

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Richard Dearing, William Evans, and)
 One 11 Advisory, LLC,)
)
 Plaintiffs,)
)
 vs.)
)
 Andrew Jaeger, Brittany Kaliher,)
 William Patterson, SLP Financial, LLC)
 and Jaeger Capital Management LLC)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS
 Case No. 19-CP-40-04352

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 SC Court of Appeals

ORDER DENYING DEFENDANT JAEGER'S MOTION FOR RECONSIDERATION OF THE COURT'S MARCH 2, 2020 ORDER FOR SANCTIONS

Before the Court is the motion of Defendant Andrew Jaeger for Reconsideration of the Court's March 2, 2020 Order granting Sanctions against Defendants in the above matter. For the reasons set forth herein, the Court hereby denies Defendant's Motion and affirms its original Order.

BACKGROUND

As set forth in the operative Complaint, this case arises out of a purchase and sale agreement ("the Agreement") entered into on October 22, 2018 between Plaintiffs Richard Z. Dearing and William Evans ("Plaintiffs"), and Defendant Andrew Jaeger ("Defendant Jaeger"). Under the terms of the Agreement, Defendant Jaeger sold to Plaintiffs the exclusive rights to provide financial services to a book of business he and Plaintiffs previously shared. (See Verified Complaint, C/A No, 2019-CP-40-04352, ¶¶ 16-50). Defendant Jaeger further agreed not to compete for, solicit, or otherwise frustrate that book of business for three (3) years after execution

of the agreement. (*Id.*) Plaintiffs instituted this action on August 5, 2019 following Defendants' alleged violations of the October 22, 2018 agreement, among other actionable conduct.¹

In a text message sent upon receipt of the filed Verified Summons and Complaint, Defendant Jaeger stated:

I suggest you do differently regarding your legal action because clients are chomping at the bit to file complaints and I have counter claims due to [Plaintiff Dearing's] negligence. Your [sic] not prepared for this. You have one hour or the sky will fall. Believe me.

Following an initial hearing on Plaintiff's Motion for Temporary Restraining Order, the parties entered into a consent decree, where Defendant Jaeger agreed not to engage in further solicitation of Plaintiffs' account-holders. (*See* Consent Order Granting Preliminary Injunctive Relief, C/A No. 2019-CP-40-04352, filed Sept. 18, 2019). Thereafter, Defendant Jaeger filed his Answer to Plaintiffs' Complaint. (*See* Filed Answer of the Jaeger Defendants, C/A No. 2019-CP-40-04352, filed Oct. 14, 2019). In the Answer, Defendant Jaeger asserted no counterclaims.

Plaintiffs filed a Motion for Sanctions and/or Constructive Trust against Defendant Jaeger on December 6, 2019 and supplemented the motion on two (2) occasions with additional supporting documents. (*See* Plaintiffs' Motion for Constructive Trust and Supplemental Information, C/A. No. 2019-CP-40-04352). To the extent Plaintiffs' exhibits contained sensitive or personal information, the documents were submitted under seal for *in camera* review.

¹ As set forth in Plaintiffs' Verified Complaint:

This action seeks equitable relief and relief at law against Defendants' Andrew Jaeger ("Defendant Jaeger"), Jaeger Capital Management, LLC ("Defendant JCM"), Silverleaf Financial Partners, LLC ("Defendant SLP"), and individual Defendants Brittany Kaliher and William Patterson, all of whom may hereafter be referred to as the Jaeger Defendants, arising out of Defendant Jaeger's breach of an Agreement to sell a book of business, and the various efforts of the Defendants individually and collectively to facilitate that breach, and continued violations of the agreement all of which have results [sic] in harm to Plaintiffs.

In their Motion, Plaintiffs sought relief against the multiple and duplicative FINRA Arbitrations initiated by Defendant Jaeger as a direct response to Plaintiffs' lawsuit. For example, the December 20, 2019 FINRA Arbitration filed by Defendant Jaeger, which names Defendants Jaeger, Kaliher, and Patterson as the Claimants, ("the Jaeger Arbitration"), provides the Arbitration was filed "as a direct response to Respondent's Emergency Motion filing for 'Constructive Trust.'" (See, "The Jaeger Arbitration," attached as Exhibit E to Plaintiffs' Supplemental Filing in Support of the Motion for Sanction, submitted under seal and *in camera*); (see also Order Granting Motion for Sanctions, C/A No. 2019-CP-40-04352, entered Mar. 2, 2020).

As set forth in this Court's March 2, 2020 Order, "Defendants, through Jaeger, initiated a parallel proceeding in FINRA, including the same parties to this litigation and submitted 'as a direct response' to Plaintiffs' Motion, over which this Court has exclusive jurisdiction." (*Id.*, at p. 2) At the time of the initial hearing, the Court continued Plaintiffs' Motion, and advised the parties to refrain from taking any additional action until such time as the Motion was reconvened. (*Id.* at Exh. A, Transcript of Hearing, Jan. 8, 2020). Roughly 2 ½ weeks later, this Court was notified of an additional FINRA filing against Plaintiff Dearingier made by an account-holder of Defendant Jaeger. As set forth in this Court's Order, the new FINRA Arbitration references the case pending before this Court and is stylistically similar to the Jaeger Arbitration.² (See Order, at p. 5).

Defendant Jaeger filed his opposition to Plaintiffs' Motion for Sanctions on February 21, 2020 essentially arguing that this Court lacked jurisdiction to prohibit successive and duplicative filings over claims arising originally in this Court, and that Plaintiffs were attempting to use the Motion to relitigate the Consent Decree prohibiting Defendant Jaeger from soliciting additional

² A review of the meta-data of the filing that initiated the Lamon FINRA Arbitration reveals that Defendant Jaeger was extensively involved in its creation despite representations by Defendant Jaeger's counsel to the contrary.

clients. Nowhere in the four-corners of Defendant Jaeger's memorandum does it address the unauthorized practice of law. (*See* Defendant Jaeger's Memorandum in Opposition to Plaintiffs' Motion for Sanctions, 2019-CP-40-04352, filed Feb. 21, 2020).

Based upon the information and record available to the Court, on March 2, 2020, this Court entered an Order granting Plaintiffs' Motion for Sanctions pursuant to S.C. Code Ann. § 15-36-10, *et seq.* The Order made the following determinations:

1. The allegations of the Jaeger Arbitration involved the same parties and subject matter as the lawsuit pending before the Court;
2. The Court had exclusive jurisdiction over the subject matter pending before it;
3. Given the full context and record of the case, allowing the Jaeger Arbitration to proceed while this Court has jurisdiction over the same parties and controversy does not serve the ends of judicial economy, may result in inconsistent determinations, and undermines the purpose of securing a just, speedy, and inexpensive adjudication;
4. The allegations of FINRA Arbitrations filed by Defendant Jaeger on behalf of others ("the Customer Arbitrations") contained legal causes of action, and preparation of these Arbitrations constituted the practice of law in South Carolina by Defendant Jaeger;
- 5.
6. Interim relief was necessary and appropriate under S.C. Code Ann. § 15-36-10, *et seq.*, as Defendant Jaeger's multiple, cumulative, and duplicative filings threatened to undermine the legal system, and resulted in an abuse of the legal process; and
7. The Lamon Arbitration, filed with Mr. Jaeger's extensive involvement after the original hearing date on Plaintiffs' Motion for Sanctions, directly contravened the Court's Order from the bench on January 8, 2020.

Accordingly, the Court granted Plaintiffs' Motion for Sanctions and Ordered relief as follows:

1. Defendants must immediately dismiss the Jaeger Arbitration before FINRA styled as a response to the Plaintiffs' Motion for Sanctions and/or Constructive Trust;
2. Defendants are enjoined from filing or causing to be filed any additional complaints or arbitrations related to this matter or which may have been asserted as a counterclaim, cross-claim, or third-party claim in this matter;
3. Defendants are enjoined from soliciting the Plaintiffs' former and current customers to file complaints or arbitration claims;
4. Defendant Jaeger is enjoined from representing individuals other than himself in any proceeding, including but not limited to FINRA arbitration proceedings, without a valid law license;
5. As it relates to the substance of this Complaint, Counsel for Defendant Jaeger will be required to make all filings on Defendant Jaeger's behalf;
6. Defendant Jaeger shall remit payment to Plaintiffs for costs and reasonable attorneys' fees associated with the filing of this motion.

(See Order Granting Motion for Sanction, p. 6, Mar. 2, 2020).

On March 12, 2020, Defendant Jaeger filed a Motion for Reconsideration of the Court's March 20, 2020 Order, based upon 3 grounds: (1) that Defendant Jaeger's conduct representing his co-defendants, and account-holders in FINRA Arbitrations does not constitute the unauthorized practice of law; (2) that prohibiting Defendant Jaeger from filing complaints in other forums that could properly have been asserted as counterclaims, cross-claims, or third party claims is overly broad; and (3) that the court lacks jurisdiction to prohibit Defendant Jaeger from filing or soliciting third-party complaints related to the subject matter of Plaintiffs' case.

For the reasons that follow, Defendants' Motion is hereby denied.

STANDARD

Rule 59(e) of the South Carolina Rules of Civil Procedure, (SCRCP), provides that “[a] motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the Order.” Rule 59(e), SCRCP. A motion for reconsideration is properly styled as a motion to alter or amend. *Smith v. Fedor*, 422 S.C. 118, 809 S.E.2d 612 (Ct.App. 2017) (denying a motion to reconsider brought pursuant to Rule 59(e) where a party failed to properly serve the motion upon the Court within the proscribed 10 days). A party is not permitted to use Rule 59(e) “to present to the Court an issue the party could have raised prior to judgment but did not.” *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (Ct.App. 1990), citing favorably *Smith v. Stoner*, 594 F.Supp. 1091, 1118 (N.D.Ind. 1984) (“issues which could have been presented to the court for consideration previously, but which were not are not the proper subject of Rule 59(e) relief; the issues are waived.”) *See also Mailsources, LLC v. M.A. Bailey & Assoc., Inc.*, 356 S.C. 370, 508 S.E.2d 639 (Ct.App. 2003).

ANALYSIS

I. DEFENDANT IS PRECLUDED FROM ARGUING FOR THE FIRST TIME ON A MOTION FOR RECONSIDERATION THAT DEFENDANT JAEGER'S CONDUCT IN REPRESENTING ACCOUNT-HOLDERS BEFORE FINRA DID NOT CONSTITUTE THE UNAUTHORIZED PRACTICE OF LAW IN SOUTH CAROLINA

Plaintiffs' Motion for Sanctions and supporting materials argue that Defendant Jaeger engaged in the unauthorized practice of law by filing FINRA Arbitrations in a representative capacity. (*See* Plaintiffs' Motion for Sanctions, at ¶ 10). However, nowhere in Defendant Jaegers' Memorandum in Opposition to Plaintiffs' Motion does Defendant argue against Plaintiffs'

allegation. Accordingly, Defendant waived his argument on this issue, and is precluded from raising this issue for the first time on reconsideration.

II. EVEN IF DEFENDANT JAEGER HAD NOT WAIVED HIS ARGUMENTS, THE FACTS AND CIRCUMSTANCES OF THIS CASE SUPPORT THE CONCLUSION THAT DEFENDANT JAEGER ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW

With respect to the Customer Arbitrations, and the Jaeger Arbitration (to the extent Defendant Jaeger purports to represent his co-defendants), this Court found in its Order that Defendant Jaeger's conduct constituted the unauthorized practice of law. As noted in the Court's Order, a review of these Arbitrations, submitted *in camera*, reveals that the filings set forth legal causes of action, make significant demands for relief, reference the matter pending before this Court, and were, in fact, prepared by Defendant Jaeger and intended to be presented before the arbitration tribunal.

"The generally understood definition of the practice of law 'embraces the preparation of pleadings, and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts.'" *State v. Despain*, 319 S.C. 317, 319, 460 S.E.2d 576, 577 (1995) (internal citations omitted); *see also Doe v. McMaster*, 355 S.C. 306, 585 S.E.2d 775 (2003) (the practice of law turns on the specific facts and circumstances of each case). The practice of law is not restricted to litigation. *McMaster*, 355 S.C. at 311-12, 585 S.E.2d at 776. Rather, the practice of law may extend to other activities in other fields which entail specialized legal knowledge and ability. *Id.*; *see State v. Buyers Service Co., Inc.*, 292 S.C. 426, 430, 357 S.E.2d 15, 17 (1987). The law in South Carolina prohibits a non-lawyer from engaging in the practice of law. S.C. Code Ann. § 40-5-310.

In concluding Defendant Jaeger's conduct constituted the unauthorized practice of law, this Court analyzed the specific facts and circumstances before it. These circumstances included

statements made by Defendant Jaeger to account-holders seeking to prepare complaints on their behalf. (See 2nd Supplemental **Exhibit B**, to Plaintiffs' Motion for Sanction, Lamon_000197). Though in his request to Ms. Lamon, Defendant Jaeger references that "the lawyers" will help prepare the complaints for account-holders, it is undisputed that Defendant Jaeger is the representative of record for a number of individuals in FINRA proceedings. Moreover, even to the extent he is not expressly listed as the representative, he helped to prepare the FINRA filings, which allege legal causes of action. (See FN 2, *supra*).

As previously noted, the Customer Arbitrations contain numerous legal causes of action. These arbitrations are pleadings, which Defendant Jaeger filed in a representative capacity. Had he continued to serve in that capacity, Defendant Jaeger's representation would have involved giving advice to customers about the relevant laws under which their claims were brought, as well settlement considerations, which usually involve negotiations about such legal concepts as waivers, mutual releases and indemnification provisions. Accordingly, this Court's finding that Defendant Jaeger engaged in the unauthorized practice of law is supported by the record, submissions, and specific facts and circumstances of this case.

III. THIS COURT HAS JURISDICTION TO REQUIRE DISMISSAL OF THE JAEGER ARBITRATION AND TO ENJOIN ADDITIONAL COMPLAINTS RELATED TO THE SUBJECT MATTER OF PLAINTIFF'S CASE

This Court concluded in its Order that the Jaeger Arbitration arose out of and was connected to the claims and defenses pending in Plaintiffs' Operative Complaint. The Court found:

Allowing the Jaeger Arbitration to proceed where this Court has jurisdiction over the same parties and controversy does not serve the ends of judicial economy, may result in inconsistent determinations, and undermines the purpose of securing a just, speedy, and inexpensive adjudication. Without interim relief from this Court, the Jaeger Arbitration would allow Defendant Jaeger to continue litigating and re-litigating these same claims across multiple forums, and will require Plaintiffs to incur additional legal expenses[.]

See Order Granting Plaintiffs' Motion for Sanction, p. 5.

The Jaeger Arbitration violates the rule against claim-splitting which is well recognized in every Court in the United States. *See Grubb v. Public Utilities Commission of Ohio*, 281 U.S. 470, 50 S.Ct. 374 (1930) (ruling that a respondent must present every available ground of which he had knowledge and “was not at liberty to prosecute that right by piecemeal, as by presenting a party only of the available grounds and reserving others for another suit, if failing that); *see also Werlein v. New Orleans*, 177 U.S. 390, 398, *et seq.*, 20 S.Ct. 622.

With respect to claim-splitting, the rule generally provides that:

a single cause of action, claim or demand cannot be split up or divided so as to be made the subject of different actions... The object of the rule is to prevent repeated litigation between the same parties in regard to the same subject of controversy...it is a matter of public policy to prevent the hardship of unnecessary litigation.

Pacific Mut. Life Ins. Co of California v. Rhame, 32 F.Supp. 59 (D.S.C. Mar. 16, 1940). *See Corpus Juris*, 1106, 1107 Sec. 276. *See also Barfield v. Barnes*, 108 S.C. 1, 11, 93 S.E. 425 (1917) (a former adjudication is conclusive not only of the precise issues raised and determined, but of such questions as could and should have been made).

Defendant argues that the portion of the Court’s Order directing Jaeger to dismiss the Jaeger Arbitration was in error, arguing that the arbitration is somehow disconnected from the subject matter of Plaintiffs’ Complaint, and therefore the Court is without jurisdiction over this claim. However, the plain language of the Statement of Claim that Defendant filed in the Jaeger Arbitration establishes that, far from disconnected, the Jaeger Arbitration is a counterclaim, cross-claim, and third party claim, as Defendant Jaeger threatened at the outset of Plaintiffs’ suit. The Jaeger Arbitration patently states that the filing was in response to the Plaintiff’s Motion for Sanctions filed in the South Carolina circuit court. Defendant’s suggestion that the forums are disconnected is disingenuous. This Court has the inherent authority to control its docket and the

parties before it, and to determine when a filing has been made not for legitimate purposes, but instead, for purposes of harassment, or delay. S.C. Code Ann. § 15-36-10, *et seq.*

The Order of this Court was carefully crafted to prevent multiple, duplicative, and cumulative filings in parallel forums, and to prohibit Defendant from piecemeal litigation that undermines the judicial process. This is squarely within the Court's authority. *See* Rule 1, SCRCPP (the rules governing procedures in South Carolina shall be construed to secure the just, speedy, and inexpensive determination of every action). As a result, the Order prohibiting Defendants from filing or causing to be filed additional complaints or arbitrations related to this matter or which may have been asserted as a counterclaim, cross-claim or third party claim is within the sound discretion of this Court, and Defendant's Motion for Reconsideration as to these grounds is denied.

IV. THE COURT'S ORDER GRANTING SANCTIONS IS APPROPRAITE UNDER S.C. CODE ANN. § 15-36-10, *et seq.*, AS WELL AS PURSUANT TO DEFENDANT JAEGER'S VIOLATION OF THIS COURT'S BENCH ORDER

Where a party is represented by an attorney, S.C. Code Ann. § 15-36-10(A) provides that a document "on behalf of a party represented by an attorney must be signed by an attorney of record who is an active member of the South Carolina Bar or who is admitted to practice in the courts of this State[.]" *Id.* (A)(1). Even where a party is pro se, the litigant's signature on a document nevertheless certifies that:

[A] reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of a civil cause is not intended merely to harass or injure the other party; and...a reasonable attorney in the same circumstances would believe his claim or defense is not frivolous, interposed for delay, or brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based.

S.C. Code Ann. § 15-36-10(A)(1)(d).

If the Court determines that a party has violated the provisions of this section, it may, upon motion, or *sua sponte*, impose any sanction deemed just, equitable, and proper under the

circumstances. S.C. Code Ann. § 15-36-10(B)(2). Thus, where the requisite finding exists, the Court has broad discretion to impose an appropriate sanction.

Moreover, South Carolina Courts have recognized that the criteria for sanctions under S.C. Code Ann. § 15-36-10, *et seq.* is the same as for sanctions under Rule 11, SCRCP. *In re Beard*, 359 S.C. 351, 597 S.E.2d 835 (2004); see *The Father v. South Carolina Dept. of Soc. Servs.*, 345 S.C. 57, 72, 545 S.E.2d 523, 531 (Ct.App. 2001) (finding the South Carolina Family Court had authority to issue sanctions under the South Carolina Civil Frivolous Civil Proceedings Acts). Generally, whether to impose sanctions for violation of an order is within the sound discretion of the trial court. *Burns v. Universal Health Services, Inc.*, 340 S.C. 509, 532 S.E.2d 6 (Ct.App. 2000); see also *Downey v. Dixon*, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct.App. 1987).

Here, the Court determined that sufficient information existed to establish that Defendant Jaeger's duplicative, cumulative filings in FINRA violated S.C. Code Ann. § 15-26-10(A)(1). In addition, this Court entered an Order from the Bench on January 8, 2020 prohibiting all parties from taking any further action in the case until the Court reconvened. This Order was equally applicable to both sides. However, it was Defendant Jaeger who caused an additional FINRA Arbitration to be filed in the interim, in contravention of the Court's Order. As such, it is within the Court's discretion to impose appropriate sanctions. The sanctions imposed by the Court were appropriate in light of Defendant Jaeger's blatant disregard of the Court's Order.

CONCLUSION

As provided herein, the Court's Order granting Plaintiffs' Motion for Sanction is supported by the record of this case and is consistent with this Court's authority. The Court therefore denies Defendant's Motion for Reconsideration, and Affirms its Order, dated March 2, 2020.



Richland Common Pleas

Case Caption: Richard Dearing , plaintiff, et al vs Andrew Jaeger , defendant, et al
Case Number: 2019CP4004352
Type: Order/Other

So Ordered

s/L. Casey Manning, 2061