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JULIETTE CHAPA,

Plaintiff,

-against-

JEFFREY WINTERS; COLLECTION SOLUTIONS, INC; CHARLES I. TURNER, ESQ.; UNITED CREDIT SPECIALISTS, and JOHN DOES 1-25;

Defendants.

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY
LAW DIVISION

DOCKET NO.:BER-L-2123-17

CIVIL ACTION

ORDER

(202)

THIS MATTER, having been opened to the court by Plaintiff by her attorneys, Jones, Wolf & Kapasi, LLC, Benjamin J. Wolf, Esq., appearing, to move for sanctions against Defendants, JEFFREY WINTERS; COLLECTION SOLUTIONS, INC; CHARLES I. TURNER, ESQ.; UNITED CREDIT SPECIALISTS, and JOHN DOES 1-25 ("Defendants"), and DAVID M. HOFFMAN, Esq. counsel to defendants, pursuant to Rule 1:4-8 *et seq*, and the Court having reviewed the moving papers and defendants' opposition thereto, and the Court having heard the argument of counsel; and good cause having been shown;

IT IS on this 12th day of April, 2018, for the reasons set forth in the annexed statement of reasons,

ORDERED that pursuant to Rule 1:4-8 and N.J.S.A. 2A:15-59.1, Plaintiff is awarded attorney fees and costs in the amount of $6,119.27 for Defendants' motion for reconsideration of this Court's December 15, 2017 Order; and

IT IS FURTHER ORDERED that Judgment be entered against Defendants JEFFREY WINTERS; COLLECTION SOLUTIONS, INC; CHARLES I. TURNER, ESQ. and UNITED CREDIT SPECIALISTS and attorney DAVID M. HOFFMAN for attorney fees

and costs in the amount of $6,119.27; and

IT IS FURTHER ORDERED that said attorney fees and costs in the amount of $6,119.27 shall be received by Plaintiff's counsel, Jones, Wolf & Kapasi, LLC, 375 Passaic Avenue, Suite 100, Fairfield, New Jersey 07004 by May 15, 2018.

The Court provides a copy of this Order on this date to all counsel of record via eCourts Civil. Movant is directed to provide an additional copy to defendants' counsel via facsimile, and to any counsel or unrepresented party not served electronically, within seven (7) days from the date hereof.

HON. MARY F. THURBER, J.S.C.

_XX__ Opposed

_____Unopposed

JULIETTE CHAPA v. JEFFREY WINTERS, et al.
DOCKET NO. BER L 2123-17
Statement of Reasons for Order Entered on April 12, 2018

This matter came before the Court on defendants' motion for reconsideration of the Court's December 15, 2017, Order granting summary judgment to plaintiff. At oral argument on March 15, 2017, the Court denied the motion for reconsideration, and set forth its reasons on the record. Also presented was plaintiff's cross-motion for sanctions. The Court now grants that motion as well.

Defendants' motion for reconsideration failed to articulate reasons that satisfied the Court that they were entitled to reconsideration. Much of what defendants included in their application was a rehash of arguments already considered and rejected by the Court, coupled with an attempt to raise a legal argument for the first time, and an attempt to have the Court consider a certification of Mr. Winters bearing an October 2017 date, which certification had never been provided previously to counsel or to the Court, although defendants filed other factual and legal arguments in opposition to the summary judgment motion heard and granted on December 15, 2017. The Court rejected defendants' reconsideration arguments for the reasons set forth on the record on that date and in accordance with the legal authority cited.

Plaintiff's motion for sanctions is based in part on the inadequacies recited above, but more so on circumstances that occurred after defendants filed the motion for reconsideration. Defendants had pending, at the time of the summary judgment motion and still at the time they filed the motion for reconsideration, a case in federal court that defendants contended should control the outcome of the state court matter. Jeffrey A. Winters et al v. Joseph K. Jones, et al., 2:16-cv-0920 (JMV) (U.S.D.N.J.). Two of the defendants in this state court proceeding, Jeffrey Winters and Collection Solutions, Inc. ("Winters"), are plaintiffs in the federal case, and the attorneys representing

plaintiff in this state court proceeding, Benjamin J. Wolf and Richard Jones ("Wolf and Jones"), were named as defendants in the federal case.

Plaintiff consistently maintained that the federal court proceeding should not have any bearing on this state court proceeding, in part because plaintiff, Ms. Chapa, is not a party to the federal court proceeding and should be entitled, she argued, to pursue enforcement and collection of her settlement regardless of the outcome of defendants' case in federal court. Defendants contended the cases were related and that the facts underlying their federal claim compelled denial of summary judgment in this state court enforcement case against them. When this Court granted summary judgment on December 15, 2017, defendants requested that the Court stay the judgment until the federal case motions were decided, which defendants contended would alter the outcome in the state court. This Court denied the stay application. Defendants' position on the interrelation between the cases was reiterated in their motion for reconsideration.

On January 8, 2018, while the state court reconsideration motion was pending, the Honorable John Michael Vazquez, U.S.D.J., issued two opinions in the federal matter. (Exhibits C (dismissal opinion) and D (sanctions opinion) to plaintiff's certification.) He granted three motions to dismiss, one of which had been filed by Wolf and Jones. Judge Vazquez denied two motions for sanctions, which had been filed by co-defendants. (Wolf and Jones had not moved for sanctions.) The decision on the motions to dismiss provided a detailed discussion and analysis of Winters' claims and pleadings. They are variously described as "defective," "severely lacking," "woefully deficient," "factually unsupported," "absurd," and "preposterous." (Exhibit C to plaintiff's certification.) Although Judge Vazquez denied the motions for sanctions, he noted that "The numerous factual and legal deficiencies noted in the Court's motion to dismiss Opinion come close to providing sufficient evidence for the Court to grant sanctions here. Plaintiffs' Amended

Complaint contains wholly-unwarranted and inflammatory allegations." (Exhibit D to plaintiff's certification, slip op. at 7).

Without conceding that the federal court case was relevant to the state court case, plaintiff nonetheless reached out to defendants by letter the very next day, January 9, 2018. In compliance with Rule 1:4-8, counsel identified the reasons he believed defendants' motion for reconsideration should be withdrawn. Those included the fact that defendants' position relied heavily on the federal case, which had now been dismissed, and the federal court opinion addressed and defeated arguments on which defendants had relied in their reconsideration motion.

Defendants did not withdraw their reconsideration motion. Plaintiff seeks sanctions pursuant to Rule 1:4-8.

Analysis

Rule 1:4-8 and New Jersey Statute §2A:15-59.1 are explicit exceptions to what is commonly referred to as the "American Rule," whereby litigants generally are responsible for their own counsel fees and costs. The concept of using sanctions and counsel fee awards to deter or to punish frivolous litigation and abuse of the legal system and to compensate parties who are adversely affected thereby has its roots in Rule 11 of the Federal Rules of Civil Procedure. In New Jersey the authority for sanctions is two-fold – a statutory provision allowing sanctions against litigants and a Court Rule allowing sanctions against attorneys.

N.J. Stat. § 2A:15-59.1(a)(1) states:

> A party who prevails in a civil action, either as plaintiff or defendant, against any other party may be awarded all reasonable litigation costs and reasonable attorney fees, if the judge finds at any time during the proceedings or upon judgment that a complaint, counterclaim, cross-claim or defense of the nonprevailing person was frivolous.

A complaint may be found frivolous if the judge finds that:

> (1) The complaint, counterclaim, cross-claim or defense was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or
>
> (2) The nonprevailing party knew, or should have known, that the complaint, counterclaim, cross-claim or defense was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

N.J. Stat. § 2A:15-59.1(b) (emphasis added).

Rule 1:4-8 sets forth the authority for awards against attorneys, and provides procedures that are applicable to applications under the statute as well. R. 1:4-8(f). Pursuant to Rule 1:4-8(a), an attorney's signature on a filed pleading constitutes a certification that to the best of his or her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,

> (1) the paper is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

R. 1:4-8(a).

Rule 1:4-8(b) states:

> **(1) Contents of Motion, Certification.** An application for sanctions under this rule shall be by motion made separately from other applications and shall describe the specific conduct alleged to have violated this rule. No such motion shall be filed unless it includes a certification that the applicant served written notice and demand pursuant to R. 1:5-2 to the attorney or pro se party who signed or filed the paper objected to. The certification shall have annexed a copy of that notice and demand, which shall (i) state that the paper is believed to violate the provisions of this rule, (ii) set forth the basis for that belief with specificity, (iii) include a demand that the paper be withdrawn, and (iv) give notice, except as otherwise provided herein, that an application for sanctions will be made within a reasonable time thereafter if the offending paper is not withdrawn within 28 days of service of the written demand. If, however, the subject of the application for sanctions is a motion whose return date precedes the expiration of the 28-day period, the demand shall give the movant the option of either consenting to an adjournment of the return date or waiving the balance of the 28-day period then remaining. A movant who does not request an

> adjournment of the return date as provided herein shall be deemed to have elected the waiver. The certification shall also certify that the paper objected to has not been withdrawn or corrected within the appropriate time period provided herein following service of the written notice and demand.
>
> No motion shall be filed if the paper objected to has been withdrawn or corrected within 28 days of service of the notice and demand or within such other time period as provided herein.

R. 1:4-8(b).

Plaintiff's counsel's letter dated January 9, 2018, attached as Exhibit E to counsel's certification, satisfied the requirements of Rule 1:4-8. Defendants did not withdraw the motion, nor did they explain the discrepancies noted in the demand letter that had been raised by defendants' late offer of the alleged October certification of Mr. Winters, which, as plaintiff pointed out, contradicted the certifications Mr. Winters had provided in opposition to the summary judgment motion, on a key fact (whether there was a settlement).

It is noteworthy that United States District Judge Vazquez recognized that the federal pleading was close to sanctionable, that it could have resulted in sanctions, and that his denial of sanctions was an exercise of his discretion. In his decision granting the motions to dismiss, Judge Vazquez commented on defendants' (plaintiffs in the federal matter) decision to stop paying on their settlement with Ms. Chapa, which is what triggered the state court complaint. "The Court is unaware of a legal basis that allows Plaintiffs to properly stop making payments under the terms of a voluntary settlement agreement. The action appears to be a transparent attempt to bolster Plaintiffs' [defendants herein] current case." (Exhibit C to plaintiff's certification, at n. 9.)

The challenge faced by a court addressing a sanction application is the tension or conflict between on the one hand ensuring access to the courts while on the other hand ensuring that the sanctions rule and statute are not toothless, meaningless provisions. See e.g., Ianone v. McHale,

supra, 245 N.J. Super. at 28 (recognizing "the concern that while baseless litigation must be deterred, nevertheless the … right of access to the courts should not be unduly infringed upon ...").

When the parties were before this Court on the summary judgment motion, the Court gave defendants numerous and repeated opportunities to articulate a disputed material fact that would justify denying summary judgment. They were unable to do so then, and have not done so in the motion for reconsideration.

This Court finds that the motion for reconsideration was without basis in law or fact when filed, and even more so after the federal court decisions. This Court views defendants' cessation of performance of the settlement agreement (as did the federal judge), interposition of defenses to the state court lawsuit, and persistence in seeking reconsideration of the summary judgment granted plaintiff were all in furtherance of pursuit of their defective, factually unsupported, woefully deficient, misguided federal court pleading.

For all of the foregoing reasons, the Court is satisfied that defendants' motion for reconsideration, specifically the refusal to withdraw the motion after receipt of the demand letter dated January 8, 2018, was frivolous within the meaning of both N.J. Stat. 2A:15-59.1 and Rule 1:4-8.

The Court's decision to grant sanctions in this case finds further support in the Court's inherent power to sanction parties and counsel, and Rule 1:10-3, which states:

> Notwithstanding that an act or omission may also constitute a contempt of court, a litigant in any action may seek relief by application in the action. … The court in its discretion may make an allowance for counsel fees to be paid by any party to the action to a party accorded relief under this rule.

R. 1:10-3.

Courts have the "inherent power to sanction a party when he or she has 'acted in bad faith, vexatiously, wantonly, or for oppressive reasons.'" Triffin v. Automatic Data Processing, Inc., 394

N.J. Super. 237, 252 (App. Div. 2007), quoting Chambers v. NASCO, Inc., 501 U.S. 32, 46 (1991) (internal citations omitted). Defendants' persistence in the motion for reconsideration meets this standard as well.

The Court reviewed counsel's certification of services and finds the hourly rates and total charges to be reasonable, considering the factors set forth in Rule 4:49-2 and R.P.C. 1.5. The Court recognizes that a portion of the fees were allocable to preparation of the frivolous litigation demand letter. Those charges are included in the fee award, because the services would not have been necessary if defendants had not filed the frivolous motion for reconsideration, and they would have resulted in savings of time and costs for both parties had defendants responded by withdrawing the motion. The Court award includes as well $850 for two hours of time on the day the motion for reconsideration was argued.

Plaintiff is awarded fees and costs against defendants and their counsel in the amount of $6,119.27. An Order accompanies this decision.