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WESTERN DISTRICT OF LOUISIANA
LAFAYETTE, LOUISIANA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

BELVA WEBB, et al

CIVIL ACTION 10-1557

VERSUS

JUDGE HAIK

JOSEPH P. MORELLA

MAGISTRATE JUDGE HANNA

REASONS FOR JUDGMENT

This matter came before the court for hearing on April 19, 2012. After full consideration of the evidence and arguments, the federal claims were dismissed with prejudice, the state law claims were dismissed without prejudice, and sanctions under Rule 11 were levied against the plaintiffs and plaintiffs' counsel in the amount of attorney fees at the rate of \$200 per hour, plus costs, incurred by Mr. Morella in defense of this suit. For completeness of the record and to fully comply with Rule 11(c)(6), the Rule 11 sanctions were imposed for the following reasons:

Federal Rule of Civil Procedure 11 states:

(b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause

unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information

c) Sanctions.

(1) *In General.* If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) *Motion for Sanctions.* A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under **Rule 5**, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or

within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

The defendant sent a copy of the Motion for Sanctions under Rule 11 and a letter to plaintiffs' counsel on November 12, 2010. A return receipt dated November 15, 2010 was secured. Following the lapse of 21 days without a withdrawal of the challenged claims, the Motion for Sanctions Under Rule 11 (Doc. #6) was properly filed and presented to the court.

A full recitation of the facts of the case is unnecessary, as the record is complete.

Essentially, this case arose from a sale of property for which Mr. Morella prepared the act of sale and completed the closing for the Webbs in February 2003. According to the evidence, Mr. Morella advised them at that time that various liens and judgments against them would follow the property. They chose to complete the purchase anyway. In May 2004, the Webbs entered into an agreement with Patrick LaSalle for sale of the property, accepting a \$1000 deposit, but they were unable to deliver merchantable title. Despite this fact, the Webbs did not return Mr. LaSalle's deposit. Mr. LaSalle eventually filed suit for return of the deposit, hiring Mr. Morella as his attorney. The Webbs failed to respond to the suit and judgment against the Webbs was entered.

In October 2009, the Webbs visited Mr. Morella's office, offering to return the deposit in exchange for a release of the judgment. Mr. Morella advised them he would need to speak with Mr. LaSalle and he would call them. According to the Affidavits of both Mr. Morella and his employee Malinda Bourgeois, the Webbs returned to the office a second time that day,

unannounced and uninvited. At that time, Mr. Morella informed them that Mr. LaSalle would not accept anything except the full judgment of \$1,692.50, which included interest and court costs. The Webbs became upset and eventually Mr. Morella had to call the Patterson City Police as they refused to leave his office.

Mr. Morella served as judge for the Mayor's Court for the City of Patterson and the Town of Berwick, in addition to maintaining a private law practice. The entirety of the relationship between the parties took place with Mr. Morella in his capacity as a private real estate attorney. Despite this fact, the Webbs made claims for Hate Crimes and the deprivation of their constitutional rights by Mr. Morella in his capacity as a judge for the Mayor's Court of Patterson and Town of Berwick. They also made various state law claim, including false arrest, assault, and extortion.

Rule 11 of the Federal Rules of Civil Procedure requires a thoughtful inquiry into claims being made. An attorney must be certain, to the best of his knowledge, information, and belief, after a reasonable inquiry, that the claims are not being presented for an improper purpose, such to harass, and that the claims are warranted by the existing law. It is the attorney's obligation to present a non-frivolous argument, with evidentiary support or which will likely have evidentiary support after a reasonable opportunity for inquiry.

The plaintiffs cite 18 USC section 245(b)(2) as support for civil damages resulting from the alleged "hate crimes". Section 245(b)(2), however, does not provide for a private cause of action, as a plain reading of the statute and case law show. Further, targets of hate crimes must be engaged in a federally protected activity for any penalties under 18 USC section 245 to apply,

which the plaintiffs in this case were not. The claim for hate crimes was legally insufficient and completely baseless in fact, clearly in violation of Rule 11. Despite this, the plaintiffs refused to dismiss the allegations after fair notice to do so prior to the filing of the Motion for Sanctions.

A violation of constitutional rights under 42 U.S.C. section 1983 requires a finding that Mr. Morella was “acting under color of state law” as a necessary component. The entirety of the relationship between the parties took place with Mr. Morella in his capacity as a private real estate attorney in his own office. There is no evidence whatsoever to the contrary. At the hearing held April 19, 2012, Mr. Abel admitted Mr. Morella was acting a private attorney, in his private office, during the entirety of the relationship with the Webbs. Although he attempted to argue that “Because, as under 1983 and under our own rules, a judge is always acting in his capacity whether he’s on the bench or not.” (Transcript, Doc. #49, Page 3, Lines 1-3), he offered absolutely no support for that contention. This is because none exists. He further evidenced a lack of “reasonable inquiry” or support for the allegation in this exchange at the Hearing:

Mr. Abel: Your Honor, we believe it’s a 1983 for the reasons set forth—

The Court: Did you cite a case for that?

Mr. Abel: I’m sure that we did, Your Honor.

The Court: No you didn’t. Not one case finds a judge who is acting—who is a part time magistrate, basically, at his private office doing private work, that calls for a 1983. It’s not there. (Transcript, Doc. #49, Page 3. Lines 7-14)

Mr. Abel’s uncertainty about whether or not he cited authority in support of his position leads this court to believe that he failed to reasonably inquire as to whether any exists.

Additionally, Mr. Abel admitted beginning on Page 4 of the Transcript (Doc. #49) that the alleged acts took place in Mr. Morella's private office; that there is no evidence or allegation that the city, parish or state pays for his private office; he was not wearing his robe; and no other individual pays the rent or owns Mr. Morella's private office. The claims presented were not "warranted by existing law" and consisted of only frivolous arguments with no basis for "extending, modifying, or reversing existing law or for establishing new law." (FRCP 11(b)(2)).

Further, the evidence presented included a Mortgage Certificate, certified by the Clerk of Court of St. Mary Parish, clearly showing the liens and/or judgments affecting the property in question, and the dictated memo of Mr. Morella dated February 25, 2003, which the Affidavit of Melinda Bourgeois confirmed he keeps in the ordinary course of business, confirming his earlier conversation with the Webbs notifying them of the effect the 5 judgments and 1 lien against them on the Kentucky Street property. This evidence directly contradicts the Webbs' Affidavit alleging no knowledge of the encumbrances on the property.

Plaintiffs' counsel could have very easily discovered the existence of the liens and judgments against the Webbs, and affecting the property in question, by simply contacting the St. Mary Parish Clerk of Court. It is an attorney's obligation to make a "reasonable inquiry" prior to filing suit and not rely solely on the client's allegations. To set forth allegations of fraud and extortion without any sort of basis is a clear violation of Rule 11, as well as being irresponsible and unethical.

Further, the Affidavits of Mr. Morella and Ms. Bourgeois directly contradict the Affidavit of the Webbs with respect to the course of events and acts of the parties. The Webbs allege Mr.

Morella engaged in offensive racial slurring, constitutional violations, and criminal conduct, with no evidentiary support whatsoever. The evidence in the record, in fact, supports a finding that Mr. Morella was performing his work in the ordinary course of business as a private attorney reasonably and properly. There is a clear record of events kept by Mr. Morella, which contradicts the vexatious claims of the plaintiffs, even if they had legal support for their contentions, which they do not.

A careful study of the record leads this court to conclude that the claims of the Webbs were made for “an improper purpose” and not in good faith, in violation of Rule 11 (b)(1).

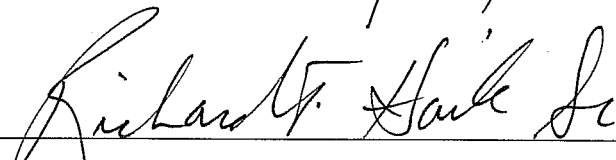
Based on the foregoing, this court hereby finds the entirety of the federal claims made against Mr. Morella by the Webbs are factually unsound, with no evidentiary support or any grounds presented which would lead to the discovery of evidentiary support; are not supported or warranted by existing law; are frivolous, with no hope of extending, modifying, or reversing existing law or establishing new law; and have been presented for an improper purpose, leading to harassment of and damage to Mr. Morella.

Rule 11(c) states:

(4) *Nature of a Sanction.* A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

Because the unfounded and vexatious claims of the plaintiffs and plaintiffs' counsel are found to be a violation of Rule 11, and have resulted in a waste of time and judicial resources, this court is awarding sanctions in the amount of reasonable attorney fees, set at \$200 per hour, plus costs, incurred by Mr. Morella in defense of this litigation to be paid by the Webbs and/or their attorneys of record. The court finds this sanction complies with the requirements of Rule 11(c)(4), in that it was imposed on motion and is warranted after a consideration of the evidence. Further, it is held the imposition of these sanctions satisfies the intent of the statute to deter repetition of the conduct demonstrated in this case. The amount of \$200 per hour is held to be reasonable, considering the experience of the attorneys representing Mr. Morella and the fee rates for similarly situated in the local legal community.

THUS DONE and SIGNED on this 9th day of July, 2014.



RICHARD T. HAIK, SR., DISTRICT JUDGE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA