* Dkt. No. 221. Sony, on its motion, argued that Mayimba and its counsel "had clear notice of the fraudulent nature of their claims before the case was filed," and had no fair basis to try the case against Sony, originally or at the evidentiary hearing. *See* Dkt. No. 212.

For the reasons discussed in this order, Mayimba's motion is DENIED and Sony's motion is GRANTED in part. The defendants shall be entitled to recover their attorney's fees and costs incurred after, but not before, their December 2014 motion.

I. Mayimba's Motion

a. Claim For Relief Pursuant To Rule 60(b)(3)

i. Legal Framework

Mayimba's motion pursuant to Rule 60(b)(3) asks for a new trial based on Sony's alleged presentation of fraudulent evidence in the evidentiary hearing. A court may grant such relief from a final judgment if the moving party shows, by "clear and convincing evidence of material misrepresentations," that the opposing party procured the final judgment by "fraud

¹ Sony Corporation of America, Sony/ATV Tunes LLC and Sony Music Entertainment were previously dismissed from the action, Dkt. No. 104 at 57-63, but join in Sony's motion. *See* Dkt. No. 215 at 1 n.1. Because my award of fees post-dates their dismissal from the action, their motion is denied.

(whether previously called intrinsic or extrinsic), misrepresentation, or misconduct.” See Fed. R. Civ. P. 60(b)(3); *Fleming v. New York Univ.*, 865 F.2d 478, 484 (2d Cir. 1989); see also *Mitchell v. Senkowski*, 246 F.R.D. 419, 420 (N.D.N.Y. 2007). The motion is not intended to relitigate the merits. *Fleming*, 865 F.2d at 484. The fraud must have prevented the moving party from fully and fairly presenting its case. See *State Street Bank and Trust Co. v. Inversiones Errazuriz Limitada*, 374 F.3d 158, 176 (2d Cir. 2004); *Breslow v. Schlesinger*, 284 F.R.D. 78, 82 (E.D.N.Y. 2012). “To grant relief from a final order pursuant to Rule 60(b), a court must find that (1) the circumstances of the case present grounds justifying relief and (2) the movant possesses a meritorious claim in the first instance.” *Cobos v. Adelphi Univ.*, 179 F.R.D. 381, 385 (E.D.N.Y. 1998).

ii. Discussion

Sony presented clear and convincing evidence at the August 2015 evidentiary hearing that completely discredited Mayimba’s claim to copyright. Arias had testified that he was present when, in 1998, “Loca Con Su Tiguerre” was recorded on a cassette. Mayimba then deposited a true copy of that cassette, necessary for obtaining copyright, in the Copyright Office in November 2011. At the evidentiary hearing, Sony presented unimpeached evidence that contradicted that provenance.

The tape’s wrapper featured a photograph of a person, Jhoan Gabriel Gomez Gonzalez (“Gonzales”), depicting him as an adult. However, as Gonzales testified, and as his birth certificate documented, Gonzales was born in 1989, and was but nine years old in 1998. Clearly, the wrapper packaging the cassette was created much later than 1998. Furthermore, the cassette had recordings of other songs, besides “Loca Con Su Tiguerre.” The songs had been recorded by a group, “the New Collection,” and the members of the group testified that the songs

had been composed in 2006 and later. An audio engineer, Paul Geluso, testified that the songs on the tape were copied from New Collection's recordings, from "La Gringa" album released in 2008 and from a digital recording of La Mujeres Cucusa from 2009. I found the testimony of Gonzales, the New Collection band-members, and Geluso to be credible. The evidence contradicted Mayimba's claim that the cassette was created in 1998.

Thus, the deposit copy of "Loca Con Su Tiguerre," necessary to register a copyright, was not copied from a cassette made in 1998, as Arias testified. The cassette did not exist in 1998. It was created much later, when Jhoan Gabriel Gomez Gonzalez was an adult, and after the "New Collection" songs were composed. Arias' testimony, far from being credible as I originally found after the first trial, was fabricated and false, as stated in my findings and conclusions issued after the evidentiary hearing, on August 18, 2015. *See* Dkt. No. 194.

Mayimba's Rule 60(b)(3) motion contends that the evidence presented by Sony was unsupported and frivolous. Mayimba's argument is nonsense. Gonzales's birth certificate may not have been issued when he was born in 1989, but the fact that it was issued several years later, in 1993, does not make it false. A Facebook picture of a teenage Gonzales, posted by his mother in 2011, with a third party's comment that the picture is "older than hunger itself," (translated from Spanish), is hardly clear and convincing proof disputing his 1989 birth. *See* Dkt. No. 222-19 (Ex. S); Dkt. No. 246-5 (Ex. E).

At the hearing, Sony presented testimony from Bienvenido de la Cruz, a member of The New Collection, that he wrote a song in 2009, "Compra Un Vuelo," that had music and rhythm resembling "Loca Con Su Tiguerre." Sony argues that Arias used "Compra Un Vuelo" to compose "Loca Con Su Tiguerre." According to Mayimba's newly-identified forensic computer expert, Robert Knudsen, "Compra Un Vuelo's" metadata shows that it was affixed to the cassette

in 2014, not in July of 2009 as de la Cruz testified, and thus could not have inspired, nor even pre-dated, “Loca Con Su Tiguerre.” Knudson’s conclusory assertion in an untested affidavit, supported by an inscrutable exhibit, proves nothing. Furthermore, “Compra Un Vuelo” was not the basis for my findings. “Compra Un Vuelo” was not on the cassette tape that was the source for the deposit copy of “Loca Con Su Tiguerre,” and I did not rely on “Compra Un Vuelo” in finding that the cassette tape was created much later than 1998. In any event, Mayimba knew about “Compra Un Vuelo” before the August 2015 evidentiary hearing, and thus could have there raised whatever information it now identifies. Any fraud related to “Compra Un Vuelo” (and I do not find any) did not prevent Mayimba from “fully presenting its case” at the proper time. *See, e.g., Progressive Cas. Ins. Co. v. Liberty Mut. Ins. Co.*, 1996 WL 524339, at *2 (S.D.N.Y. Sept. 13, 1996) (citing *Taylor v. Texgas Corp.*, 831 F.2d 255, 260 (11th Cir. 1987)). Mayimba also contends that various songs might have been recorded onto the tape between 1998 and 2011, when it was out of Arias’ possession, and thus concludes that the tape’s version of “Loca Con Su Tiguerre” is still authentic. Mayimba’s narrative about possible alterations made to the tape is entirely speculative and unsupported by any evidence. Such an argument ignores that Sony’s evidence discredits Arias’ testimony regarding the tape’s provenance.

Mayimba offers dubious evidence about peripheral issues. Mayimba does nothing to prove it “possesses a meritorious claim in the first instance,” *Cobos*, 179 F.R.D. at 385, and it has no basis to ask for relief under Rule 60(b)(3).

b. Claim For Relief Pursuant To Rule 60(b)(6)

i. Legal Standard

Mayimba argues that its trial counsel, James Sheinbaum, did not provide proper representation because of an undiagnosed medical or psychological condition and, on that basis,

moves for a new trial under the catch-all provision of Rule 60(b)(6). See Fed. R. Civ. P. 60(b)(6) (allowing for relief based on “any other reason that justifies relief”). “[W]here an attorney’s mishandling of a movant’s case stems from the attorney’s mental illness,” a new trial may be a possibility, but only if the moving party shows that there are “extraordinary circumstances justifying [such] relief.” *Cobos*, 179 F.R.D. at 388 (quoting *P.T. Busana Idaman Nurani v. Marissa by GHR Indus. Trading Corp.*, 151 F.R.D. 32, 34 (S.D.N.Y. 1993)); see also *United States v. Cirami*, 563 F.2d 26, 34-35 (2d Cir. 1977). The lawyer’s failures must be “so egregious and profound that they amount to the abandonment of the client’s case altogether, either through physical disappearance, or constructive disappearance.” *Harris v. United States*, 367 F.3d 74, 81 (2d Cir. 2004) (citing *Vindigni v. Meyer*, 441 F.2d 376 (2d Cir. 1971); *Cirami*, 563 F.2d at 34–35). Furthermore, “[e]ven in these extraordinary circumstances, . . . client diligence must . . . be shown.” *Cobos*, 179 F.R.D. at 388.

ii. Discussion

Mayimba fails to make the requisite showing to warrant the new trial it seeks. There are no affidavits in the record describing a condition that Sheinbaum suffers, or a medical or psychological diagnosis, or anything of the sort. Mayimba offers a picture of Sheinbaum at the center of a desk strewn with papers and bookshelves in substantial disorder, and argues that the picture adequately shows his disability. The picture shows disorder, but lots of fine minds thrive on disorder around them. Marti Cuevas, Mayimba’s president, states that she worked with Sheinbaum in the same period of time, received strategic advice from him, and was loathe to discharge him or ignore his advice because of his previous successful representations of Mayimba. Sheinbaum’s strategy at the evidentiary hearing played out in plain view of Mayimba. According to her declaration, Cuevas had full exchanges with Sheinbaum about strategy and

witnesses, and “sat through virtually all of the Hearing.” Cuevas said that she did not like Sheinbaum’s strategy not to present evidence and merely to oppose the evidentiary hearing but, she said, she was reluctant to act on her hesitation because Sheinbaum’s previous strategic calls had furthered Mayimba’s interests.

The law requires a “particularized showing” of prejudice from “exceptional circumstances. *See, e.g., Alvarado v. Manhattan Worker Career Ctr.*, 2003 WL 22462032, at *3 (S.D.N.Y. Oct. 30, 2003) (requiring that “the movant . . . make a particularized showing that his or her attorney’s conduct stemmed from exceptional circumstances.”). Accepting an attorney’s advice to hinder and oppose another’s presentation of evidence are not the “exceptional circumstances” that the law requires. Courts have granted relief where the attorney’s impairment results in a physical or constructive abandonment of the case, not a diminution of legal acumen. *Cf. Cirami*, 563 F.2d at 34 (the attorney’s psychological disorder led to his “constructive disappearance . . . which led him to neglect almost completely his clients’ business while at the same time assuring them that he was attending to it”); *Vindigni*, 441 F.2d at 376 (finding extraordinary circumstance where attorney had reportedly disappeared). Nor do Sheinbaum’s decisions necessarily indicate he was impaired. His decisions in the evidentiary hearing reflect that he saw no opportunity to win his case, and a strategic decision to impede Sony and obfuscate the issues in the hope that the court, somehow, would continue its original decision. *See, e.g., Nemaizer v. Baker*, 793 F.2d 58, 63 (2d Cir. 1986) (attorney’s decision “could well have been based on a conscientious and informed estimate by counsel of plaintiff’s legal chances of success.”).

Mayimba cannot now avoid the consequences of the acts or omissions of its freely selected agent. *See Cirami*, 563 F.2d at 34 (“Petitioner voluntarily chose this attorney as his

representative in the action, and cannot now avoid the consequences of the acts or omissions of his freely selected agent.” (quoting *Smith v. Ayer*, 101 U.S. 320, 326 (1879))). Even if Sheinbaum’s performance were inadequate, Mayimba cannot challenge a final judgment by pointing to the quality of counsel whom it voluntarily chose and to whom it remained loyal notwithstanding conduct that it later claimed to be eccentric. *See Dominguez v. United States*, 583 F.2d 615, 618 (2d Cir. 1978) (“Unfortunately, appellant is bound by the inexcusable conduct of her counsel, since there is no particularized showing of exceptional circumstances explaining his gross negligence and no indication of diligent efforts by appellant to induce him to fulfill his duty.”). Mayimba’s 60(b)(6) motion also fails.

II. Sony’s Motion For Sanctions

a. Legal Framework

Sony seeks attorney’s fees and costs against Mayimba pursuant to section 505 of the Copyright Act, 17 U.S.C. § 505, and jointly and severally against Mayimba’s counsel pursuant to 28 U.S.C. § 1927 and the court’s inherent powers.

Section 505 of the Copyright Act gives a court the discretion to award full costs, including a reasonable attorney’s fee, to a prevailing party in a case brought under the Copyright Act. *See, e.g., Baker v. Urban Outfitters, Inc.*, 431 F. Supp. 2d 351, 356-57 (S.D.N.Y. 2006) *aff’d*, 249 F. App’x 845 (2d Cir. 2007). “In exercising their discretion, courts generally consider a number of equitable factors, including the non-prevailing party’s frivolousness, motivation, objective unreasonableness (both in the factual and legal components of the case), together with the need in particular circumstances to advance considerations of compensation and deterrence.” *Baker*, 431 F. Supp. 2d at 357 (citations omitted). Objective unreasonableness should be given “substantial weight” in determining whether an award of fees is appropriate. *Id.* (citing *Matthew*

Bender & Co. v. West Publ'g Co., 240 F.3d 116, 122 (2d Cir. 2001); *Earth Flag Ltd. v. Alamo Flag Co.*, 154 F.Supp.2d 663, 666 (S.D.N.Y. 2001)).

Section 1927 of the Judicial Code, 28 U.S.C. § 1927, authorizes sanctions against an attorney who “multiplies the proceedings in any case unreasonably and vexatiously.” Section 1927 imposes a “substantive requirement of bad faith.” *Gollomp v. Spitzer*, 568 F.3d 355, 368 (2d Cir. 2009). Therefore, a court must find that “the attorney's actions are so completely without merit as to require the conclusion that they must have been undertaken for some improper purpose, and upon a finding of conduct constituting or akin to bad faith.” *Higgins v. NYP Holdings, Inc.*, 836 F. Supp. 2d 182, 195 (S.D.N.Y. 2011) (internal quotation marks omitted). Section 1927 authorizes sanctions based upon an attorney’s course of conduct over the litigation. “Moreover, § 1927 imposes a continuing obligation to connect or withdraw claims, defenses, and litigation positions after it becomes obvious that they are without merit.” *Gollomp v. Spitzer*, 2007 WL 433361, at *8 (N.D.N.Y. Feb. 5, 2007) *aff’d*, 568 F.3d 355 (2d Cir. 2009).

The court also has an inherent power to impose sanctions on counsel or a litigant for any abuse of the judicial process. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44-45 (1991); *see also Baker*, 431 F. Supp. at 362. “[A] court may assess attorney's fees when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.” *Chambers*, 501 U.S. at 45-46. Courts have determined that “the bad faith conduct that is necessary for a proper award of § 1927 sanctions is the same bad faith conduct that justifies an award of sanctions under the court's inherent powers.” *Baker*, 431 F. Supp. 2d at 363. But the court’s inherent power is “both broader and narrower than other means of imposing sanctions,” as it “extends to a full range of litigation abuses.” *Chambers*, 501 U.S. at 46.

“[A] sanctioned attorney must receive specific notice of the conduct alleged to be sanctionable and the standard by which that conduct will be assessed, and an opportunity to be heard on that matter.” *Ted Lapidus, S.A. v. Vann*, 112 F.3d 91, 97 (2d Cir. 1997). Depending on the circumstances, an evidentiary hearing is not required and briefing may suffice. *See Gollomp*, 568 F.3d at 368; *60 E. 80th St. Equities, Inc. v. Sapir*, 218 F.3d 109, 115 (2d Cir. 2000).

b. Discussion

Sony argues that it is entitled to a full shifting of attorney’s fees and costs because Mayimba and its counsel “had clear notice of the fraudulent nature of their claims before the case was filed.” *See* Dkt. No. 215 at 3.

It is true that Mayimba’s claim of copyright infringement depended upon the tape, and the tape has been thoroughly discredited. But Sony has not offered sufficient proofs to allow me to determine that Mayimba and its counsel knew from the initiation of proceedings that the tape was fraudulently created. Moreover, Mayimba was not the only party that put forward evidence that was, or appeared to be, flawed. Sony’s original strategy for the lawsuit depended on Bello’s testimony that he composed “Loca Con Su Tiguerre,” testimony that I found lacked credibility. Dkt. No. 104 at 14-15. Mayimba presented evidence of due diligence in acquiring the rights to the song, evidence that I found credible. I cannot say that either party lacked good faith with regard to the original bench trial.

Clearly, however, Mayimba could not have acted in good faith in responding to Sony’s proof that the tape had been fraudulently created. Sony’s motion in December of 2014 set forth persuasive evidence that the tape was created long after 1998. This was evident from the other songs on the same tape, and the picture of Gonzales on the wrapper. With those proofs,

Mayimba had to re-evaluate its claim to the copyright of “Loca Con Su Tiguer,” and closely question Arias, Gonzales, and others involved in substantiating its claim.

Mayimba’s requests for deadline extensions for its opposition suggested that it was investigating. *See* Dkt. No. 121, 122. But, judging by the absence of evidence Mayimba put before the court, Mayimba could have found no evidence in its alleged investigation to refute Sony’s evidence that the tape was fraudulently created. Mayimba, rather than withdraw its claim when it became clear that Sony was correct, doubled down. It opposed Sony’s motion and then continued to press its claim through an evidentiary hearing, where it lacked any meritorious evidence to refute Sony’s claim of fraud. At the hearing, Mayimba presented scant rebuttal evidence. Ramon Arias again testified, but only to repeat what he said before. He did not explain the presence of recent New Collection songs, identified on the tape’s wrapper, or the photograph of Gonzales. The three other witnesses that Mayimba offered – Carlos Martin Carle, Vice-President of Mayimba, Marti Cuevas, President of Mayimba, and Rafael Mayol Matos (“Junior Mayol”) – had no first-hand knowledge of the creation of the tape or of “Loca Con Su Tiguer.” *See* Dkt. No. 203 (Tr. 8/5/15) at pp. 540-541.

Mayimba had no lawful basis to continue a claim to copyright that had become spurious. *See Baker*, 431 F. Supp. 2d at 357 (considering, in a Section 505 fee request, the losing party’s “frivolousness, motivation, objective unreasonableness (both in the factual and legal components of the case), together with the need in particular circumstances to advance considerations of compensation and deterrence”). At the point at which Mayimba’s evidence was discredited and shown to be fraudulent, its continuation of the action became objectively unreasonable. When a copyright claim is demonstrably without merit and “devoid of legal or factual basis,” “defendants must be compensated for being forced to defend against such a

baseless action.” *Arclightz & Films Pvt. Ltd. v. Video Palace, Inc.*, 2003 WL 22434153, at *3 (S.D.N.Y. Oct. 24, 2003).

Even after I issued a final judgment in favor of Sony, Mayimba continued to press its claim. Mayimba’s Rule 60(b) motion does not refute testimony of the New Collection band members that the tape included their recent songs. Nor does it rebut the expert testimony of Paul Geluso that the recent New Collection recordings were the source material for the recordings on the tape, and that the tape recordings had been copied from the New Collection recordings released in 2008 and later, which he could discern based on the degraded quality of the songs on the tape. Mayimba simply presents conclusory testimony of a fresh expert, whom it never before identified or vetted in discovery.

Mayimba’s evidence is not merely unpersuasive, it is objectively unreasonable to predicate a Rule 60(b)(3) motion on such irrelevant and speculative contentions. Mayimba’s Rule 60(b)(6) motion, based on an unidentified medical condition attributed to Sheinbaum, is no more reasonable because it cites a new ground for relief. Mayimba concludes that Sheinbaum’s performance during the evidentiary hearing is a basis to set aside the judgment. But, as discussed above, the invalidity of its underlying claim should have been apparent to Mayimba even before the evidentiary hearing. And, relief under Rule 60(b) requires that “the movant possesses a meritorious claim in the first instance.” *Cobos*, 179 F.R.D. at 385.

Sheinbaum’s conduct after Sony’s motion was designed to prolong litigation and cause obfuscation. He filed exhibits of marginal relevance, raised opposition to Sony’s witnesses’ identities and then neglected to inspect their identification when arranged by Sony, interfered with the defendants’ conduct of a deposition with a key witness, refused to seek visas for witnesses, and then made frivolous oppositions and arguments to advance Mayimba’s claim

during the evidentiary hearing. To sanction an attorney for “unreasonable and vexatious conduct,” 28 U.S.C. § 1927, a court must find that “the attorney's actions are so completely without merit as to require the conclusion that they must have been undertaken for some improper purpose, and upon a finding of conduct constituting or akin to bad faith.” *Higgins*, 836 F. Supp. 2d at 195. His conduct, obstructing and prolonging the litigation even after it was clear that Mayimba’s claim was meritless, was unreasonable and vexatious.² And, because there was no valid purpose for his conduct, I find it was undertaken in bad faith.

Cost-shifting is warranted for Sony’s attorney’s fees spent following its December 2014 motion. Sony is invited to submit an application detailing the costs incurred since that point, including those costs incurred in opposition to Mayimba’s Rule 60(b) motion. Since Mayimba hired new counsel to bring this motion and terminated James Sheinbaum’s representation, Sheinbaum is jointly and severally liable only to the costs incurred before his representation was terminated.

III. Conclusion

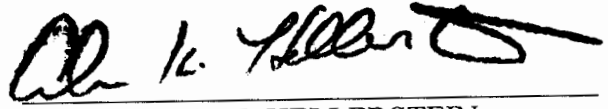
Sony’s motion to include its attorney’s fees in costs is granted for the period following the filing of its motion to vacate the judgment previously granted to plaintiff, and denied for the prior period. Mayimba’s Rule 60(b) motion is denied. The Clerk shall terminate the motions. *See* Dkt. No. 212, 221.

² Though Mayimba’s Rule 60(b)(6) motion alleges that Sheinbaum had an unspecified medical condition that interfered with his representation, Sheinbaum’s affidavit in response to the sanctions motion does not report or attribute his conduct in litigation to any such impairment. *See* Dkt. No. 234.

Sony shall submit a revised fee application consisted with this Order and Opinion, and a proposed bill of costs since the inception of the case, by April 22, 2016; plaintiff shall have 20 days to oppose and defendants, 10 days to reply. The judgment shall follow.

SO ORDERED.

Dated: New York, New York
March 31, 2016

A handwritten signature in black ink, appearing to read "Alvin K. Hellerstein", written over a horizontal line.

ALVIN K. HELLERSTEIN
United States District Judge