

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

IN RE:

JOHN P. MESSINA, doing business as
THE LAW OFFICE OF
JOHN P. MESSINA,
Debtor – Appellant

No. 10-3240

U.S.C.A. – 7th Circuit
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**MOTION OF APPELLEE, AMERICAN CITRUS PRODUCTS CORPORATION,
TO NOT PERMIT ORAL ARGUMENT**

Appellee, American Citrus Products Corporation, pursuant to Rule 34(a)(2) of the Fed. R. App. P., respectfully requests that oral argument not be permitted. The appeal filed by John P. Messina is both frivolous and the dispositive issues have been authoritatively decided. In support, American Citrus states:

1. This is Messina's third full appeal to this Court of a contempt decision that was rendered against him in 1995. In each of the two previous appeals, the contempt decision was unanimously affirmed. In the second appeal, this Court found that Messina's arguments were "frivolous" and he was sanctioned pursuant to Rule 38 of the Fed. R. App. P.

2. 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).

3. 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 It was unanimously affirmed in an unpublished opinion. 134 F.3d 374 (7th Cir. 1998).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 to the United States Supreme Court was denied. 525 U.S. 988 (1998).

4. Rather than pay the monetary sanctions that were imposed by Judge Zagel, Messina filed for protection in bankruptcy court. During the course of the disposition of the bankruptcy proceedings, 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 comply with the procedures established in Judge Zagel's contempt decision to avoid further violations. At that point, those procedures already had been sustained by this Court.

5. Messina's improper disclosure resulted in the second contempt petition before Judge Zagel. Messina was again found to have violated the district court's orders and was ordered to pay petitioner's attorneys fees.

6. Messina used the second contempt proceeding again to contest the initial contempt judgment. Messina filed a motion seeking recusal of Judge Zagel, who Messina 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.

7. Messina also sought to vacate the initial contempt judgment through a motion filed pursuant to Rule 60(b)(6) of the Fed. R. Civ. P. 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. Judge Zagel denied Messina's motions for recusal and to vacate the contempt judgment.

8. Messina appealed the denial of his motions. Once again, this Court unanimously affirmed Judge Zagel's decisions and the basis for the original contempt judgment. Messina's

petition for rehearing and suggestion for rehearing en banc were denied. 299 F.3d 635 (7th Cir. 2002). Messina's petition for a writ of certiorari to the United States Supreme Court was denied. 538 U.S. 907 (2003).

9. This Court did not merely reject Messina's contentions. This 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, this Court found Messina's appeal to be "frivolous." Messina was sanctioned pursuant to Rule 38 of the Fed. R. App. P., and ordered to pay \$1,500 "for his abuse of the litigation process and the frivolous nature of his appeal." 299 F.3d at 642.

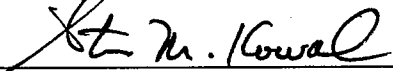
10. In his current appeal to this Court, which is now his third, Messina again contests the factual basis of Judge Zagel's rulings related to the contempt judgment. He again asserts that the rulings concerning his status as a Grove Fresh attorney were improper. He again claims the assembly and maintenance of the district court record deprived him of the ability to pursue interlocutory appeals. He again insists that Judge Zagel's findings of fact and conclusions of law constituted an unfair recitation of the underlying events. This time, however, instead of focusing on the alleged "unremitting bias" of Judge Zagel, Messina contends these arguments support the conclusion that the appellees and their lawyers had "unclean hands" and therefore are not entitled to judgments and rulings in their favor.

11. American Citrus respectfully submits that Messina's arguments already were found to be frivolous in this Court's ruling of 2002. They have not improved with the passage of time. In addition, Messina's arguments and contentions have been fully reviewed and repeatedly rejected. Therefore, the issues raised in his current appeal have been authoritatively decided.

Accordingly, there is no basis to permit oral argument. Such an argument would merely waste the time of this Court, the resources of the parties and continue Messina's shameful abuse of the litigation process.

Dated: February 22, 2011

Respectfully submitted,

By: 
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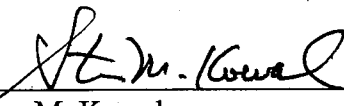
CERTIFICATE OF SERVICE

I, Steven M. Kowal, hereby certify that I caused a copy of the foregoing Motion of American Citrus Products Corporation To Not Permit Oral Argument to be served via U.S. Mail and by electronic mail on February 22, 2011.

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