


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
2007 JAN 17 PM 2:52
CLERK OF DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY 

RIAD ELSOLH HAMAD,
Plaintiff,

-vs-

Case No. A-06-CA-285-SS

CENTER FOR THE STUDY OF POPULAR
CULTURE and DAVID HOROWITZ,
Defendants.

ORDER

BE IT REMEMBERED on the 17th day of January 2007 the Court reviewed the file in the above-styled cause, specifically Plaintiff's Fifth Amended Petition [#49], Daniel Pipes and the Middle East Forum's¹ Motion for Sanctions [#93], the Center for Jewish Community Studies' Motions for Sanctions [#90, 91], the Center for the Study of Popular Culture's Motion for Sanctions [#107], Dotster.com's Motion to Dismiss [#110, 111], Plaintiff's Motion for Sanctions against Randy Howry [#113], Plaintiff's Motion for Summary Judgment against Dotster.com [#114], Plaintiff's Motion for Default Judgment against Joe Kaufman and AmericansAgainstHate.com [#105], Plaintiff's Motion for Default Judgment against Laurence Simon [#106], and the responses and replies to these motions, where available. In accordance with its Order of September 6, 2006, the Court now enters the following.

¹Although Plaintiff continues to name Campus Watch as a defendant in his filings, this organization is not a legal entity but a project of the nonprofit organization Middle East Forum.

P

Background

Plaintiff Riad Elsolh Hamad first filed this wholly frivolous claim on April 13, 2006. Since that time, his "Petition" has gone through five revisions. None of the five Amended Petitions was authorized by the Federal Rules or leave of this Court, and not one version of Hamad's complaint states any claim for which relief can be granted under any law of the United States or the State of Texas against any defendant. The Court dismissed Hamad's complaint with prejudice in its second incarnation in an Order dated June 26, 2006. Nevertheless, Hamad has continued to file Amended Petitions presenting claims for relief identical to the ones dismissed in the Second Amended Petition. Each Amended Petition merely drags yet another group of defendants into the same unintelligible morass of vitriolic accusations for which no basis in law has ever been established. Moreover, Hamad continues to name dismissed parties as defendants in his repetitive pleadings.

On July 25, 2006, this Court put Hamad on notice that his Fifth Original Amended Petition, as well as the earlier versions of his complaint, not only failed to state any claim for which relief could be granted but also violated Rule 11 of the Federal Rules of Civil Procedure. The Court gave Hamad twenty-one days in which to file a voluntary dismissal of this lawsuit against all defendants or face sanctions, including substantial fines and the attorney's fees incurred by all parties sued. Hamad did not dismiss the Fifth Amended Petition—on the contrary, he filed a motion for the entry of default judgment against Defendant Joe Kaufman and AmericansAgainstHate.org.

On September 7, 2006, this Court entered an order imposing sanctions of \$1000 per defendant "sued and served" in this lawsuit subsequent to the Court's dismissal with prejudice on June 26, 2006. Hamad appealed this order and, in the meantime, filed three more motions for default judgment, a motion for sanctions against attorney Randy Howry, a motion for leave to file yet

another Amended Petition, and a motion for summary judgment granting his claims against Defendant Dotster, Inc.

The Fifth Circuit has now dismissed Hamad's interlocutory appeals, freeing this Court to make a final disposition of this case. Without more ado, each of Hamad's baseless motions is DENIED.²

Analysis

With regard to Hamad's motions for default judgment, this Court denied both his Motion for Entry of Default Judgment against Joe Kaufman and AmericansAgainstHate.org and his Motion for Entry of Default Judgment against the Center for Jewish Community Studies in an order dated October 13, 2006. Nevertheless, on November 2, 2006, Hamad again filed a Motion for Default Judgment against Kaufman and AmericansAgainstHate.org, alleging the Court's October 13 Order dismissed this motion for default judgment "before it was even filed." The Court's Order of October 13, 2006 dismissed a motion for default judgment against Joe Kaufman and AmericansAgainstHate.org filed by Hamad on August 28, 2006. The November 2, 2006 Motion for Default Judgment against Joe Kaufman and AmericansAgainstHate.org states no additional legal grounds for the entry of default and is entirely frivolous. Therefore, the Motion for Entry of Default Judgment against Joe Kaufman and AmericansAgainstHate is denied.

Hamad filed a Motion for Default Judgment against Defendant Laurence Simon on November 9, 2006. This motion, too, is completely baseless, as Hamad's claims against Simon are barred by the applicable statutes of limitations and otherwise fail to state a claim for which relief can

²This Court denied Hamad's Motion for Leave to File a Sixth Amended Petition on October 16, 2006.

be granted, as explained in this Court's Order of June 26, 2006, dismissing identical claims against the original defendants in this case.

The Court notes Simon's allegedly wrongful publication of statements about Hamad's business took place in 2004, somewhat later than the acts complained of in Hamad's initial Petitions. The statute of limitations on the various tort claims asserted in Hamad's sprawling Petition is two years. TEX. CIV. PRAC. & REM. CODE § 16.003(a). However, to the extent Hamad's tort claims are not barred by the statute of limitations in Simon's case, the Court dismisses these claims as frivolous attempts to avoid the one year statute of limitations on libel claims through artful pleading. The only action of which Hamad complains is Simon's alleged publication of defamatory statements on his website. Therefore, the one year statute of limitations applies, regardless of how Hamad attempts to characterize the complaint. *See Williamson v. New Times, Inc.*, 980 S.W.2d 706, 710 (Tex. App.—Fort Worth 1998, no writ). This Court fully explained Texas' limitation on artful pleading in libel and slander claims in its June 26, 2006 Order; Hamad was on notice from that date that his various repleadings of the same claim are groundless. The Motion for Default Judgment against Defendant Laurence Simon is denied.

Hamad's motion for summary judgment against Dotster.com is equally frivolous. Not only does the statute of limitations on libel claims shield this defendant, as it does every other defendant in this case, but Defendant Dotster.com is a website domain name registrar that "has never written a word about plaintiff" and enjoys immunity from liability as a "publisher or speaker" under 47 U.S.C. § 230. Plaintiff's remaining claims against Dotster fail for the reasons discussed in this Court's Order of June 26, 2006 and in the paragraph above. Therefore, Hamad's motion for

summary judgment against Dotster is denied and Dotster's Motion to Dismiss is granted. Hamad's claims against Dotster.com are dismissed with prejudice.

Hamad's motion for sanctions against Howry is similarly meritless. In a hearing on October 24, 2006, this Court invited counsel for all defendants to submit their costs and fees to aid the Court in addressing the issue of sanctions. The fee requested by Howry for his work on this case was calculated by the lodestar method, long approved in this Circuit. *See, e.g. Saizan v. Delta Concrete Prods. Co.*, 448 F.3d 795, 800 (5th Cir. 2006) (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)). Hamad complains of the amount of work Howry claims to have performed. However, this Court warned Hamad that he would be liable for the attorneys' fees of all defendants in this case. Hamad has nevertheless continued to file motion after motion, all of which must be addressed by counsel. He cannot make a good faith argument that counsel has spent an unreasonable amount of time on this case when he himself has kept the meter running. Hamad's Motion for Sanctions is denied.

The Court now turns to the various motions for sanctions submitted by defendants. Noting that Hamad has not only abused the judicial process in this case but also has a long history of filing frivolous litigation in this Court,³ the Court invited all defendants to submit their attorneys fees and costs as a sanction for Hamad's flagrant violations of Rule 11 in this particular case. Having reviewed the motions for sanctions and the supporting affidavits, the Court finds the amounts requested for attorneys' fees and costs by each defendant⁴ are reasonable, based on the factors

³ See this Court's Order of July 25, 2006 for a detailed list of Hamad's frivolous filings in 1994, 1995, 1999, 2002, and 2006.

⁴ Defendants State of Texas, Joe Kaufman and Americans Against Hate, CB Accounts and MilitantIslam.org, Jim Robinson and Freerepublic, LLC, Laurence Simon, and Dotster, Inc. have not submitted motions for attorneys' fees or other sanctions.

articulated in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974).⁵

Although Hamad's claims were dismissed in June of 2006, his voluminous and seemingly unstoppable filings have continued through January of 2007, requiring hours of work from defendants' experienced, capable, and patient counsel. Time spent dealing with Hamad's filings is time counsel could not spend on other matters. Moreover, counsel for each defendant testified by affidavit that services in this case were rendered at substantial discount from their customary hourly rates. Therefore, the motions for sanctions in the form of attorneys' fees and costs filed by the Center for Jewish Community Studies, the Center for the Study of Popular Culture, and Daniel Pipes and the Middle East Forum are fully granted.

It is ORDERED that Plaintiff will pay attorney's fees and costs in the amount of:

\$12,915 on behalf of Daniel Pipes and the Middle East Forum;

\$18,401.93 on behalf of the Center for Jewish Community Studies;

\$19,524 on behalf of David Horowitz and the Center for the Study of Popular Culture.

Furthermore, in accordance with this Court's Order of September 7, 2006, imposing sanctions of \$1000 per defendant "sued and served" in this lawsuit subsequent to the Court's dismissal with prejudice on June 26, 2006, Plaintiff is ordered to pay sanctions of \$9000, representing \$1000 for each defendant sued in the Fifth Amended Complaint and served with process: (1) the Center for the Study of Popular Culture and David Horowitz, (2) the Center for

⁵The Johnson factors are: (1) the time and labor required to represent the client or clients; (2) the novelty and difficulty of the issues in the case; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney; (5) the customary fee charged for those services in the relevant community; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Jewish Community Studies, (3) the State of Texas, (4) Joe Kaufman and Americans Against Hate, (5) Daniel Pipes and the Middle East Forum (Campus Watch), (6) CB Accounts and MilitantIslam.org, (7) Jim Robinson and Freerepublic, LLC, (8) Laurence Simon, and (9) Dotster, Inc.

Conclusion

In accordance with the foregoing,

IT IS ORDERED that the Motion for Entry of Default Judgment against Joe Kaufman and AmericansAgainstHate is DENIED.

IT IS FURTHER ORDERED that the Motion for Default Judgment against Defendant Laurence Simon is DENIED.

IT IS FURTHER ORDERED that Hamad's motion for summary judgment against Dotster is DENIED and Dotster's Motion to Dismiss is GRANTED.

IT IS FURTHER ORDERED that Hamad's Motion for Sanctions is DENIED.

IT IS FURTHER ORDERED that the motions for sanctions filed by the Center for Jewish Community Studies, the Center for the Study of Popular Culture, and Daniel Pipes and the Middle East Forum are fully GRANTED:

It is ORDERED that Plaintiff will pay attorney's fees and costs in the amount of:

\$12,915 in fees, plus costs on behalf of Daniel Pipes and the Middle East Forum;

\$18,401.93 in fees, plus costs on behalf of the Center for Jewish Community Studies;

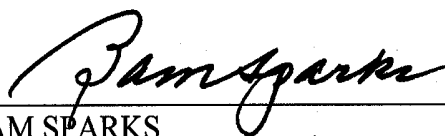
\$19,524 in fees, plus costs on behalf of David Horowitz and the Center for the Study of

Popular Culture.

IT IS FURTHER ORDERED that Plaintiff must pay sanctions of \$9000, representing \$1000 for each defendant sued in the Fifth Amended Complaint and served with process.

IT IS FINALLY ORDERED that Plaintiff's Fifth Amended Petition is DISMISSED with prejudice in its entirety, and all further pending motions in this case are DISMISSED as moot.

SIGNED this the 17th day of January 2007.



SAM SPARKS
UNITED STATES DISTRICT JUDGE