

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

RECEIVED

In re: Tony Megna:

SEP 30 2015

JAMES A. ANASTI,)
Plaintiff,)

Docket Number: 2007-CP-40-0576
Court of Appeals

vs.

Case No. 2007-CP-40-0576

LANCE WILSON,)
WILLIS GOODWIN,)
GINA L. ANASTI LEE,)
And RICHLAND COUNTY)
CLERK OF COURT,)
Defendants.)

ORDER

RICHLAND COUNTY
FILED
2015 AUG 25 PM 4: 21
JEANNETTE W. MCBRIDE
C.C.P. & G.S.
25 PM 4: 21
S.C. Civ.P.

This matter came before the Court on Plaintiff Anasti's Motion for Rule 11 Sanctions¹, which has been fully briefed by all Parties and was first argued before this Court on July 22, 2014 and again on July 23, 2015. The only issue that is properly before this Court is whether Mr. Megna knowingly interjected frivolous defenses during the course of the case, the result of which allegedly caused harm to Plaintiff.² Defendant opposed the Motion and has asked the Court to impose sanctions against Plaintiff's counsel for the inappropriate reference in his Motion and supporting Memorandum to certain privileged documents inadvertently produced

¹ The original Motion was filed November 7, 2007 and an Amended Motion was subsequently filed four years later on November 21, 2011. The amended motion contained a request for \$500,000.00 in damages and sanctions.

² In his filings, Plaintiff references conduct occurring during the appeal of this Court's order granting summary judgment to the South Carolina Court of Appeals and conduct relating to a bankruptcy filing on behalf of Mr. Megna's client, Ms. Gina Lee. This Court does not have jurisdiction to impose sanctions for conduct during an appeal. *Bowen & Smoot v. Plumlee*, 308 S.C. 325, 417 S.E.2d 855 (1992). Moreover, this Court lacks authority to sanction an attorney for conduct occurring in federal bankruptcy court. *See, e.g., Gonzales v. Parks* 830 F.2d 1033 (9th Cir. 1987); *Mason v. Smith*, 140 N.H. 696, 672 A.2d 705 (1996).

SCANNED

by Defendant's counsel in violation of Rule 26(b)(5)(B), S.C. Rules Civ. P. Having considered all of the evidence, written submissions, and oral arguments of the Parties, and for reasons further explained herein, the Court finds and orders that Plaintiff's Motion for Sanctions is denied. In addition, the Court denies Defendant's request for sanctions against Plaintiff's counsel for noncompliance with Rule 26(b)(5)(B).

OPINION

Plaintiff's request for sanctions is denied. A party seeking sanctions under Rule 11 must prove an attorney knowingly signed a pleading or motion "to cause delay or when no good grounds exist to support the filing." *Ex parte Bon Secours-St. Francis Xavier Hosp., Inc.*, 713 S.E.2d 624, 628 (S.C. 2011). Plaintiff contends that the defenses asserted by Mr. Megna that related to his client's legal interest in certain property were frivolous and warrant sanctions because at the time they were asserted Mr. Megna knew them to be false and was using them to leverage his client's position in related litigation. However, Plaintiff has not cited to, nor has the Court found, controlling case law addressing the asserted defenses in the unique factual context of this case. Moreover, the Court finds the Plaintiff has not demonstrated proof of the mental state required for sanctions under Rule 11, and therefore, Plaintiff's Motion is denied. *See* Rule 11, S.C.R.Civ.P. ("The written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; *that to the best of his knowledge, information and belief* there is good ground to support it; and that it is not interposed for delay.") (emphasis added).

Similarly, Defendant's request for sanctions is also denied. It is within the Court's discretion to award sanctions under Rule 11. Defendant requests the Court award sanctions against Plaintiff's counsel because, despite being put on notice by Mr. Megna that certain

privileged information had been inadvertently disclosed, Plaintiff's counsel referenced the same in his public filings with this Court prior to seeking a determination from the Court regarding Defendant's claim of privilege. While the Court finds Mr. Truslow did not follow the established procedure set forth in Rule 26(b)(5)(B), the Court does not find that his conduct rises to the level of being sanctionable. Accordingly, Defendant's request for sanctions is denied.

CONCLUSION

Based on the foregoing, the Court denies Plaintiff's Motion for Sanctions and denies Defendant's request for sanctions against Plaintiff.

IT IS SO ORDERED.



Robert E. Hood
Circuit Court Judge

Columbia, S.C.

August 24, 2015