

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) CASE NO: 2017-CP-07-1519
COUNTY OF BEAUFORT)

Shemuel Nahum Ben Yisrael, Plantation)
Yisrael,)

Plaintiff,)

vs.)

**ORDER GRANTING DEFENDANTS'
MOTION FOR SANCTIONS**

Roy Hughes Sr., Margaret Hughes,)
Hughes General Merchandise; Town of)
Yemassee; Yemassee Police Department;)
Gregorie Alexander, Police Chief; Law)
Office of Darrell Thomas Johnson, Jr.,)
LLC; Mills Lane Morrison, Jr., Attorney;)
Fulcher Hagler, LLP; Elizabeth McLeod,)
Attorney; Peters Murdaugh, Parker,)
Eltzroth & Detrick; Randolph Murdaugh,)
III, Attorney; Duffy Stone Law Firm,)
LLC; Roberts Vaux; Republic Services;)
F & ME consultants; CSX)
Transportation, Inc.; David Poston, Road)
Master; Kirby Peeples; Ross Gregorie)
Estate; Joseph L. Goodwin, Former)
Mayor; Beaufort County 911 Emergency)
Dispatch; Hampton County 911)
Emergency Dispatch; Jerry's Auto Parts;)
Jerry Cook; Colin Moore; Jackie Moore;)
and Jerry Thompson)

Defendants.)

This matter comes before the Court on a Motion for Sanctions filed on behalf of Defendants CSX Transportation, Inc.; David Poston, Roadmaster; Fulcher Hagler LLP (incorrectly identified in the Complaint as "Fulcher Hagler, LLP"); and Elizabeth McLeod, Attorney (collectively "Defendants"). To deter Plaintiffs' filing of any frivolous actions against them in the future, Defendants request entry of an order requiring Shemuel Nahum Ben Yisrael and/or Plantation Yisrael to post a \$50,000.00 bond or letter of credit simultaneously with their

filing of any complaints or amended complaints naming as defendants CSX Transportation, Inc. or its employees, David Poston, Elizabeth McLeod, or Fulcher Hagler LLP or its attorneys.

Subject to the conditions and terms set forth below, the Court **GRANTS** Defendants' motion.

I. Background

Plaintiffs are no strangers to the litigation process; they are frequent filers of complaints in this Court. As Defendants' motion and accompanying documents substantiate, Plaintiffs have sued CSXT and/or its Roadmaster David Poston in at least four prior actions, not including the instant case. Those claims generally allege a malicious civil and criminal conspiracy among defendants to unlawfully trespass upon Plaintiffs' lands, to unlawfully imprison and arrest Plaintiffs, and to steal Plaintiffs' personal property. See generally Defs.' Mot, Ex. 1 (composite exhibits containing several previously filed Complaints). In fact, Plaintiffs' claims in the instant case are the same allegations Mr. Yisrael previously asserted on behalf of himself and Plantation Yisrael in prior cases—and which previously were dismissed with prejudice. Of note in this regard, the record confirms that in *Yisrael et al. v. Hughes et al.*, Case No. 2016-CP-07-02588, Plaintiffs Shemuel Ben Yisrael and Plantation Yisrael alleged that twelve defendants—including CSX Transportation, Inc. and David Poston, Roadmaster—"entered into a malicious civil and criminal conspiracy to unlawfully trespass upon Plaintiff's lands, and unlawfully imprison and unlawfully arrest, and steal Plaintiff's personal property." (Complaint at 1, *Yisrael et al. v. Hughes et al.*, Case No. 2016-CP-07-02588, Court of Common Pleas, County of Beaufort, State of South Carolina.)¹ Those two Defendants, represented by Elizabeth McLeod, Esq. and the law firm Fulcher Hagler LLP, obtained a dismissal with prejudice of Plaintiffs' claims and a default judgment on their counterclaim against the Plaintiffs for attorney's fees and costs in the amount

¹ "A court can take of judicial notice of its own records, files[,] and proceedings for all proper purposes including facts established in its records." *Wise v. Wise*, 394 S.C. 591, 601 (Ct. App. 2011) (alteration in original) (quoting *Freeman v. McBee*, 280 S.C. 490 (Ct. App. 1984)). A copy of the subject complaint is attached to composite Ex. 1 to Defendants' motion for sanctions.

of \$6,138.00 incurred in the defense of Plaintiffs' claims. That judgement has not been set aside and remains binding on the parties to that proceeding. Plaintiffs have not satisfied the judgment entered against them for the attorney's fees and costs defendants CSXT and Poston incurred in their defense of that litigation.

Subsequent to the entry of that judgment in favor of CSXT and David Poston, Plaintiffs Shemuel Nahum Ben Yisrael and Plantation Yisrael filed another action—against thirty defendants, including CSXT, David Poston, and their attorney, Elizabeth McLeod, and Ms. McLeod's law firm, Fulcher Hagler LLP—alleging the Defendants entered “into a malicious civil and criminal conspiracy to unlawfully trespass upon Plaintiff's lands, and unlawfully imprison and unlawfully arrest, and steal Plaintiff's personal property.” (Compl. at 4.) Plaintiffs sought \$1,000,000.00 from each Defendant. On November 2, 2017, Judge Buckner entered an order dismissing with prejudice Defendants CSXT, David Poston, Elizabeth McLeod, and Fulcher Hagler LLP. On November 6, 2017, these Defendants filed their instant motion for sanctions. Defendants' motion is based on S.C. Code Ann. § 15-36-10 and the Supreme Court's recent interpretation of that statutory provision in *Holmes v. East Cooper Comm. Hosp., Inc.*, 408 S.C. 138 (2014).

II. Analysis

Under S.C. Code Ann. § 15-36-10, an attorney or pro se party can be sanctioned for seeking to advance a frivolous position, or for taking a position which “a reasonable attorney presented with the same circumstances would believe . . . was intended merely to harass or injure the other party[.]” *Id.*, § 15-36-10(A)(4)(a)(iii). The relief which the Court may award in such circumstance is broad—and includes, but is not limited to, reasonable attorney's fees and costs, as well as injunctive relief designed to deter the filing of future frivolous or bad faith actions.

Id., § 15-36-10(G). As noted, the statute applies to pro se litigants. *Id.*, § 15-36-10(A)(4) (listing conduct for which “[a]n attorney or pro se litigant . . . may be sanctioned”).

Upon consideration, the Court finds that Defendants’ motion for sanctions raises precisely the sort of concerns that § 56-36-10 was designed to address. Plaintiff was on notice that his civil and conspiracy claims against CSXT and David Poston were meritless and had been adjudicated in favor of those defendants. Notwithstanding that knowledge, Plaintiffs nonetheless filed a subsequent action against CSXT, David Poston, and others, including the attorney (Ms. McLeod) and law firm (Fulcher Hagler LLP) who represented CSXT and Mr. Poston in connection with those now-dismissed claims—raising precisely the same claims as those previously dismissed. Plaintiffs’ claims against these Defendants meet any conceivable definition of frivolous, and Plaintiffs have not advanced a good-faith basis for their claims against these Defendants.

Accordingly, the Court **GRANTS** Defendants’ motion for sanctions. To protect against further abuse of the litigation process, Plaintiffs Shemuel Nahum Ben Yisrael and Plantation Yisrael are each enjoined from filing future complaints (or amended complaints) naming as defendants CSX Transportation, Inc. or its employees; David Poston; Elizabeth McLeod; or the law firm Fulcher Hagler LLP or its attorneys, absent either: (1) the posting of a \$50,000.00 bond or letter of credit with the Clerk of Court contemporaneously with the filing of any such pleadings, *see Holmes v. East Cooper Comm. Hosp., Inc.*, 408 S.C. 138 (2014), or (2) the filing of any such pleading signed by an attorney licensed to practice law by (and in good standing with) the South Carolina Bar, which complies with the requirements of Rule 11, SCRPC. Further, in any action in which either Plaintiff brings claims against CSX Transportation, Inc. or its employees; David Poston; Elizabeth McLeod; or the law firm Fulcher Hagler LLP or its attorneys; and fails to comply with the terms and conditions of this Order, the Clerk of any trial

court in this State in which said action is pending shall summarily **DISMISS** that action upon the presentation to such Clerk of a copy of this Order.

IT IS SO ORDERED, this _____ day of _____, 2017.

Hon. Marvin H. Dukes, III

CERTIFICATE OF SERVICE

I hereby certify that on this date, December ____, 2017 a true copy of the forgoing was served by U.S. Mail, postage prepaid, upon the following:

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Michael N. Loebi



Beaufort Common Pleas

Case Caption: Shēmuel Nahum Ben Yisrael , plaintiff, et al VS Roy Hughes Sr ,
defendant, et al
Case Number: 2017CP0701519
Type: Order/Sanctions

So Ordered:

s/Marvin H. Dukes III #3069

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