

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

REGSCAN, INC.,	:	NO. 02-01,152
Plaintiff	:	
	:	
vs.	:	
	:	CIVIL ACTION - EQUITY
RICHARD MARTIN and	:	
CITATION PUBLISHING, INC.,	:	
Defendants	:	APPEAL OF ALLEN E. ERTEL

OPINION IN SUPPORT OF ORDER OF MAY 4 2006.
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Appellant, Allen E. Ertel, Esquire, has appealed this Court's Order of May 4, 2006, which directed him to pay attorney's fees to Defendant Citation Publishing, Inc. as a result of the granting of Citation's Motion for Sanctions against him, as contained in an Order dated August 31, 2004.¹ It appears from his Statement of Matters Complained of on Appeal that Mr. Ertel challenges only the original determination granting the Motion for Sanctions, rather than the amount of the sanction set forth in the May 4, 2006 Order.

Sanctions against Mr. Ertel were directed pursuant to Pennsylvania Rule of Civil Procedure Rule 1023.2, based on the Court's determination that Mr. Ertel violated Rule 1023.1. The focus of the motion for sanctions was a Motion to Amend the Complaint filed by Mr. Ertel as counsel for Plaintiff on December 24, 2003, whereby Plaintiff sought to add, inter alia, a federal cause of action against Citation under the Racketeer Influenced Corrupt Organization (RICO) Act. That motion to amend was denied by the Court on February 27, 2004. As explained in the Opinion issued in support of the Order of August 31, 2004, sanctions were based on the Court's determination that the Motion to Amend contained accusations which rose

¹ After granting the Motion for Sanctions, the Order of August 31, 2004, indicated that subsequent to the trial in the matter, a hearing on the amount of the sanction (in the form of attorney's fees) would be held. The case was resolved and the matter discontinued by Plaintiff by praecipe filed December 15, 2005. Thereafter, Citation requested the scheduling of a hearing per the Court's previous Order. That hearing was held February 7, 2006.

to the level of harassment, the motion did not appear to have a legitimate purpose, the claims in the motion were not warranted by existing law, nor could they be pursued through any nonfrivolous argument for the extension or modification of existing law, and the Court had been provided with no basis on which to find that Mr. Ertel had evidentiary support for the factual allegations contained therein. The Court also considered several factors suggested by the Explanatory Comment to Rule 1023.1, specifically that the filing of the Motion to Amend was willful, that Mr. Ertel is trained in the law, and that the filing of the motion was part of a “pattern of activity” rather than an isolated event. The Court felt sanctions were appropriate to discourage any further abuse of the litigation process.

Mr. Ertel raises several issues in his Statement of Reasons Complained of on Appeal. First, he charges as an abuse of discretion the Court’s review and consideration of certain of the previous filings in this matter. As noted above, however, the Explanatory Comment to Rule 1023.1 enumerates several factors the Court may consider in deciding whether to impose sanctions, one of which is “whether [the improper conduct] was part of a pattern of activity or an isolated event.” Pa.R.C.P. 1023.1 (Explanatory Comment – 2003). The prior filings were considered by the Court as such a “pattern of activity” and therefore the Court sees no abuse of its discretion in this regard.

Next, Mr. Ertel claims the Court “abused its discretion in awarding sanctions without a hearing on the merits of the sanctions motion” and in “not providing RegScan and/or Mr. Ertel with an opportunity to respond to the docket entries identified sua sponte by the Court.” A hearing *was* held on the merits of the Motion for Sanctions, however, on July 12, 2004. Mr. Ertel was provided a full opportunity to present whatever argument or evidence he deemed necessary at that time. Nothing prevented him from offering testimony addressing any of the factors enumerated in the Comment to the Rule. The Court believes its consideration of the previous filings, based on their content, and the Court’s responses thereto, based on the content of the orders entered in response, was proper consideration of matters of record in the case, and did not constitute an abuse of discretion.

Next, Mr. Ertel alleges an abuse of the Court’s discretion in “granting a motion for sanctions that the Court described, in its May 9th Order, as untimely.” The Court did not

describe the Motion for Sanctions as untimely, however. Rather, in referring to “a motion that was filed late” the Court was referring to the Motion to Amend the Complaint.²

Finally,³ Mr. Ertel contends the Court erred in “ordering sanctions for filing a legal, valid claim.” The reasons for the Court’s belief that the RICO claim was not valid may be found in the Opinion issued in support of the August 31, 2004, Order, and the Court will simply rely on that Opinion with respect to this final issue.

It appearing to this Court that the Motion for Sanctions was properly granted, it is respectfully submitted that the Order of May 4, 2006, should be affirmed.

RESPECTFULLY SUBMITTED,

DATED: June 21, 2006

Dudley N. Anderson, Judge

cc: Daniel F. Schranghamer, Esq.
Jason Gosselin, Esq.
Drinker Biddle & Reath LLP
One Logan Square, 18th & Cherry Streets, Philadelphia, PA 19103-6996
J. David Smith, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson

² The Court also wishes to clarify, in response to Mr. Ertel’s assertion that this Court stated in the May 4, 2006, Order that the Motion for Sanctions was “filed late and was based on such a peculiar and questionable legal theory and (sic) was perhaps a bit of overkill” , that the Court was referring to the *Motion to Amend the Complaint* when it stated: “The Court finds that 59.3 hours of legal work arising out of a motion that was filed late and was based on such a peculiar and questionable legal theory was perhaps a bit of overkill.”

³ Although there are ten numbered issues listed in the Statement of Matters Complained of on Appeal, the Court sees only four issues; many of the issues are repetitive.