

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

)	
)	
)	
)	Case No. 09-CV-1739
In re:)	
)	Judge Robert Gettleman
JOHN P. MESSINA, d/b/a)	
The Law Office of John P. Messina,)	
)	
Debtor)	

**MOTION OF AMERICAN CITRUS PRODUCTS CORPORATION FOR SANCTIONS
AND FOR AN ORDER TO PREVENT FUTURE MISCONDUCT**

Judgment holder – Appellee, American Citrus Products Corporation, hereby respectfully moves for sanctions against Appellant, John P. Messina, for his continued abuse of the litigation process through the frivolous appeal of the bankruptcy court’s decision that the contempt judgment is not dischargeable. Also, the petitioner seeks an order to prevent the future misconduct that history demonstrates is inevitable. In support, the petitioner states:

1. On June 9, 1995, Judge James B. Zagel issued findings of fact and conclusions of law holding Messina in contempt for willful and repeated violations of confidentiality orders and a seal order. *Grove Fresh Distributors, Inc. v. John Labatt, Ltd.*, 888 F. Supp. 1427 (N.D. Ill. 1995).

2. Prior to the contempt determination, Judge Zagel issued the seal order because Messina engaged in conduct that was “questionable if not reprehensible.” Messina had attempted

to disregard a confidentiality order to improperly disclose information. *Id.* at 1431. Thereafter, Messina was repeatedly admonished by the court because of his attempts to disregard the confidentiality and seal orders during the course of the litigation. *Id.* at 1431, n. 2; 1438, n. 11.

3. Even after the contempt proceedings were initiated, Messina disregarded the court's orders and ignored a procedure specifically established to avoid further disclosure problems. Instead, Messina disclosed confidential information to journalism students asserting that he had decided the propriety of his conduct for himself. *Id.* at 1446.

4. In the June 9, 1995 ruling, Judge Zagel also held that Messina had violated Rule 11 of the Fed. R. Civ. Proc. in three ways. Messina had filed a motion in the U.S. Court of Appeals for the Seventh Circuit seeking an original evidentiary hearing. The Court of Appeals had remanded the determination of the nature of the violation and the sanctions to the district court. Judge Zagel held that Messina had misrepresented to the appellate court that he was an attorney for a party when he had been discharged by his client approximately nine months earlier. Also, by signing the pleading, Messina certified that it was filed for a proper purpose when it was not. Also, Messina's motion was not warranted by existing law but instead was precluded by it. *Id.* at 1449-52.

5. Judge Zagel ordered Messina to pay \$149,554.45 plus statutory interest to the contempt petitioners. Also, Messina was fined \$1,000 for the Rule 11 violations and ordered to compensate the petitioners for the costs incurred.

6. Judge Zagel found that Messina's conduct and attitude evidenced a significant risk of repetition of the disregard of court orders. Messina was ordered to post a \$50,000 bond

“with the admonition that any future disclosures – made without first consulting me and proving an independent public source – will lead to forfeiture of this amount, if not further sanctions.”

The bond was to remain in effect for five years. *Id.* at 1452.

7. Messina’s 42-page motion and two-volume appendix seeking an evidentiary hearing before the appellate court was stricken as “frivolous.” The Court of Appeals ordered Messina to show cause why he should not be disciplined for this filing. Eventually, the Court of Appeals referred this matter to the Illinois Attorney Registration and Disciplinary Commission.

8. During the course of the contempt proceedings and while the petitions were being considered by the court, Messina filed a series of notices of appeal and jurisdictional statements. These pleadings again disclosed information that was protected from disclosure. These pleadings were stricken by the Court of Appeals, and the order stated Messina would be sanctioned if he continued to file frivolous papers. Judge Zagel described Messina’s conduct as “a shamelessly willful subversion of this court’s authority and business, performed with ... reckless abandon ...” *Id.* at 1448.

9. Messina appealed the contempt decision. It was unanimously affirmed in an unpublished opinion. 134 F.3d 374 (7th Cir. 1998). The petition for writ of certiorari was denied. 525 U.S. 988 (1998).

10. Messina did not pay the attorney’s fees sanction imposed by Judge Zagel. Instead, he filed for protection in the bankruptcy court.

11. The judgment holders filed an adversary complaint in bankruptcy seeking a determination that the contempt judgment was not dischargeable pursuant to 11 U.S.C. § 523(a)(6). Messina responded by attempting to contest the fairness of the contempt proceeding.

12. United States Bankruptcy Judge John H. Squires held the contempt judgment was not dischargeable. In its memorandum opinion, the bankruptcy court rejected as irrelevant Messina's attempt to rehash the factual basis of the litigation before Judge Zagel. Also, the bankruptcy court approvingly quoted language from another case that Messina's attempt to reopen the district court's final judgment "made no sense." (Mem. Op. p. 12).

13. During the course of the disposition of the adversary complaint in bankruptcy, Messina repeated some of the same misconduct that resulted in the initial contempt judgment. He filed pleadings that publicly disclosed information protected by the confidentiality and seal orders. Messina made no attempt to use the procedure required by Judge Zagel's contempt decision.

14. Messina's improper disclosure resulted in a second contempt petition before Judge Zagel. Messina was again found to have violated the district court's orders. Messina was ordered to pay the petitioner \$7,500 for the attorney's fees incurred.

15. Messina used the second contempt proceeding again to contest the fairness of the initial contempt judgment. Messina filed a motion seeking recusal of Judge Zagel, who he alleged exhibited an "unremitting bias." Messina supported this contention, in part, by insisting that Judge Zagel had issued findings about Messina's conduct leading to the imposition of the seal that were unwarranted. Messina also asserted that Judge Zagel issued inconsistent rulings related to Messina's status as an attorney for Grove Fresh.

16. Messina also sought to vacate the initial contempt judgment through a motion filed pursuant to Rule 60(b)(6) of the Fed. R. Civ. Proc. Among other reasons, Messina argued that he had been prejudiced because failure to maintain a proper record had deprived him of the ability to appeal. Also, he argued that he was not properly represented during his first appeal because his lawyers from Jenner & Block operated under an undisclosed conflict of interest.

17. Judge Zagel denied Messina's motions for recusal and to vacate the contempt judgment.

18. Messina appealed the denial of his motions. Judge Zagel's decisions were unanimously affirmed by the U. S. Court of Appeals for the Seventh Circuit in a published opinion. Messina's petition for rehearing and suggestion for rehearing en banc were denied. 299 F.3d 635 (7th. Cir. 2002). Messina's petition for writ of certiorari to the United States Supreme Court was denied. 538 U.S. 907 (2003).

19. The Court of Appeals did not merely reject Messina's contentions. The appellate court stated that Messina had failed to heed warnings against future abuse of the legal system. The court stated that Messina's appeal was an attempt to repackage prior appeals and pursue claims that "had been unsuccessfully litigated numerous times in both this Court and in the district court," Accordingly, the appellate court found Messina's appeal to be "frivolous." He was sanctioned pursuant to Rule 38 of Fed. R. App. Proc., and ordered to pay \$1,500 "for his abuse of the litigation process and the frivolous nature of this appeal." 299 F.3d at 642.

20. Messina has attempted to contest the validity of Judge Zagel's contempt ruling in

Illinois state court. In 1998, there was a hearing to confirm settlement of a state class action. Messina pursued his argument through surrogates. The lead intervener contesting the settlement was Stuart Cohen, who at the time was an attorney representing Messina.

21. The objections of the interveners were rejected by the Illinois appellate court for the First Judicial District. The court stated that it has “... no authority to rebuke, annul or modify an order or decree of a federal court”

22. The Illinois appellate court noted that Messina could not have represented a party at the settlement fairness hearing because he “was suspended from the practice of law at the time of the hearing”

23. With this history of restraining orders, admonitions, warnings, findings, contempt rulings, penalties and disciplinary proceedings, Messina now comes before this Court ostensibly to appeal the non-dischargeability decision of the bankruptcy court. Messina’s appeal, however, is focused on the conduct of the underlying Grove Fresh litigation and the initial contempt proceeding. He not only pursues arguments and contentions that have been appealed and unanimously rejected twice, he pursues arguments which the Court of Appeals has held to be “frivolous” and for which he has already been sanctioned.

24. It is clear beyond any shadow of a doubt that Messina simply will not obey court orders. He will not accept the rejection of his contentions. He will continue to abuse the litigation process and waste the time, money and resources of every conceivable court system, the parties and the lawyers for the parties.

25. To pursue his course of misconduct, Messina has largely ignored the financial penalties that have been imposed against him. Although some amounts have been paid, most have not. Moreover, the financial penalties that have been imposed represent only a fraction of the expenditures that have been required to address his misconduct. There was no order, for example, that required reimbursement for expenditures in the bankruptcy court, to respond to either of his two appeals to the U. S. Court of Appeals for the Seventh Circuit or to address the claims of the alleged interveners in the state court litigation.

26. Financial penalties based only on reimbursement for some of the expenditures caused by Messina simply have not been effective. Those reimbursement penalties have not deterred Messina to this point; reimbursement penalties cannot reasonably be expected to prevent future misconduct. Accordingly, the petitioner seeks severe sanctions against Messina to prevent future abuse.

27. The petitioner submits that Messina's appeal of the bankruptcy court decision violates Rule 11(b)(1) of the Fed. R. Civ. Proc. By reasserting arguments and contentions that already have been rejected by the Court of Appeals as frivolous, Messina's appeal has not been brought for a proper purpose. Rather, the appeal was brought to harass the parties and increase the costs of litigation.

28. Similarly, Messina's appeal violates Rule 11(b)(2). His claims are not warranted by existing law. They already have been rejected as frivolous. There is no reasonable basis for him to believe this Court would or should ignore the controlling determinations of the Court of Appeals.

29. The petitioner submits that Messina also has violated 28 U.S.C. § 1927. The assertion of arguments already rejected by the Court of Appeals as frivolous is unreasonable and vexatious and brought in bad faith.

30. Both Rule 11(c)(4) and § 1927 authorize the Court to order Messina to reimburse the petitioner for attorney's fees and costs expended in connection with Messina's violations. Accordingly, the petitioner respectfully requests an order requiring Messina to pay the attorney's fees and costs incurred, in an amount to be determined.

31. Rule 11(c)(4) authorizes this Court to impose a sanction that is sufficient to deter repetition of the conduct or comparable conduct. In making this determination, the Court is authorized to review whether the current misconduct is part of a pattern. *Vollmer v. Publishers Clearing House*, 248 F.3d 698, 710 (7th Cir. 2001); *Grebiskes v. Universities Research Association, Inc.*, 417 F.3d 752, 758 (7th Cir. 2005).

32. In Messina's case, there is overwhelming evidence of a protracted course of conduct to disregard court orders and harass the defendants from the Grove Fresh litigation. Judge Zagel noted that Messina pursued his own agenda, and that observation continues to remain accurate and relevant. The history of this litigation establishes conclusively that Messina will not hesitate to ignore any court order with which he disagrees. Monetary sanctions designed to reimburse respondents are ineffective and insufficient – either to deter Messina or fully compensate the respondents.

33. Accordingly, the petitioner requests that Messina be ordered to pay a multiple of the attorney's fees and costs expended by the respondent. The petitioner requests that Messina be ordered to pay three times the amount of the attorney's fees and costs incurred. The petitioner

submits this order is necessary to attempt to achieve deterrence from additional misconduct and secure compliance with court orders, directions and warnings.

34. In addition to the provisions of Rule 11, the petitioner submits that an order requiring payment of a multiple of the fees and costs incurred to secure deterrence is authorized by this Court's inherent authority to protect its jurisdiction and enforce its orders. *Support Systems International, Inc. v. Mack*, 45 F.3d 185 (7th Cir. 1995); *Grebis v. Universities Research Association, Inc.*, *supra*.

35. Messina has failed to pay a substantial portion of the monetary sanctions that already have been imposed against him. He has continued his pattern of disobedience while ignoring the sanctions imposed to confront and deter that defiance. Accordingly, the petitioner respectfully requests that Messina be ordered to pay all of the sanctions, including applicable interest, that already have been imposed. At a minimum, Messina should be barred from any court filing unless and until all such sanctions have been paid. *Support Systems International, Inc. v. Mack*, *supra*.

36. Rule 11(c)(4) and this Court's inherent power authorize sanctions that include non-monetary directives. The petitioner submits that additional orders are justified and necessary to deter Messina from continued abuse of the litigation process.

37. Messina's brief in this Court indicates that he is contemplating additional litigation related to the underlying Grove Fresh litigation and the contempt proceedings, orders and sanctions related to that litigation. In describing the counterclaim he filed in the bankruptcy proceeding, Messina said his claim "sought damages for tortious interference with debtor's contractual relations with orange juice consumers." (Messina Brief at 41). Later, Messina

contends that the bankruptcy trustee breached his fiduciary obligations by failing to take any action on that claim. (Messina Brief at 50). Thus, there is reason to conclude that Messina intends to pursue additional litigation alleging some sort of tortious interference.

38. The petitioner requests that this Court exercise its inherent authority to enter an order prohibiting Messina, or anyone on his behalf, from initiating or pursuing any legal proceedings whatsoever in any federal or state court that are related in any way to the Grove Fresh litigation or any of the subsequent proceedings. The petitioner also requests a warning that violation of the order will result in serious sanctions, including the possibility of criminal contempt. To this point, the record is clear that civil contempt and monetary sanctions simply have not been effective in deterring Messina from additional misconduct.

39. The Court's authority extends to prohibiting vexatious litigation. Such an order would not violate Messina's constitutional rights because it would not prevent his access to the courts for other matters, which presumably would be appropriate. *See, e.g., In the matter of Lamar Chapman*, 328 F.3d 903 (7th Cir. 2000); *Dreis & Krump Manufacturing Company v. International Association of Machinists and Aerospace Workers, District No. 8*, 802 F.2d 247 (7th Cir. 1986); *Srivastava v. Marion County Election Board*, 2005 WL 406387 (7th Cir. 2005).

40. The petitioner requests that this Court consider the brief it filed in response to Messina's appeal in further support of this motion.

41. On August 13, 2009, American Citrus served this motion on Messina in conformance with Rule 11(c)(2) of the Fed. R. Civ. Proc. The motion was transmitted by both e-mail and regular mail. The Notice of Service and Certificate of Service are attached.

42. The motion served on Messina contained the introduction, paragraphs 1 through 40 and the prayer for relief.

43. Messina has not responded.

44. Messina has indicated his intention to continue to pursue his frivolous appeal. He has requested that his reply in support of his appeal be filed with the Court on October 16, 2009. He has not stated nor has he given any indication that he will abandon his appeal and reimburse American Citrus for the expenditures that have been required.

45. Accordingly, American Citrus has no choice other than to proceed with this motion for relief.

WHEREFORE, the petitioner respectfully requests the following relief:

A. A determination that Messina's appeal of the bankruptcy court decision violates Rule 11 and § 1927.

B. That Messina be ordered to reimburse the petitioner for all attorney's fees and expenses incurred in responding to Messina's appeal to this Court and all related proceedings.

C. That Messina be ordered to pay the petitioner three times the attorney's fees and expenses incurred in responding to Messina's appeal to this Court and all related proceedings to deter future misconduct and secure obedience to court orders, directions and warnings.

D. That Messina be ordered to pay all outstanding monetary sanctions, including applicable interest.

E. That Messina be prohibited from initiating or pursuing, directly or indirectly, any legal proceedings whatsoever in any federal or state court that are related in any way to the Grove Fresh litigation or any of the subsequent proceedings.

F. That this Court order such other and further relief as it deems appropriate.

Respectfully submitted,

By: /s/ Steven M. Kowal

Attorney for the judgment holder,
American Citrus Products Corporation

Steven M. Kowal
K&L GATES LLP
70 West Madison Street, Suite 3100
Chicago, IL 60602
Telephone: (312) 372-1121

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:

JOHN P. MESSINA, d/b/a
The Law Office of John P. Messina,

Debtor

)
)
)
)
)
)
)
)
)
)
)

Case No. 09-CV-1739

Judge Robert Gettleman

NOTICE OF SERVICE

To: John P. Messina
The Law Office of John P. Messina
541 N. Cuyler Avenue
Oak Park, IL 60302-2306
john@jpmessinalaw.com

Please take notice, the attached MOTION OF AMERICAN CITRUS PRODUCTS CORPORATION FOR SANCTIONS AND FOR AN ORDER TO PREVENT FUTURE MISCONDUCT is hereby served upon you in conformance with Rule 11(c)(2) of the Fed. R. Civ. Proc.

By: /s/ Steven M. Kowal
Attorney for the judgment holder,
American Citrus Products Corporation

CERTIFICATE OF SERVICE

Steven M. Kowal, an attorney, hereby certifies that he caused a copy of the **Motion of American Citrus Products Corporation for Sanctions and for an Order to Prevent Future Misconduct and Notice of Service** to be served via electronic mail and U. S. Mail on August 13, 2009 upon:

John P. Messina
The Law Office of John P. Messina
541 N. Cuyler Avenue
Oak Park, IL 60302-2306
john@jpmessinalaw.com

By /s/ Steven M. Kowal
Attorney for Judgment Holder
American Citrus Products Corporation

Steven M. Kowal
K&L Gates, LLP
70 West Madison Street, Suite 3100
Chicago, Illinois 60602
(312) 372-1121
(312) 372-8000 facsimile