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FILED

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

2016 MAY -6 P 1: 06

KATHLEEN MARSHALL
Plaintiff

Case No: CV-13-817284

CLERK OF COURTS
CUYAHOGA COUNTY

Judge: MICHAEL E JACKSON

COOPER & ELLIOTT, ET AL
Defendant

JOURNAL ENTRY

THIRD PARTY DEFENDANT MICHAEL A. DOLAN'S MOTION FOR SANCTIONS AND FEES, FILED 08/28/2015, IS GRANTED. O.S.J.



Judge Signature

5/6/16

Date

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CUYAHOGA COUNTY, OHIO

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KATHLEEN MARSHALL,

) Case No. CV 13-817284

CLERK OF COURTS
CUYAHOGA COUNTY

PLAINTIFF,

) JUDGE MICHAEL E. JACKSON

v.

) JOURNAL ENTRY AND OPINION: THIRD-

COOPER & ELLIOTT, et al.,

) PARTY DEFENDANT MICHAEL A.

) DOLAN'S MOTION FOR ATTORNEY FEES

DEFENDANTS.

) AND SANCTIONS.

Third-Party Defendant Michael A. Dolan's (Dolan) motion for attorney fees and sanctions against Defendants the Calabrese Law Firm LLCs, Anthony O. Calabrese III (collectively, Calabrese), his attorney John R. Christie (Christie), and Stefanic & Christie LLC (Christie's Firm), filed 08/28/2015, is granted pursuant to R.C. 2323.51, against Calabrese and Christie. The Court denies Dolan's claims against Christie's Firm because insufficient evidence was submitted concerning the law firm. Dolan's motion for fees and sanctions pursuant to Civ.R. 11 is denied.

This case began on November 14, 2013 when Plaintiff Kathleen Marshall (nka as Kirk) filed her complaint against Defendants Charles Cooper, Rex Elliott, Cooper & Elliott (collectively, C & E), and Calabrese. Kirk asserted the following claims: Count one, breach of contract; Count two, conversion; Count three, fraud and; Count four, civil conspiracy to commit fraud. These claims arose out of an assignment to Kirk from G. Timothy Marshall (Marshall), Kirk's ex-husband, as part of their divorce resolution. Marshall assigned his portion of attorney fees that he earned along with C & E, Calabrese, and Dolan for shared representation *In Re*

Trans Union Corporation Privacy Litigation, MDL No. 1350 (United States District Court, Northern District of Illinois) (*Trans Union* case). Like Kirk, Dolan also disputed the fee arrangement because he asserted that he was entitled to one third of the total fee, and that C & E was not entitled to one-half of the total fee. Dolan complied with Prof.Cond.R. 1.5 and Dolan's claim was arbitrated by a local bar association panel. After a full hearing on the matter, the arbitration panel affirmed the division of attorney fees, and determined that Dolan's 25% of the total fees was proper. Despite Dolan's urging, Kirk did not participate in the arbitration to challenge Marshall's fees.

Calabrese filed an answer, counterclaims, and third-party complaint against Dolan and his law firm Michael A. Dolan, Attorney and Counselor at Law, LLC (collectively Dolan), on July 14, 2014 asserting the following third-party claims: Count four, breach of contract; Count five, unjust enrichment and; Count six, slander. On August 19, 2014, Dolan filed an answer and asserted the following counter-claims against Calabrese: Count one, fraud and; Count two, tortious interference with employment.

After discovery was completed, C & E and Calabrese filed motions for summary judgment against Kirk, and the Court granted both motions on April 1, 2015. No other dispositive motions were filed prior to the dispositive motion deadline. Because the Court granted the motions for summary judgment against Kirk, the only claims that remained pending were Calabrese's claims against Kirk, and the claims between Calabrese and Dolan.

On the eve of trial set for August 3, 2015, several issues developed. Kirk filed for bankruptcy, and the Court was obligated to stay the claims between Calabrese and Kirk. Dolan filed a motion for judgment on the pleadings. This Court deferred ruling on the motion until after

the presentation of opening statements. Calabrese attempted to notice several depositions, but sought a continuance of the trial. The Court denied Calabrese's motion to continue. Finally, on August 3, 2015, Calabrese and Dolan filed a stipulated notice of dismissal without prejudice of the claims against each other.

On 08/28/2015, within 30 days of filing of the dismissal entry for the claims between Dolan and Calabrese, Dolan filed his motion for sanctions. R.C. 2323.51(B) (1). After all parties briefed the issues, the Court provide notice to all parties and held a hearing on 03/28/2016 to determine whether the conduct was frivolous, and whether Dolan was adversely affected by the frivolous conduct. R.C. 2323.51(B) (2).

LAW

“‘Conduct’ means any of the following: (a) The filing of a civil action, the assertion of a claim, defense, or other position in connection with a civil action, the filing of a pleading, motion, or other paper in a civil action, including, but not limited to, a motion or paper filed for discovery purposes, or the taking of any other action in connection with a civil action.” R.C. 2323.51(A) (1).

“‘Frivolous conduct’ means either of the following: (a) Conduct of an inmate or other party to a civil action, of an inmate who has filed an appeal of the type described in division (A)(1)(b) of this section, or of the inmate’s or other party’s counsel of record that satisfies any of the following:

- (i) It obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation.

(ii) It is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law.

(iii) The conduct consists of allegations or other factual contentions that have no evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(iv) The conduct consists of denials or factual contentions that are not warranted by the evidence or, if specifically so identified, are not reasonably based on a lack of information or belief.” R.C. 2323.51(A) (2).

ANALYSIS

Calabrese possess a juris doctor degree; he was a practicing attorney for sixteen years before his license to practice law was suspended, and he was ultimately disbarred. Christie has been a practicing attorney for nineteen years. In this case, both Calabrese and Christie are presumed to know the law and the Ohio Rules of Professional Conduct, including Prof.Cond.R. 1.5, which governs sharing and disputing attorney fees.

After considering all the briefs, and arguments the Court finds that Calabrese, and Christie, engaged in frivolous conduct by filing claims for breach of contract and unjust enrichment against Dolan that arises out of an attorney fee dispute. That fee dispute is discussed in detail in this Court’s journal entry and opinion filed on April 1, 2015 and arises out of the same *Trans Union* case. Calabrese and Christie knew that Calabrese was obligated by Prof.Cond.R. 1.5 to arbitrate or mediate a fee dispute. The rule requires attorneys to arbitrate or mediate a fee dispute through a local bar association or the Ohio State Bar Association.

In fact, Calabrese participated in the arbitration proceeding initiated by Dolan against C & E, by having his deposition taken regarding Dolan’s fee dispute in the *Trans Union* case.

Christie was also aware of the required arbitration or mediation hearing pursuant to Pro.Cond.R. 1.5. However, Calabrese did not raise his issues with his share of the fees in that hearing, nor did he or his counsel file a separate claim asserting Calabrese's fee dispute with Dolan. Rather, they chose to raise Calabrese's fee dispute by filing a third-party complaint against Dolan in this action.

In defending against Kirk's claim for breach of contract, Christie filed Calabrese's motion for summary judgment. In so doing, Calabrese and Christie specifically incorporated all the arguments of C & E, which argued that Marshall was obligated to pursue any fee dispute with Calabrese and C & E at arbitration or mediation hearing pursuant to Prof.Cond.R. 1.5. The basis of their argument was that Kirk "stepped into the shoes" of Marshall who assigned his part of the fee to her as part of a divorce resolution. They advocated that fee disputes between attorneys, or one who receives an assignment of fees, must be resolved according to Prof.Cond.R. 1.5 in the motions for summary judgment and at the motion hearing. Yet, Calabrese and Christie did not dismiss immediately Calabrese's breach of contract and unjust enrichment claims against Dolan. Instead, Calabrese and Christie pursued the claims to the day of trial before dismissing pursuant to Civ.R. 41(A)(2). Dolan incurred additional costs of litigation including motion practice, and trial preparation. This demonstrates a clear knowledge of the law and a deliberate decision to ignore Calabrese's obligation to follow the law and Rules of Professional Conduct; this constitutes bad faith. Pursuing these claims in this manner serves an improper purpose including needless litigation, and showed a lack of a good faith argument in law. R.C.2323.51 (A)(2)(a)(i) and (ii).

The Court further finds that Calabrese, and Christie, engaged in frivolous conduct, and did not act in good faith by filing and thereafter maintaining this slander claim against Dolan when this claim was not supported by credible evidence. Not only do the pleadings lack operative facts to support the claim, Calabrese and Christie demonstrated no intent on pursuing the claim.

The Court finds Dolan's three assertions valid regarding Christie himself and acting as Calabrese's agent concerning the slander claim. First, he completely failed to inquire into any issue related to slander during Dolan's deposition. Second, he did not issue interrogatories or request for admissions concerning the alleged slander. Third, he did not address slander in his trial brief or proposed jury instructions. These assertions went unrebutted by Christie and Calabrese. Further, Calabrese, a lawyer himself, was aware of these points, given his interest in this case and the clear impression created by Christie that his client was actively involved in this case. The Court provided them a reasonable opportunity to investigate this claim through the discovery process, but they did nothing regarding this claim. Their conduct in filing or maintaining this claim lacked evidentiary support, and the Court finds that it was not reasonable to either assert or thereafter maintain this claim. Accordingly, the Court concludes that Christie and Calabrese asserted this claim for an improper purpose, including needless litigation.

R.C.2323.51 (A)(2)(a)(i),(iii) and (iv).

The Court further finds that Dolan has been adversely affected by the frivolous conduct of Calabrese and Christie, by incurring attorney fees as alleged in the exhibits attached to Dolan's motion for sanctions. R.C.2323.51 (B)(2)(c). The Court will set a separate hearing to permit Dolan the opportunity to present his evidence for an award of a reasonable amount of fees

and for Christie and Calabrese to oppose that request. R.C.2323.51 (B)(2)(c) and R.C.2323.51 (B)(3)-(5).

IT IS SO ORDERED.

DATED: 5/6/16



JUDGE MICHAEL E. JACKSON

THE CLERK OF COURT SHALL SERVE A COPY OF THE FOREGOING JOURNAL ENTRY AND OPINION ON ALL COUNSEL OF RECORD AT THE ADDRESS LISTED ON THE COURT DOCKET.