

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

GEORGE L. BADOVICK)	CASE NO. 10 CV 741681
)	
Plaintiff,)	JUDGE DAVID T. MATIA
)	
-vs-)	
)	<u>MEMORANDUM AND</u>
GREGORY GREENSPAN, et al)	<u>ORDER</u>
)	
Defendants.)	

This lawsuit is the third in a series of legal proceedings in which the Plaintiff, Attorney George L. Badovick (“Attorney Badovick”) has sought to recover a debt discharged in bankruptcy. The Defendants’ answer to this complaint contained two counter claims: one for frivolous conduct; the second for Attorney Badovick to be named a vexatious litigator. For the reasons stated below, the court finds that the Defendants have proven the elements necessary to both counterclaims, awards attorney’s fees to Defendants and declares Attorney Badovick to be a vexatious litigator.

RELEVANT PROCEDURAL HISTORY

Original Proceedings in the Bankruptcy Court

On February 8, 2007, Alexander and Frida Greenspan (the “debtors”), defendants in the first two Common Pleas Court proceedings, through their attorney Mary Ann Rabin (“Attorney Rabin”) filed a Chapter 13 petition in the Bankruptcy Court for the Northern District of Ohio. The proceedings were later converted to a Chapter 7 proceeding and Mr. David Simon was appointed as trustee (“Trustee Simon”). Attorney Badovick, who was owed legal fees for services provided to one of Debtor Alexander

Greenspan's companies, filed a proof of claim with the Bankruptcy Court in the amount of \$5,686.94

During a bankruptcy court hearing, Trustee Simon questioned the Debtors about a prepetition real estate transaction they had entered into with their long-time friends, Dr. Igor and Ludmilla Lantsberg. Trustee Simon alleged the following facts: About seven months before the Debtors filed their bankruptcy petition, they sold their residence located on Trapper's Trail in Newbury, Ohio (the "Newbury Property"). They wanted to purchase a house on Liberty Road, in Solon, Ohio (the "Solon Property") but could not obtain a mortgage due to their financial difficulties. The Debtors asked their friends Dr. and Mrs. Lantsberg to help and they agreed to do so.

The transaction was structured so that Frida Greenspan provided the down payment in the amount of \$120,000.00 for purchase of the Solon Property, using proceeds from the sale of the Newbury Property. Dr. and Mrs. Lantsberg took title to the Solon Property and signed the note and mortgage. Thereafter, the Debtors moved into the Solon house and paid the monthly note payments and expenses associated with it. Later, the title to the Solon Property was transferred to FGAG Limited, LLC, ("FGAG") an Ohio limited liability company in which Dr. Lantsberg held a 95% interest with the remainder held by Alexander Greenspan.

Trustee Simon asserted that the \$120,000.00 transfer from the Debtors to the Lantsbergs was fraudulent pursuant to Ohio Revised Code, Chapter 1336. After substantial discussions and negotiations, the Debtors offered to compromise Trustee Simon's claim for \$80,000.00 which represented the equity in the Solon property.

Trustee Simon filed a Motion to Compromise Claim on August 30, 2007. The Motion was accompanied by a Notice of Hearing which specified a date by which objection to the Motion could be filed. The Notice and Motion were served on all creditors, including Attorney Badovick. Despite the opportunity, Attorney Badovick did not file an objection. The Bankruptcy Court approved Trustee Simon's Motion by Order dated September 28, 2007. Included in the Order was the notation that "the entry of this Order and the payment of the settlement authorized hereby shall constitute a full release of Igor and Ludmilla Lantsberg, their respective heirs, affiliates, agents, successors, and assigns, with respect to such claim." This order was not served on Badovick but was posted on PACER, a public website maintained by the United States Bankruptcy Court.

Trustee Simon also investigated the 2006 purchase of two condominiums in Florida by the Debtor's son, (and Defendant herein) Gregory Greenspan. One condominium was deeded to Gregory Greenspan, individually, and the other in the name of the "Frida Greenspan Trust," of which Gregory Greenspan was a trustee. Upon such investigation, Trustee Simon learned that the properties did not have any equity, and the condominiums had been listed for sale for over a year without an offer. Given the real estate market in Florida at that time, Trustee Simon determined that the condominiums were unmarketable and would not benefit the bankruptcy estate.

The Debtors received their bankruptcy discharge on October 15, 2007. On October 17, 2007, the court posted the Notice of Order of Discharge with a Certificate of Service attached. Attorney Badovick was served with notice of the discharge and with an attached "Explanation of Bankruptcy Discharge in a Chapter 7 Case," which explained the prohibition on collecting a discharged debt. Attorney Badovick, as an unsecured

creditor, received a pro rata distribution from the Trustee in June, 2007 at the rate of 14.831% of his original claim (which amounted to \$843.43) as did all other unsecured creditors.

Proceedings in the Court of Common Pleas

The First Complaint

Notwithstanding the payment on his claim from the bankruptcy estate and the Notice of Discharge prohibition against collection efforts, Attorney Badovick engaged Attorney P. Ryan Parker to file a complaint in the Court of Common Pleas, Cuyahoga County (CV-09-691547) on May 9, 2009 against Alexander Greenspan, Frida Greenspan, FGAG Limited, LLC, and Dr. Igor Lantsberg. In Count One, Attorney Badovick asserted a fraudulent conveyance claim, in Count Two he asserted a civil conspiracy claim, and in Count Three, a Civil RICO claim (the "First Complaint"). Each of the claims in the first complaint related to the alleged pre-petition fraudulent conveyance of down payment for the Solon Property, which was resolved by the acceptance of the Trustee's Motion to Compromise in September, 2007.

Upon receipt of the first complaint, Attorney Rabin, informed Attorney Parker that a lawsuit attempting to collect a prepetition debt against a debtor was a clear violation of the permanent injunction prohibition provided by the Bankruptcy Code (the "Code"), and urged him to dismiss the complaint. Receiving no response from Attorney Parker, Attorney Rabin contacted Attorney Badovick directly and demanded he dismiss the complaint. He refused.

On June 5, 2009, Attorney Rabin presented a seminar on bankruptcy to the Geauga County Bar Association during which she discussed the permanent injunction

granted debtors in a Chapter 7 discharge, using this case as an illustration. Without naming the parties or their attorneys, she stated that the complaint was filed in violation of the Code's discharge injunction. Attorney Rabin did not learn until the seminar was over that Attorney Badovick was in the audience. On June 19, 2009, after further communication between the parties, Attorney Badovick dismissed the first complaint. The Debtors paid Attorney Rabin \$500.00 in legal fees but did not seek any damages against Attorney Badovick.

The Second Complaint

On August 7, 2009, Attorney Badovick, acting as his own counsel, filed a second complaint in the Court of Common Pleas of Cuyahoga County against the same parties he had named in his first complaint. This complaint also focused on the alleged pre-petition fraudulent conveyance of funds from the Debtors to the Lantsbergs. It differed slightly from the first complaint in that Paragraph 7 stated "...that Defendants, Alexander Greenspan and Frida Greenspan, are named herein as necessary parties as described in Civil Rule 19. No money judgment is being sought against them." However, Attorney Badovick sought money damages, once again, from Dr. Lantsberg and from FGAG.

Renewed Proceedings in the Bankruptcy Court

Attorney Rabin successfully petitioned the Bankruptcy Court to reopen the Debtors' Chapter 7 proceedings and removed the second complaint to the Bankruptcy Court as the second complaint related directly to matters disposed of in the Debtors' bankruptcy case. On November 20, 2009, the Debtors filed a motion for Attorney Badovick to appear and show cause why he should not be found to be in contempt for violation of the discharge order and for sanctions under Bankruptcy Rule 9011.

The Bankruptcy Court found the motion stated good cause and scheduled an evidentiary hearing. On February 22, 2010, after the evidentiary hearing, the Bankruptcy Court issued a Memorandum of Opinion and Order which stated the following: “[a]t deposition and again at trial, Attorney Badovick admitted that the transaction underlying this complaint is the same transaction that was the subject of the trustee’s motion in the bankruptcy court. When asked at deposition what other ‘transactions’ he was referring to in the complaint, Attorney Badovick could not identify any.”

The Bankruptcy Court found that Attorney Badovick was indeed in contempt of court for violation of the permanent discharge prohibiting an action to collect a pre-petition debt, and was acting in bad faith by attempting to coerce payment from the Defendants. By way of damages, the Court awarded the Debtors’ attorney’s fees and expenses in the amount of \$13,185.86. Attorney Badovick appealed the judgment to the Bankruptcy Appellate Panel (“BAP”) for the Sixth Circuit. The BAP sustained the judgment in February, 2011. Attorney Badovick has paid those legal fees.

Although the Bankruptcy Court had issued a full release to Dr. and Mrs. Lantsberg, the Bankruptcy Court did not find that Attorney Badovick had violated the injunction related to the discharge since Dr. Lantsberg was not a debtor. While holding that the action against the Debtors was barred by the discharge injunction, the Bankruptcy Court remanded the claims against Dr. Lantsberg and FGAG to the state court for resolution. In accordance with the Court’s order, Attorney Badovick voluntarily dismissed the action against the Debtors, but continued to pursue claims against Dr. Lantsberg and FGAG in the Court of Common Pleas.

The Defendants filed a Motion to Dismiss in this Court arguing that Attorney Badovick lacked standing to bring this claim, that this action was barred by *res judicata* by virtue of settlement in the Bankruptcy Court, and that such settlement constituted a full release of Igor and Ludmilla Lantsberg, their respective heirs, affiliates, agents, successors, and assigns. This Court granted the Defendants' Motion to Dismiss. Plaintiff appealed the dismissal to the Court of Appeals for the Eighth District. The Court of Appeals upheld this Court's ruling and further denied Attorney Badovick's Motion for Reconsideration.

The Third Complaint

During the pendency of the appeal, Attorney Badovick initiated this action, the third complaint to be filed with this Court regarding his efforts to collect the pre-petition debt owed to him by Alexander Greenspan. In this complaint Attorney Badovick named Gregory Greenspan individually, and as trustee of the Frida Greenspan Family Trust as well as "John Does 1 and 2." Attorney Badovick repeated the allegations of fraudulent conveyance, conspiracy, and violation of RICO laws contained in the previous two complaints.¹

Attorney Badovick filed a Motion for Summary Judgment on May 4, 2011. Defendants filed a Cross-Motion for Partial Summary Judgment, solely on Attorney Badovick's claims. This Court granted the Defendants' Cross-Motion for Partial Summary Judgment on August 19, 2011. The Defendants' counterclaims remained. This Court held a hearing regarding these counterclaims on September 30, 2011.

LAW AND DISCUSSION

¹ The Third Complaint was originally filed with Judge Joseph Russo, however upon Defendants' motion the case was transferred to this Court due to its previous involvement with previous filings.

Frivolous Conduct

Attorney Badovick's claims in this lawsuit are frivolous. They are not grounded in any legitimate theory of law, nor can they be supported by a good faith argument for an extension, modification, or reversal of existing law. These three complaints have been filed merely to harass the Greenspan Family. It is clear that Attorney Badovick had no good faith basis to bring this action. Attorney Badovick's claim was satisfied in the bankruptcy court and he is barred from pursuing the remainder of the debt by the permanent injunction. He is no longer a creditor of the Debtors and thus has no standing to sue them. Any attempt to relitigate the fraudulent conveyance claims, having been investigated and compromised by the Bankruptcy Trustee, is prohibited by *res judicata*.

Accordingly, the Court finds, pursuant to O.R.C. 2323.51(A)(2), that Attorney Badovick's conduct in the initiation and pursuit of this action:

“ . . . obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation;

“ . . . is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law; and

“ . . . consists of allegations or other factual contentions that have no evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

“The important policy considerations advanced by the [frivolous conduct] legislation (...) demand that sanctions be imposed whenever appropriate.” *Ceel v. Zion Industries, Inc.* (1992), 81 Ohio App.3d 286, 292. Having examined the pleadings filed in

this case and the arguments of counsel, this court finds that Attorney Badovick has engaged in frivolous conduct and awards legal fees to the Defendants in the amount of \$14,144.34.²

Vexatious Litigator

“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.” *Mayer v. Bristow* (2000), 91 Ohio St.3d 3, 13, quoting from *Central Ohio Transit Auth. v. Timson* (1998), 132 Ohio App.3d 41, 50.

A litigator engages in “vexatious conduct” if their conduct obviously serves merely to harass or maliciously injure another party to the civil action or 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. O.R.C. § 2323.52(2). A “vexatious litigator” is one who has “habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action (...)”. O.R.C. § 2323.52(3). The Court finds that Attorney Badovick fulfills the definition of a vexatious litigator provided in the statute.

Attorney Badovick’s conduct must be held to a higher standard. The permanent injunction against efforts to collect a debt that had been discharged is clearly set out in the “Explanation to Discharge.” In spite of the clear language in the discharge notice, and in spite of the efforts of Attorney Rabin to dissuade him from his actions, he persisted in not one, but three separate filings to collect the discharged debt. Attorney

² Attorney Rabin submitted her fee bills and an affidavit from an expert asserting the necessity and reasonableness of the fees charged. Attorney Badovick submitted a notice of withdrawal of contest which stipulated to the reasonableness and necessity of fees in the amount of \$14,144.34.

Badovick intended to violate the discharge injunction and collect his fees through any pressure that he could apply.

This Court finds that George L. Badovick, in his persistent attempts to collect a debt that had been discharged in bankruptcy, is a vexatious litigator pursuant to O.R.C. § 2323.52(A)(3). Accordingly, as a *pro se* litigant, he is enjoined from performing the following actions without first obtaining leave of this Court:

- a) Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court;
- (b) 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;
- (c) 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.

Any proceedings instituted or continued, or any application made by George L. Badovick, acting *pro se*, without leave of that court to proceed shall be dismissed. This order shall remain in force indefinitely. See R.C. § 2323.52(E).

The Clerk of Courts, Cuyahoga County, Ohio, is hereby ordered to send a certified copy of this journal entry to the Ohio Supreme Court for publication pursuant to Ohio Revised Code § 2323.52(H).

Court costs are hereby assessed to the Plaintiff, George L. Badovick.

IT IS SO ORDERED.

THE STATE OF OHIO Cuyahoga County	I, GERALD E. FUERST, CLERK OF SS, THE COURT OF COMMON PLEAS WITHIN AND FOR SAID COUNTY.
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL <u>98</u>	
dated <u>10-25-11</u>	
NOW ON FILE IN MY OFFICE.	
WITNESS MY HAND AND SEAL OF SAID COURT THIS <u>25</u> DAY OF <u>Nov</u> A.D. 20 <u>11</u>	
GERALD E. FUERST, Clerk	
By <u>P. K. [Signature]</u>	, Deputy

[Signature] 10-21-11
Judge David T. Matia Date

RECEIVED FOR FILING
OCT 25 2011

GERALD E. FUERST, CLERK
By [Signature] Deputy