

IN THE COURT OF COMMON PLEAS  
BUTLER COUNTY, OHIO

J.R. ROSE  
aka JERRY RAY ROSE  
aka JERRY ROSE  
Plaintiff,

vs.

MARY G. PAULUS, et al  
  
Defendants.

\* Case Number: CV 2011-06-2069

\*  
\* JUDGE MICHAEL J. SAGE  
\*

\* ENTRY DECLARING PLAINTIFF  
\* TO BE VEXATIOUS LITIGATOR  
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This matter comes before the Court on Defendant Mary and Dale Paulus' Counterclaim to have Plaintiff, J.R. Rose, declared a vexatious litigator, pursuant to R.C. §2323.52. For the following reasons, the Court declares Plaintiff to be a vexatious litigator.

FACTUAL AND PROCEDURAL BACKGROUND

This case originates out of an investigation into J.R. Rose for selling unregistered securities. From 2000-2007, Rose, a licensed insurance agent at the time, held himself out to be an investment advisor. Nearly 200 investors, mainly friends or friends of friends, gave Rose money to invest on their behalf. Rose promised \$1,000 in monthly income for each \$50,000 invested. When Rose received their money, he deposited it into an investment account with Raymond James Financial and commingled the money with his own funds. Rose used the newly invested money to pay the monthly income promised to the older investors as well as using the money for himself. Rose ran a multi-million dollar Ponzi scheme.

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Butler County, Ohio

Ultimately, the Ohio Department of Commerce, Division of Securities, began an investigation into Rose's activities, which resulted in a criminal prosecution under CR 2007-07-1192, and a civil case to appoint a receiver under CV 2007-07-2578.

On July 17, 2007, Rose entered guilty pleas to three (3) charges under a Bill of Information: Count One- Sale of Unregistered Securities; Count Two- Perjury; and Count Three- Forgery. A Bill of Information is an agreed charging document that by-passes the grand jury indictment process. These three (3) charges were selected to represent multiple charges that could have been filed against Rose had it proceeded to grand jury indictment.

On April 16-18, 2008, a sentencing hearing was conducted in which multiple victims, the court appointed receiver, attorneys and character witnesses on behalf of Rose all provided testimony to the Court. The court appointed receiver testified that the total amount of money Rose had received from his victims to invest was approximately \$17.7 million dollars. The receiver further testified that there was approximately \$1.8 million dollars remaining in the investment account. Rose did initially cooperate with the receiver, turning over \$6.9 million dollars worth of assets.

On April 18, 2008, the Court sentenced Rose to serve ten (10) years for Count One, Sale of Unregistered Securities; five (5) years for Count Two, Perjury; and five (5) years for Count Three, Forgery. The Court further ordered that these sentences be served consecutively to each other, for a total sentence of twenty (20) years incarceration.

Between 2007 and today, Rose has been involved in a number of civil and appellate cases in Butler County as well:

1. Case No. CV 2007-06-1249- Johnson v. Johnson Administrix, et al: a civil case instituted by Barbara Johnson to recover civil damages from Rose, who had forged the will of Johnson's deceased husband and forged his signature. This was the basis for the criminal forgery charge in the above reference Bill of Information. This case was voluntarily dismissed on January 30, 2009.
2. Case No. CV 2007-07-2578- Zurz v. Jerry Ray Rose, et al: the civil case to appoint a receiver for the funds as part of the Ohio Department of Commerce's investigation into Rose. The docket for this case is more than twelve (12) pages long, with Rose having filed multiple frivolous motions claiming fraud and conspiracy by the victims and the receiver.
3. Case No. CV 2008-06-2889 Ahr, et al. v. Raymond James Financial Services, Inc., et a.: Rose not named a party to the complaint; filed a "Motion to Intervene" asking the Court to "prosecute the Plaintiffs and their counsel for contempt of this Court, including but not limited to, conspiracy and fraud." Rose's motion to intervene was denied.
4. Case No. CA 2008-04-0109 State of Ohio v. Jerry R. Rose: this is Rose's direct appeal of the sentence issued in CR 2007-07-1192. Affirmed by the Court.
5. Case No. CA 2009-04-0097 State of Ohio v. Jerry R. Rose: this is Rose's appeal of the trial court's denial of his petition for post conviction relief; Rose fired the attorney that filed the initial brief and proceeded pro se. Denied by the Court.
6. Case No. CA 2009-09-0230 Jerry Rose v. Michael Gmoser: a Writ of Mandamus filed with the Court of Appeals to order Attorney Gmoser to turn over documents to Rose under the Public Records Act. Denied by the Court.
7. Case No. CA 2009-09-0233 Jerry Rose v. Michael Masana: a Writ of Mandamus filed with the Court of Appeals to order Attorney Masana to turn over documents to Rose under the Public Records Act. Denied by the Court.

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8. Case No. CA 2009-10-0269 Jerry Rose v. Rupert E. Ruppert: a Writ of Mandamus filed with the Court of Appeals to order the court appointed receiver to comply with the Public Records Act and to provide an accounting of the claimants, failure of federal filings and late payment fees. Denied by the Court.
9. Case No. CA 2010-03-0059 State of Ohio v. Jerry R. Rose: Rose's appeal of the trial court's denial of his Motion to Vacate Plea, Vacate Sentence or alternatively, Post-Conviction Relief. Affirmed by the Court.
10. Case Nos. CV 2011-06-2069 JR Rose v. Mary Paulus; CV 2011-07-2139 JR Rose v. Dale Paulus (Consolidated with CV 2011-06-2069); CV 2011-07-2303 JR Rose v. Ronald and Deborah Phelps (consolidated with CV 2011-06-2069): civil suits filed by Rose against former "investors" alleging insurance fraud, perjury, libel and slander, fraud and unjust enrichment. This is the case *sub judice*.
11. Case No. CV 2011-07-2140 JR Rose v. Mitchell Roberts : civil case filed by Rose against former "investor" alleging insurance fraud and libel and slander. Currently pending before Judge Keith M. Spaeth.
12. Case No. CV 2011-08-2955 JR Rose v. Ruth Howard: civil case filed by Rose against former "investor" alleging fraud and unjust enrichment. Currently pending before this Court.
13. Case No. CV 2011-10-3763 Bank of New York Mellon v. Jerry R. Rose: civil foreclosure case in which Rose is a defendant and he has filed a counterclaims of intentional/negligent misrepresentation, violation of mortgage broker act, breach of fiduciary duty, fraud, and TILA/HOEPA Violations. Currently pending before Judge Charles L. Pater.

In the case *sub judice*, Defendants, in their Counterclaims filed August 30, 2011, ask

the Court to declare Rose to be a vexatious litigator pursuant to R.C. §2323.52. In his

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Answer to the Counterclaims, Rose simply asserts that he does not meet the definition outlined in R.C. §2323.52.

### LEGAL ANALYSIS

At the outset, the Court must note that bringing a counterclaim seeking to have a plaintiff declared a “vexatious litigator” is recognized as bringing a civil action under R.C. §2323.52(B). See *Borger v. McErlane*, 1<sup>st</sup> Dist. No. C-010262, 2001-Ohio-4030; *Ortiz v. Frye*, 7<sup>th</sup> Dist. No. 06 JE 41, 2008-Ohio-2750.

To be considered a “vexatious litigator,” Rose’s actions must fall within certain criteria set forth in R.C. §2323.52:

(A) As used in this section:

(1) “Conduct” has the same meaning as in section 2323.51 of the Revised Code.

(2) “Vexatious conduct” means conduct of a party in a civil action that satisfies any of the following:

(a) The conduct obviously serves merely to harass or maliciously injure another party to the civil action.

(b) The conduct is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

(c) The conduct is imposed solely for delay.

(3) “Vexatious litigator” means any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court, whether the person or another person instituted the civil action or actions, and whether the vexatious conduct was against the same party or against different parties in the civil action or actions.\*\*\*

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The policy behind the vexatious litigator statute was set forth by the Ohio Supreme Court in *Mayer v. Bristow*, 91 Ohio St.3d 3, 13, 740 N.E.2d 656 (2000):

“ ‘The purpose of the vexatious litigator statute is clear. It seeks to prevent abuse of the system by those persons who persistently and habitually file lawsuits without reasonable grounds and/or otherwise engage in frivolous conduct in the trial courts of this state. Such conduct clogs the court dockets, results in increased costs, and oftentimes is a waste of judicial resources-resources that are supported by the taxpayers of this state. The unreasonable burden placed upon courts by such baseless litigation prevents the speedy consideration of proper litigation.’ “

Quoting *Cent. Ohio Transit Auth. v. Timson*, 132 Ohio App.3d 41, 50, 724 N.E.2d 458, (1998).

The vexatious litigator statute was designed to stop litigators who use the court system as a weapon to intimidate or cause emotional and financial harm upon their targets. *Mayer, supra*, 91 Ohio St.3d at 13.

The Court must first determine if Rose’s conduct meets the criteria of “vexatious conduct.” This must be conduct that “serves merely to harass or maliciously injure another party to the civil action” or “conduct is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.”

In the case at hand, Defendants Mary and Dale Paulus and Defendants Ronald and Deborah Phelps were all investors in Rose’s Ponzi scheme for which he pled guilty to and is serving a twenty (20) year sentence. In his complaints against the victims of his crime, he

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asserts claims of insurance fraud and perjury, both criminal offenses for which he cannot utilize as a cause of action, which will be dismissed in a separate entry.

Additionally, he asserts claims of insurance fraud, libel and slander, and unjust enrichment alleging that these victims were conspirators in the scheme and made false reports to the insurance company to receive compensation. Rose cannot bring claims on behalf of the insurance company that would have been damaged by the so-called insurance fraud and unjust enrichment.

Finally, Rose bases his last claim of libel and slander based upon the victims reporting to the insurance company that they lost their money due to Rose's wrongful conduct. Rose apparently forgets that he has been criminally convicted after having pled guilty to the offense of selling unregistered securities. That conviction was upheld by the Twelfth District Court of Appeals in Case No. CA 2008-04-109.

All of Rose's asserted causes of action against these victims were filed to harass and maliciously injure these individuals a second time. Furthermore, none of his claims can be supported by existing law nor a good faith extension, modification, or reversal of existing law.

The next step in the analysis is to determine whether Rose has "habitually, persistently, and without reasonable grounds engaged in this vexatious conduct." The Court not only looks at the cases at hand, but also the multitude of filings Rose has made in the Butler County Common Pleas Court and the Twelfth District Court of Appeals. A common thread through most of these filings is an attempt to overturn his conviction, whether it be

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through appeal of the sentence, a motion for post-conviction relief, writs of mandamus demanding various financial records, motions and request that the receiver be investigated and prosecuted, or the current cases that the victims of his crimes were actually co-conspirators and committed acts of fraud themselves.

Based upon the foregoing, the Court hereby declares that J.R. Rose (aka Jerry R. Rose; aka Jerry Rose) is a vexatious litigator and hereby is prohibited, under R.C. § 2323.52(D) doing all of the following, without first seeking leave of the Court:

- 1) Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court;
- 2) Continuing any legal proceedings that the vexatious litigator had instituted in any of the courts specified in division (D)(1)(a) of this section prior to the entry of the order;
- 3) Making any application, other than an application for leave to proceed under division (F)(1) of this section, in any legal proceedings instituted by the vexatious litigator or another person in any of the courts specified in division (D)(1)(a) of this section.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that J.R. Rose (aka Jerry R. Rose; aka Jerry Rose) is hereby declared a vexatious litigator. The Clerk of Courts is ordered to send notice as mandated under R.C. § 2323.52(H).

**SO ORDERED.**

Judge Michael J. Sage  
Common Pleas Court  
Butler County, Ohio

ENTER,

  
Michael J. Sage, Judge

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