

JUL 07 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BROTHER RECORDS, INC., a California corporation,

Plaintiff-counter-defendant -

Appellee,

v.

ALLAN GABA, an individual,

Defendant,

ROY A. SCIACCA, an individual a/k/a ROY ANTHONY,

Defendant-counter-claimant,

and

GEM SYSTEMS, INC., a Nevada corporation,

Defendant - Appellant.

No. 07-55345

D.C. No. CV-06-00204-R

MEMORANDUM *

BROTHER RECORDS, INC., a California corporation,

No. 07-55706

D.C. No. CV-06-00204-R

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Plaintiff-counter-defendant -
Appellant,

v.

ALLAN GABA, an individual,

Defendant,

and

GEM SYSTEMS, INC., a Nevada
corporation,

Defendant - Appellee,

ROY A. SCIACCA, an individual a/k/a
ROY ANTHONY,

Defendant-counter-claimant -
Appellee.

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding

Submitted June 5, 2008**
Pasadena, California

Before: THOMPSON, O'SCANNLAIN, and TALLMAN, Circuit Judges.

I

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

In case No. 07-55345, Gem Systems, Inc. (“Gem”) moved for attorney’s fees under 17 U.S.C. § 505, 15 U.S.C. § 1117, Cal. Civil Code § 3344 and 28 U.S.C. § 1927, after both parties had stipulated to a dismissal. Notwithstanding that the district court provided almost no analysis as to why it denied Gem’s motion for attorney’s fees, the record supports the district court’s denial. In fact, no evidence was presented by Gem why either party to a stipulated dismissal should be entitled to legal fees. Therefore, we affirm.

II

In case No. 07-55706, the district court granted summary judgment which we must reverse and remand because there is some evidence of oral and written assignments which may be valid, thus raising genuine issues of material fact which bear on standing. Additionally, there are issues of fact with respect to ownership of the memorabilia.¹ In light of the remand, we also reverse the award of Rule 37 discovery sanctions.

No. 07-55345 AFFIRMED; No. 07-55706 REVERSED. Costs in both appeals to Brother Records, Inc.

¹ We deny the request for judicial notice of the Miami case admissions in deciding the appeal before us. *See Ctr. for Bio-Ethical Reform, Inc. v. City of Honolulu*, 455 F.3d 910, 919 n.3 (9th Cir. 2006) (expressing reluctance to grant judicial notice of “documents [that] were not before the district court and their significance, if any, is not factored into the record on appeal”).