Stuart J. Moskovitz
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Pro Se

Township of Manalapan,

Plaintiff

vs.

Stuart Moskovitz, Esq., Jane Doe and/or John Doe, Esq. I-V (these names being fictitious as their true identities are presently unknown) and XYZ Corporation, I-V (these names being fictitious as their true corporate identities are currently unknown)

Defendants (s)

Stuart J. Moskovitz, Esq.,

Third Party Plaintiff

vs.

Andrew Lucas, Richard Roe I-V (these names being fictitious as their true identities are presently unknown)

Third Party Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MONMOUTH COUNTY
DOCKET NO. MON-L-2893-07

CIVIL ACTION

REPLY BRIEF IN SUPPORT OF MOTION FOR SANCTIONS

Preliminary Statement

Contrary to the assertion by Plaintiff's various counsel in this matter, this case has never been a legal malpractice case. In fact, there is little about Plaintiff's case, a case that remains without an authorizing resolution, that is legal.

What we have seen in the last several weeks is a glaring abuse of the judicial system for political purposes. What we have seen in the last several weeks is a political charade – an attempt to enlist the judiciary, for which the taxpayers foot the bill – to further political gains of politicians, for whom the taxpayers foot the bill, to violate the constitutional rights of a candidate, a defendant and nonparties whose only "offense" is to exercise their right to criticize this government. Again, all at taxpayers' expense.

It has long been the history of our judicial system, not only in this State, but in the nation as a whole, that the courts are to be the protectors of rights, the protectors of abusive actions by government, not the willing or even inadvertent accomplices to the abuse of our citizens.

In *Marbury v. Madison*, 5 U.S. 137 (1803), Chief Justice Jay noted that "The government of the United States has been emphatically termed a government of laws and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right."

That would seem to apply even more so if an attempt to enlist the judiciary in violating vested legal rights were to be successful.

This case, masquerading as a legal malpractice case, is a first amendment case, nothing less. Were this a legal malpractice case then surely the professionals who participated in the court order in 2004, including the attorneys and the engineers, would have been named as defendants. They were not. The appraiser who was aware of the underground storage tank and may or

may not have incorporated that information into his appraisal, would also have been named. The engineer who declared prior to the closing in 2005 that there was no evidence of contamination, would have been named. This is not to suggest that any of these individuals actually were negligent. In fact, there was no negligence involved in this matter by any professional.

But what the court has before it now is clear evidence of the Plaintiff's true intent. The Plaintiff has made it clear that it believed Defendant was the blogger known as "daTruthSquad" who was posting criticisms of this government long before this case commenced.

What the court has before it is extreme vitriol in the papers submitted by Plaintiff's attorneys. The gratuitous venom unleashed in paper after paper submitted by Mr. McCarthy, who is not even the attorney of record in this matter, merely the catalyst for it, may stand as the most vile and unprofessional ranting ever received by this court.

This is a litigation of hate, not of merit. It is a political vendetta. It is an abuse of the judicial process. The taxpayers money is wasted with each day of this litigation, not only in the cost of this court itself, but in the cost of paying four attorneys fixated on violating first amendment rights.

The Motion for Sanctions

In reading the reply papers of Plaintiff's attorneys, it would be easy for this Court to forget what Defendant's motions actually sought and why.

Contrary to the lengthy diatribe of Mr. McCarthy, we are not seeking

sanctions as the result of this action being brought. That will be dealt with in a malicious prosecution case at the conclusion of this litigation, not in these motions.

Defendants' motion against Mr. McCarthy and his firm was solely in connection with his intentionally providing false information in his papers. First, after claiming to have knowledge of every fact in his certification in opposition to the Order to Show Cause, Mr. McCarthy made the absurd allegation that Defendant was "daTruthSquad." Though that statement cast light on the true underlying basis for this litigation, it was false. This misrepresentation, though couched in the qualifying phrase "it appears that," had its qualifying veil lifted in Mr. McCarthy's brief where he stated, time and again, that, in fact, Defendant WAS indeed, "daTruthSquad," with no such qualification.

No sanctions have been sought against Mr. McCarthy or any other attorney in connection with these motions for bringing the case itself.

Nor is such a sanction sought against Mr. Weeks and his firm. The motion against Mr. Weeks and his firm was solely on the basis of the subpoena issued by Mr. Weeks' firm, and nothing else. Mr. Weeks' firm issued a subpoena to Google with a return date in early October. It was not until late October that Defendant first learned of the issuance of this subpoena, from the Electronic Frontier Foundation. Mr. Weeks' firm intentionally failed to serve Defendant with this subpoena. Convinced that Defendant was

"daTruthSquad" their intent was to act surreptitiously to find proof that Defendant was "daTruthSquad" without his knowing they were investigating. The surreptitious action itself is a clear violation of legal ethics, as noted in Defendant's moving papers. The failure to provide Defendant with notice of the subpoena was a violation of court rules. Again, that is the basis for this motion for sanctions.

It is telling that Mr. Weeks's responsive papers fail to address the singular issue addressed by Defendant's motion – the failure to give notice of a subpoena to a third party. That failure is as telling as the Plaintiffs' attorneys' obsession with "daTruthSquad" throughout this litigation.

Defendant's motion was with respect to the foregoing, and it is respectfully submitted that his Court should focus on the actual issues raised by Defendant's motion, not the vile, vituperative vitriol in the responsive papers that respond to none of the above.

Rule 1:4-8

Plaintiff's attorneys raise a number of distracting issues that are easily dismissed. Mr. McCarthy postures at length about the fact that Defendant's Certification contains "hearsay" apparently because it contains legal argument. To begin with, there is nothing within the Certification that bears directly on the merits of Defendant's motion that is hearsay. The lack of a proper authorizing resolution legally passed in an open session as required by law is public information. Mr. McCarthy states that Judge Pressler herself

suggested in her comment to 1:6-6 that legal argument constitutes impermissible hearsay in a Certification. She suggested nothing remotely of the sort.

Mr. McCarthy makes numerous quotations from the hearings, all of which are irrelevant to this hearing, and deceptively quoted out-of-context. For example, on page 32 of his brief, he quotes Defendant as saying that he agrees there were other things that he could have done besides the strategy he employed, but stops quoting before the next line which clearly indicates that while there were other steps he could have taken, the steps he did take were the reasonable strategy, in light of the existing facts. He ignores the part of Defendant's argument where he pointed out that if he had employed the option "Plaintiff" now suggests, the Township would have condemned the property and forfeited the $250,000.00 in Green Acres money that the State advised would not be available after 2004 for any condemnation of this property, but would be available for a purchase.

Mr. McCarthy also intentionally adopts a misrecording by the transcriber of the hearing, stating that Defendant had said he was "terrified" that the Court asked the question it did. In the very context in which that statement is recorded, it is clear that could not have been Defendant's statement. The Court surely will recall that Defendant was hardly "terrified" of any of the questions asked by the Court, which, as any attorney would, he freely answered.

Finally, both Mr. McCarthy and Mr. Garza, from Mr. Weeks' firm, refer

to Rule 1:4-8 a basis for denying this motion. Interestingly enough, it is actually Mr. Garza who provides this court with an unassailable argument as to why this rule does NOT preclude Defendant's motion.

As Mr. Garza points out in his brief, the Supreme Court in *Toll Bros., Inc. v. Township of West Windsor,* 190 NJ 61, 69 (2007) emphasized that the rule requires such a letter "only to the extent practicable." Obviously, such a letter was not practicable when the return date of the subpoena occurred prior to my being notified of its existence. Such a letter was not practicable when the false statements by Mr. McCarthy were made very shortly before the argument on an Order To Show Cause and were leaked to the press prior to my opportunity to react to them.

Defendant's motion with respect to Mr. Weeks' firm is with respect to a subpoena that was never served on Defendant. That means, simply enough, there was never a window of opportunity to provide Mr. Weeks with the "safe harbor" letter requesting withdrawal. Of course, when the attorney for "daTruthSquad" advised Plaintiff of the opportunity to withdraw the subpoena, the opportunity was soundly rejected by a venomous Mr. Garza.

Defendant's motion with respect to Mr. McCarthy was his false statements to the Court made in response to an Order to Show Cause. There was similarly no opportunity for such a safe harbor letter. The fact that Mr. McCarthy persists in continuation of these false statements, even after this motion has been filed, negates any argument that the letter would have been of any import.

What the rule *does* apply to, however, is Mr. Garza's own motion for sanctions, made, in violation of his own argument, without any letter to Defendant seeking a withdrawal of this motion.

As for Defendant's motion, the Supreme Court in *Toll Bros., Inc.* noted that "a court should not dismiss an application governed by subsection (f) without making an assessment about the practicability of compliance."

It should not be a difficult assessment to determine that it was not practicable to send a safe harbor letter regarding a subpoena never served on opposing counsel, and of which opposing counsel had no notice until after the return date of the subpoena.

Conclusion

In that Plaintiff's attorneys provided no opposition to the actual issues addressed in Defendants' Motion for Sanctions, those sanctions should be granted.

Respectfully submitted,

Stuart J. Moskovitz, Esq.
Pro Se

Dated: December 17, 2007