

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (4th) 120072-U

NO. 4-12-0072

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

November 6, 2012  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

KUVEDINA, LLC, an Illinois Limited Liability Company,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Champaign County
RAKESH PAI and MHALSA TECHNOLOGIES, INC., a Kansas Corporation,	)	No. 10CH507
Defendant-Appellee.	)	Honorable
	)	Michael Q. Jones,
	)	Judge Presiding.

---

JUSTICE KNECHT delivered the judgment of the court.  
Presiding Justice Turner and Justice Cook concurred in the judgment.

### ORDER

¶ 1 *Held:* The trial court's order imposing sanctions on plaintiff under Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994) is not against the manifest weight of the evidence.

¶ 2 In October 2011, the trial court imposed sanctions on plaintiff, Kuvedina LLC, pursuant to Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994). Kuvedina appeals the order, arguing the trial court abused its discretion. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In May 2010, Kuvedina and defendants, Rakesh Pai and Mhalsa Technologies, Inc., entered into a "Subcontractor's Agreement." Kuvedina, the contractor, was engaged in providing business and management consulting, software consulting, training, and programming services. Defendants, the subcontractors, agreed to provide such services as needed to

Kuvedina's clients. According to the terms of the "Subcontractor's Agreement," Pai agreed, in part, "[t]o refrain from disclosing or using Proprietary Information in any manner or for any purpose after termination or cancellation of this Agreement, with the exception of disclosure or use of Proprietary Information to legally enforce rights or defend action[s] under this Agreement."

¶ 5 By letter dated October 30, 2010, Kuvedina terminated defendants' subcontractor services as of November 4, 2010. The letter referenced repeated notices of "unprofessional and unethical conduct."

¶ 6 In December 2010, the trial court entered an injunction against defendants. According to the order, the court found Kuvedina had shown a clear and recognizable right to the relief requested as a result of the "Subcontractor's Agreement" entered into by Kuvedina and defendants. The court prohibited defendants from disclosing or continuing to use any propriety information received from Kuvedina or one of Kuvedina's clients and "from soliciting or continuing to communicate in any way with any of [Kuvedina's] clients as initially agreed pursuant to the Subcontractor's Agreement."

¶ 7 In August 2011, Kuvedina filed a petition for rule to show cause, alleging defendants violated the injunction. Kuvedina also sought damages. According to Kuvedina's petition, Pai violated the injunction multiple times. First, Kuvedina alleged Pai "on numerous occasions contacted [Kuvedina's] client and revealed sensitive and proprietary information." In support of its allegation, Kuvedina attached to the petition a letter from defendants' counsel to Anil Baddi, Kuvedina's owner, stating Pai had spoken to Cognizant's lawyer Misty Pederson "and was told \*\*\* that you had invoices." Cognizant is Kuvedina's client. A large part of the letter is

unreadable because blocks of text are blurred. Second, Kuvedina alleged Pai, in July 2011, contacted Ricky Suga, a subcontractor of Kuvedina. By affidavit, Suga averred Pai contacted him by telephone to ask if he had been paid by Kuvedina, to ask him if he knew how to reach Baddi, and to inform him about the federal lawsuit Kuvedina filed against defendants. Third, Kuvedina alleged Pai, in early July 2011, attempted to contact Baddi. Fourth, Kuvedina alleged Pai's brother threatened Baddi to stop pursuing the federal lawsuit.

¶ 8 In September 2011, defendants moved to dismiss Kuvedina's petition and filed a motion for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994). In their motion, defendants attached a copy of the same letter from defendants' counsel to Baddi with text that was not blurred. The text relevant to the communication with Kuvedina's client, Cognizant, is as follows: "When we talked on the day we were last at Court, you denied that [Pai] did the work or submitted time sheets. You further denied that you had invoiced Cognizant or had been paid for his work in those months. Those statements are false. I contacted Cognizant's lawyer, Misty Pederson, and was told both that you had invoiced them and been paid." Defendants further averred Kuvedina had filed a complaint in federal court, alleging, among other things, Pai tortiously interfered with the business contract of Kuvedina and one of its clients. Defendants further argued the "Subcontractor's Agreement" prohibited efforts to gain or share proprietary information and none of the communications mentioned in Kuvedina's lawsuit violated such prohibition.

¶ 9 The trial court held a hearing was held in October 2011. The transcripts of that hearing are not included in the record on appeal. The record shows the court granted defendants' motion for Rule 137 sanctions. A docket entry from November 2011 states the court awarded

\$2,730 in sanctions pursuant to its "findings and provisions made" on October 25, 2011.

¶ 10 Kuvedina moved for reconsideration of the order imposing sanctions. The trial court denied Kuvedina's motion. This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 Initially, we note Kuvedina's appellant brief is insufficient under Illinois Supreme Court Rule 341(h)(6) (eff. July 1, 2008). Rule 341(h) imposes requirements for appellant briefs. Rule 341(h)(6) mandates the "Statement of Facts" contain "the facts necessary to an understanding of the case," as well as "appropriate reference[s] to the pages of the record on appeal." Ill. S. Ct. R. 341(h)(6) (eff. July 1, 2008). Kuvedina's brief contains no citations to the pages of record. Kuvedina's appeal could be dismissed on this ground alone. See *Progressive Universal Insurance Co. of Illinois v. Taylor*, 375 Ill. App. 3d 495, 501-02, 874 N.E.2d 910, 915 (2007).

¶ 13 Despite Kuvedina's procedural error, we will address the substantive allegations of its appeal. Kuvedina first contends the trial court erroneously awarded the sanctions against Kuvedina because Kuvedina had "reasonable and sufficient evidence" to support its motion for sanctions against defendants. Kuvedina, citing *McClaghry v. Village of Antioch*, 296 Ill. App. 3d 636, 645, 695 N.E.2d 492, 500 (1998), maintains Rule 137 sanctions should not be imposed on a party for failing to conduct an investigation if the party presents objectively reasonable arguments. Kuvedina emphasizes the communications included in its petition for rule to show cause and cites an email from Pederson to Pai.

¶ 14 A trial court may grant sanctions under Rule 137 in the following circumstances:  
"(1) if either party files a pleading or motion that to the best of the attorney's 'knowledge, information, and belief' is not 'well

grounded in fact' and is not 'warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law,' or (2) if the pleading or motion is interposed to 'harass or to cause unnecessary delay or needless increase in the cost of litigation.' " (Emphasis omitted.) *Miller v. Bizzell*, 311 Ill. App. 3d 971, 976, 726 N.E.2d 175, 179 (2000).

This court will not reverse an order imposing sanctions under Rule 137 absent an abuse of discretion. See *McNeil v. Ketchens*, 397 Ill. App. 3d 375, 403, 931 N.E.2d 224, 246 (2010). We will find an abuse of discretion "only if no reasonable person could agree with the court's decision." *McNeil*, 397 Ill. App. 3d at 397-98, 931 N.E.2d at 242.

¶ 15 Kuvedina's initial argument is unconvincing. The injunction explicitly prohibits defendants "from soliciting or continuing to communicate in any way with any of [Kuvedina's] *clients* as initially agreed pursuant to the Subcontractor's Agreement." (Emphasis added.) This language does not extend to communications with subcontractors, with Kuvedina, or with Baddi, the owner of Kuvedina. Given the plain language of the injunction, the defendants' communications with Baddi and with a subcontractor do not, as Kuvedina argues, constitute "reasonable and sufficient evidence."

¶ 16 Kuvedina also includes two pieces of evidence regarding defendants' communications with Kuvedina's client. The first is the April 7, 2011, letter from defendants' counsel to Baddi, indicating defendants' counsel had talked to Pederson, a lawyer for Cognizant. The second is an email from the same counsel, Pederson, to Pai.

¶ 17 Contrary to Kuvedina's contention, the injunction does not prohibit all contact

with Kuvedina's clients. The injunction prohibits contact with Kuvedina's clients when such contact violates the "Subcontractor's Agreement": the trial court prohibited defendants "from soliciting or continuing to communicate in any way with any of [Kuvedina's] clients *as initially agreed pursuant to the Subcontractor's Agreement.*" (Emphasis added.)

¶ 18 Neither of these communications with Cognizant's lawyers violate the terms of the "Subcontractor's Agreement" or the terms of the injunction. The first communication falls within an exception outlined in the "Subcontractor's Agreement". Under the plain language of section 10(e) of the "Subcontractor's Agreement," defendants are permitted to disclose or use proprietary information "to legally enforce rights or defend actions under this Agreement." We note an apparent typographical error lists this section as "30," but the section falls between section 9 and section 11. Even if proprietary information was exchanged, communications between counsel of Cognizant and defendant's counsel regarding issues relevant to the litigation between Kuvedina and defendants fall within the exception. The letter is not "reasonable and sufficient evidence" of a violation of the December 2010 injunction.

¶ 19 The email from Pederson to Pai is also not evidence of a violation. The email dated July 21, 2011, 2:07 p.m., states the following:

"Rakesh: I have checked with Recruitment who handles all staffing agency relationships; and they have confirmed that any interaction with you has no bearing on whether or not we continue to do business with Kuvedina. Kuvedina is not on any blacklist, but naturally at any given time we have hundreds of vendors and whether or not we give them business is judged on the basis of

candidates they submit for open contractor roles."

¶ 20 The record further reveals an email from Pai to Pederson preceded the above email cited by Kuvedina. This email, dated July 21, 2011, 1:47 p.m., states the following, in part:

"As discussed over the phone, Anil Baddi \*\*\* has not paid me my wages for [October and November] 2010[,] even after he was paid for the services from Cognizant. When we directed Anil with a letter addressing to pay the wages, he [] filed a complaint against me in the Federal Court asking for damages due to breach of contract and tortious interference with business relationships.

I have never interfered in the business relationships[] and continued working after [November 4,] 2010[,] after getting written authorization from Cognizant. I stopped working on [November 23,] 2010[,] and declined to work with another vendor.

Can you please confirm that I have [had] no role in damaging Anil's business relationships with Cognizant and it is [a] recruiting[-]team decision to not work with Anil Baddi \*\*\*."

¶ 21 The plain language of the email correspondence does not show proprietary information was exchanged, requested, or offered in violation of the injunction. In addition, the email conversation falls within the protection of section 10(e) of the Subcontractor's Agreement, as Pai and Pederson discussed matters related to the defense of Kuvedina's federal lawsuit against defendants. We find no abuse of discretion on this ground.

¶ 22 Kuvedina next argues the trial court erroneously determined its filing of the petition was sanctionable. In support, Kuvedina contends the court failed to analyze the evidence properly. Kuvedina claims its petition for rule to show cause "was specifically administered to protect [Kuvedina and] its reputation and income from being further destroyed by" defendants. Kuvedina contends the "essence" of the injunction was to protect Kuvedina from harm, but defendants' actions exposed Kuvedina's "payment schedule[] and possible price points" to Cognizant, causing Kuvedina irrevocable damage.

¶ 23 We find no abuse of discretion. As defendants argue, Kuvedina failed to include the transcripts from the October 2011 hearing at which the trial court imposed the sanctions. This failure denies this court the opportunity to review the trial court's reasons for the sanction. "When a record is incomplete, this court must presume that the trial court's judgment conformed to the law and had a factual basis." *Milnes v. Hunt*, 311 Ill. App. 3d 977, 979, 725 N.E.2d 779, 781 (2000). The record contains no evidence and Kuvedina provides no argument to overcome the presumption the trial court's imposition of sanctions is correct.

¶ 24 In deciding whether to impose sanctions, the trial court was faced with deciding whether Kuvedina had a good-faith basis to pursue a claim that the communications violated the injunction or whether Kuvedina acted with the intent of harassing or causing unnecessary delay. We cannot be certain upon which ground stated in *Miller* the trial court based its decision. Given the presumption that arises from the incomplete record, either basis would be affirmed. Kuvedina and its counsel should have been able to ascertain the communications were not barred based on the plain language of the communications, the injunction, and the Shareholder's Agreement. We cannot find no reasonable person could agree with the trial court's decision.



¶ 25

### III. CONCLUSION

¶ 26

We affirm the trial court's judgment.

¶ 27

Affirmed.