

STATE OF VERMONT
WINDSOR COUNTY, SS.

BILL BERNSON,
Plaintiff

v.

WILLIAM R. JOHNSON,
NANCY PRESTON JOHNSON, and
CATHERINE ANN JOHNSON,
Defendants

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WINDSOR SUPERIOR COURT

CIVIL ACTION

DOCKET # S170-4-97 Wrcv

DECISION AND ORDER:

MOTION FOR RULE 11 SANCTIONS,

FILED BY DEFENDANT CATHERINE ANN JOHNSON

INTRODUCTION

This matter is before the court for consideration of Defendant Catherine Ann Johnson's Motion for Rule 11 Sanctions. Earlier the court granted a similar motion on behalf of Defendants William R. Johnson and Nancy Preston Johnson. *See Decision and Order* dated July 17, 1997. The July 17 decision contains a detailed description of the procedural history. The facts as described in that decision are incorporated into this decision, and they need not be repeated here.

ADDITIONAL BACKGROUND

Plaintiff filed his initial pleadings on April 15, 1997. His claims included a request for replevin against Defendant Catherine Ann Johnson, based on his allegations that she had prevented him from retrieving numerous items of his personal property.

The court held a hearing on May 12, 1997. All the Defendants attended with their attorneys, but Plaintiff did not appear. At that time Defendant Catherine Ann Johnson filed her Answer and Counterclaim. Defendant Catherine Ann Johnson acknowledged that Plaintiff was entitled to retrieve his property, but she specifically denied that she had unreasonably denied him the right to recover his property. The Defendants agreed to the terms of an order providing an opportunity for the

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Plaintiff to retrieve items of personal property according to a specified procedure, and the court issued the order.

At 4:26 p.m. on May 12, 1997, the Court Clerk of this court received a fax from the Plaintiff in which he purported to withdraw his claims by stating the following:

Please be advised that I will not be proceeding further with either of the above actions. Please withdraw these filings effective immediately.

The relevant papers have been filed this day in Federal Court; a more competent jurisdiction and they will proceed through that system.

The original of this letter will follow in due course.

This court has never accepted or approved Plaintiff's fax as a complete withdrawal of his claims. As a general matter, this court does not accept fax filings. In addition, the court declines to permit Plaintiff to withdraw his claims without prejudice to him, because such withdrawal would cause prejudice to the Defendants, who had already filed Answers and Counterclaims and have had to defend themselves against his claims.

At 4:27 p.m. on May 12, 1997, the court faxed to Mr. Bernson a copy of the May 12, 1997 Order concerning return of personal property to him. At 5:12 p.m. he faxed back to the court a copy of a letter addressed by him to Attorney Stebbins in which he responded to the details of the Order and addressed implementation issues.

As the court explained in the decision dated July 17, Plaintiff faxed additional documents to the court on May 14, 16, 19, and 20, 1997. However, he never filed originals of the faxed documents, and since that time he has neither communicated with this court nor participated in the litigation in any fashion.

On June 9, 1997, the court issued orders granting Plaintiff's Motion to Amend Pleadings, and scheduling the Motion for Rule 11 Sanctions for hearing on June 24, 1997 at 9:30 a.m.

The court held a hearing concerning Rule 11 Sanctions on June 24, 1997, but Plaintiff did not appear. Defendants William R. Johnson and Nancy Preston Johnson were present with their attorney

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Nancy Preston Johnson in its Decision and Order dated July 17, 1997.

The court agrees with Defendant Catherine Ann Johnson that the Plaintiff's misuse of the legal process caused problems for her in the same way that it caused problems for the other Defendants. The court's discussion of this issue in its July 17 decision applies equally to this Defendant, and she is entitled to Rule 11 sanctions for the same reasons.

However, there is one aspect of this case that makes Defendant Catherine Ann Johnson's position somewhat different from that of the other Defendants. Plaintiff's claims included a claim for replevin of personal property which was stored at Catherine Ann Johnson's residence. For this reason the claim concerned Catherine Ann Johnson more than it concerned the other Defendants. Even though the record suggests that the other Defendants had some ownership interest in the property, they were not residing there. At the hearing on May 12, 1997, all Defendants agreed to an order providing Plaintiff with an opportunity to retrieve his property, and the court issued such an order. The court concludes that Plaintiff's claims against Catherine Ann Johnson were not totally lacking in merit.

The merit of the claims is a relevant factor for the court to consider in determining whether or not a claim is being presented for an improper purpose under Rule 11(b). It is also a relevant factor when the court exercises its discretion to tailor sanctions to fit the violation. Rule 11(c); 5A Wright and Miller, Federal Practice and Procedure (1990), § 1336 at 113.

In light of the court's conclusion that Plaintiff's claims against Defendant Catherine Ann Johnson were not totally lacking in merit, based on the order dated May 12, 1997, the court declines to award this Defendant attorney's fees for legal expenses incurred prior to and including that date. However, subsequent to May 12, this Defendant's position with respect to Plaintiff's misuse of the process was similar to that of the other Defendants. Plaintiff had attempted to withdraw his claims, but the court had not approved Plaintiff's attempt to withdraw the claims, and all the Defendants had to continue to prepare their defenses. Therefore the court will grant Defendant Catherine Ann Johnson the other relief she requests, including dismissal of Plaintiff's claims against her with

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prejudice, and attorney's fees for legal expenses incurred subsequent to May 12, 1997. See the Decision and Order dated July 17, 1997, for a more detailed discussion of these issues.

ORDER

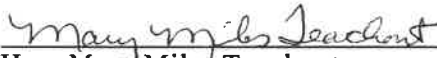
Defendant Catherine Ann Johnson's Motion for Sanctions is GRANTED in part and DENIED in part, as follows:

1. Plaintiff Bill Bernson's complaint against Defendant Catherine Ann Johnson is hereby DISMISSED with prejudice.

2. Plaintiff Bill Bernson is ORDERED to pay Defendant Catherine Ann Johnson the amount of \$1,459.05, for legal expenses incurred subsequent to May 12, 1997; Defendant Catherine Ann Johnson's request for legal expenses incurred prior to and including May 12, 1997, is DENIED.

3. Defendant Catherine Ann Johnson is entitled to proceed against Plaintiff Bill Bernson on her counterclaim.

Dated at Woodstock, Vermont this 27th day of August, 1997.



Hon. Mary Miles Teachout
Presiding Superior Court Judge

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