

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

ORDER GRANTING
PLAINTIFFS' MOTION FOR
SANCTIONS PURSUANT TO
S.C. CODE ANN. § 15-36-10, *et seq.*

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SC Court of Appeals

This matter comes before the Court on Plaintiffs' Motion for Sanctions and Unconscionable Trust filed on December 6, 2019, and supplemented on January 7, 2020 ("Plaintiff's Motion"). Plaintiffs seek relief under the South Carolina Civil Frivolous Proceedings Act, S.C. Code Ann. § 15-36-10, *et seq.* For the reasons set forth below, this Court hereby grants Plaintiffs' Motion and provides the following relief.

BACKGROUND

This action arises out of a contract for the purchase of a book of business. In October 2018, Defendant Jaeger sold the exclusive rights to provide financial services to his clients to Plaintiffs Dearing and Evans, former employees of Defendant Jaeger. In exchange for the rights to the book of business, Plaintiffs paid Defendant Jaeger \$900,000. The events since execution of the contract, and specifically Defendant Jaeger's conduct, are highly contested and are the subject of the action currently pending before this Court.

According to Plaintiffs' Motion and supporting documentation, on the day Defendant Jaeger received notice of this suit, he communicated to Plaintiffs that if they did not withdraw their

Complaint, Defendant would cause professional complaints to be filed against Plaintiffs.

(Plaintiff's Motion for Sanctions, **Exhibit B.**) Specifically, Defendant Jaeger texted:

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's] negligence. Your [sic] not prepared for this[.] You have one hour or the sky will fall. Believe me.

On December 20, 2019, rather than file his counterclaims in this proceeding, Defendant Jaeger, on his own behalf, and as the representative of Defendants Brittany Kaliher and Wil Patterson, filed a FINRA arbitration naming Plaintiffs in this case as the Respondents (the "Jaeger Arbitration", a copy of which was filed under seal as Exhibit E to Plaintiffs' 2nd Supplemental Filing). Defendants' filing in the Jaeger Arbitration directly relates to the issues before this Court, stating in the initial paragraph:

[t]he Claimants [Jaeger, Kaliher, and Patterson] who have been damages [sic] via retaliation by the Respondents, as well as their abuse of the local South Carolina court system, prepared this arbitration filing as a **direct response to Respondents Emergency Motion filing for "Constructive Trust."**

Emphasis added.

Thus, 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. The Court notes that prior to the initial hearing date, counsel for the Defendants filed no response to Plaintiffs' Motion in this proceeding. The Court further notes that while Defendants are represented by competent counsel in this matter, in the Jaeger Arbitration, Defendant Jaeger purports to represent himself and his co-defendants.

In addition to the Jaeger Arbitration, since Plaintiffs' initiated this litigation, Defendant Jaeger, acting in a "representative" capacity, has filed or caused to be filed a number of FINRA arbitration proceedings for former customers of Plaintiffs Dearing and Evans (the "Customer Arbitrations"). Defendant Jaeger is not a licensed attorney. However, the allegations contained in

the FINRA filings include legal causes of action such as negligence, breach of fiduciary duty, and fraud – serious allegations with significant ramifications. These filings have been submitted under seal for the Court’s review. This Court finds that some of the allegations contained in these filings involve the subject matter of the pending litigation. With respect to these Arbitrations, to the extent Mr. Jaeger holds himself out in a representative capacity, he has engaged in the unauthorized practice of law in South Carolina.

Plaintiffs’ Motion first came before this Court on January 8, 2020, at which time the Court encouraged the parties to reach a mutual resolution to the Motion. After extensive discussion however, the parties were unable to agree. The Court ordered the hearing to be rescheduled, and further admonished the parties that no additional action should be taken in the interim.

I want everybody to have an opportunity to sort of maintain the status quo. Don’t do anything else that this lawsuit is about, and I will take that into account. If something happens between now and the next hearing that either side can report to me that I find objectionable by the spirit of the effort to try to resolve this matter I’ll take that into account and issue a decision since this is – *sua sponte* on my own[.]

(See Exhibit A, Transcript Hearing, January 8, 2020, p. 3 lines 14-20). The hearing was rescheduled for February 11, 2020.

On January 26, 2020, 2 ½ weeks after the Court urged the parties to maintain the status quo, another customer arbitration claim was filed. While Defendant Jaeger’s name does not appear on the face of the statement of claim, the Complaint involved an account holder Defendant Jaeger had communicated with, and from whom Defendant Jaeger had previously requested permission to draft a Complaint. (See 2nd Supplemental Exhibit B, Lamon_000197: “They provided me [Defendant Jaeger] with additional time and we are getting affidavits drawn up and complaints filed with the regulators. Can the lawyers and I help prepare that for you?”) To this Court’s

knowledge, no lawyer has ever helped Defendant Jaeger in preparing his submissions to FINRA involving the subject matter of this case.

STANDARD

Rule 1, SCRCP provides that the rules governing procedures in South Carolina courts shall be construed to secure the just, speedy, and inexpensive determination of every action. S.C. Code Ann. § 15-36-10(B)(2) allows a court by its own motion or upon motion of a party to impose equitable remedies against a person who has filed a civil or administrative matter for the purposes of harassment, injury or for any purpose beyond securing proper discovery and a just adjudication of a claim or defense. A court's decision to impose sanctions or remedies under S.C. Code Ann. § 15-36-10 is reviewed for abuse of discretion. *Holmes v. East Cooper Community Hospital, Inc.*, 408 S.C. 138, 758 S.E.2d 483 (2014).

ANALYSIS

Under S.C. Code Ann. § 15-36-10(A), the signature on a document filed in either a civil or administrative action "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). In this case, Defendant Jaeger initiated a number of arbitrations in FINRA that referenced or exclusively encompassed the subject matter of this case all while represented by counsel. Counsel of record never appeared on any of these FINRA filings. Even where a pro se party files a civil or administrative matter however, the signature of a pro se litigant 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.

(Emphasis added). If a document is signed in violation of this section, the court may, upon its own motion, impose any sanction which the Court deems just, equitable and proper under the circumstances. S.C. Code Ann. § 15-36-10(B)(2).

From this Court's review, the claims in the Jaeger Arbitration arise out of and are connected to the claims and defenses pending before this Court. The Jaeger Arbitration was not signed by an attorney of record, despite the fact that Defendant Jaeger had counsel at all relevant times. 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. 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, not to mention the time associated with defending each of these "new claims."

With respect to both the Jaeger Arbitration and Customer Arbitrations, it appears to the Court that in varying degrees Mr. Jaeger has engaged in the unauthorized practice of law in South Carolina by initiating arbitrations encompassing legal causes of action, preparing documents for submission in those arbitration proceedings and appearing in those proceedings as the representative for various parties.

The addition of another filing since the parties were last before this Court also directly contravenes the Court's Order from the bench. Though Defendant has stated he is not responsible for this filing, the claimant is the same claimant for whom Defendant drafted a prior claim, and the claim itself references the lawsuit before this Court, and is stylistically consistent with the other filings initiated by Defendant Jaeger.

Accordingly, this Court finds that the Defendant has violated S.C. Code Ann. § 15-36-10, *et seq.*, by filing the Customer Arbitrations, and the Jaeger Arbitration in direct response to Plaintiffs' Complaint and this Motion for Sanctions, all while represented by counsel. The Court further finds Defendant has violated the Court's Order to maintain the status quo. The Court finds that Defendant's filing of multiple duplicative, cumulative proceedings in parallel forums, which necessitate significant time, effort, and expense, and which could lead to inconsistent adjudications, amounts to the unauthorized practice of law, and an abuse of the legal process.

Based upon the findings set forth herein, this Court hereby Orders as follows:

1. Defendants must immediately dismiss the Jaeger Arbitration pending 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.

AND IT IS SO ORDERED.



The Honorable L. Casey Manning
Circuit Court Judge
5th Judicial Circuit

This 20 day of Feb., 2020
Columbia, South Carolina