

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DONALDSON TWYMAN,)	
Plaintiff,)	
)	No. 16-cv-04182
v.)	
)	Honorable Virginia Kendall
S&M AUTO BROKERS, INC., SAED)	
IHMOUD and MOHAMMED IHMOUD,)	Magistrate Judge Sheila Finnegan
Defendants.)	

PLAINTIFF'S RULE 11 MOTION

Plaintiff, by his undersigned counsel, moves for entry of sanctions against Defendant and its counsel pursuant to Rule 11 of Federal Rules of Civil Procedure. In support of this motion, Plaintiff states:

1. Plaintiff served a Rule 11 Motion on Defendant and its counsel on April 27, 2016, which summarizes all the sanctionable conduct described herein. Accordingly, this Motion complies with the requirements of Rule 11 to initiate a motion under the Rule after providing Defendant and its counsel with a safe harbor period giving them time to withdraw the sanctionable pleadings.

2. Rule 11 sanctions are appropriate as to pending motions and pleadings in this case for the reasons already stated in Plaintiff's Memorandum in Support of Motion for Sanctions Under § 1927, Rule 30(D)(2), and Inherent Powers. The sanctionable claims in Defendant's pending motions and pleadings include Defendant and Defense counsel's false and defamatory claims that Plaintiff's counsel is part of a criminal enterprise and allegedly fabricated this lawsuit. This is demonstrably false and was made in bad faith. As Defendant and its counsel are aware, independent expert records from Manheim Automobile Auctions, Progressive Insurance, an Indianapolis Infiniti dealer and Indianapolis Body Shop all prove that the automobile at issue was

in a serious accident, has substandard repairs, and was worth far less than the purchase price. This is the same conclusion reached by Plaintiff's expert and supported by a detailed declaration based on his many years of expertise. He reached his conclusions after the other experts had already concluded that the automobile was in a serious accident and had substandard repairs. Accordingly, entry of Rule 11 sanctions are appropriate. Defense Counsel should be sanctioned for misusing pleadings to defame and abuse a fellow officer of the Court by falsely accusing him of criminal misconduct. Such behavior has no place in civil litigation and mandates entry of monetary Rule 11 sanctions for the fees which were incurred to clear Plaintiff's counsel's good name and reputation.

3. Rule 11 sanctions should enter as to the following pending motions and pleadings and as to Defendant and its counsel's false criminal enterprise claims contained in some of those pleadings:

A. Defendant's motion for summary judgment (Dkt. No. 106) which doesn't comply with the local rules and advances frivolous factual and legal arguments as set forth in Plaintiff's opposition and doubles down on the false criminal enterprise claims (Dkt. Nos. 127, 125);

B. Defendant's requests for sanctions in its opposition to Plaintiff's motion for summary judgment (Dkt. No. 106) falsely claiming that Plaintiff has misstated the record on matters that cannot be disputed such as Manheim arriving at a 1.9 "Rough" grade for the FX37 due to the large number of sub-standard repairs caused by an accident summarized in its report with photographs of the sub-standard work and falsely accusing Plaintiff's counsel of criminal misconduct;

C. Defendant's motion for a protective order regarding the deposition of Defendant's expert, Ayad Hasan (Dkt. No. 151) which is contrary to established law, doesn't justify Defense counsel's abusive and obstructive behavior at the deposition, and misstates what transpired, as proven by Plaintiff's pleadings on the issue and a review of the deposition transcript and audio tape (Dkt. Nos. 153, 158, 160);

D. Defendant's opposition to Plaintiff's motion for a protective order regarding the Hasan deposition (Dkt. No. 155) which misstates what transpired at the deposition, is contrary to established law, and continues to falsely accuse

Plaintiff's counsel of fabricating this case and engaging in criminal extortion and abuse of process instead of owning up to Defense counsel's misconduct;

E. Defendant's motion to place the Hasan audio recording under seal (Dkt. No. 162) as the case cited in support of the motion has nothing to do with sealing an audio recording of a deposition that reveals professional misconduct by an attorney, which misconduct cannot be fully determined from the transcript, such as shouting, pounding the table and sarcastic and antagonistic tone of voice;

F. Defendant's motion for sanctions against Mr. Lubin and Mr. Szczesniak (Dkt. Nos. 121, 138, 142, 150) which relies on frivolous legal arguments, speculation, and defamatory claims of criminal conspiracy, along with other false and speculative claims, which are refuted by Mr. Szczesniak, his wife, son and mother along with his mother's doctor, and third party documents proving the automobile at issue was in a severe accident and that Plaintiff's counsel did not fabricate this case. (Dkt. Nos. 137, 140, 149).¹

4. Accordingly, this Court should award monetary sanctions to Plaintiff and his counsel for the costs and fees they have incurred due to these sanctionable pleadings. This Court should bar Defendant's expert Hasan from testifying and strike his report. It should also award monetary sanctions to the Clerk of the Court due to the waste of judicial resources caused by Defendant and its counsel's Rule 11 violations, and such additional sanctions it deems appropriate and just under the circumstances.

¹ Defendant has indicated that it does not want to pursue this sanctions motion. However, it has not filed a motion to withdraw it. Its former counsel has filed a motion attempting to do that as part of a settlement with Plaintiff's expert. Simply indicating a desire to withdraw the motion is not the same as formally withdrawing the motion, which has not yet occurred. If the motion is withdrawn in the near future, Plaintiff will not pursue Rule 11 sanctions as to that motion. However, Plaintiff still has a sanctions motion pending with regard to this pleading under § 1927 and Court's inherent powers. Plaintiff is still pursuing that sanctions motion as to this sanctionable pleading as he has incurred substantial time and expense in responding to the motion and the claim therein that Plaintiff's counsel should be sanctioned for failing to terminate his expert.

WHEREFORE, Plaintiff requests that this Court sanction Defendant and its counsel under Rule 11 awarding Plaintiff and his counsel monetary sanctions for the fees and costs incurred due to the sanctionable conduct; barring Hasan from testifying and striking his report; awarding the Clerk of the Court monetary sanctions due to the waste of judicial resources caused by Defendant and Defense counsel; and awarding such additional sanctions as the Court deems appropriate and just under the circumstances.

DONALDSON TWYMAN

By: /s/ Peter S. Lubin

One of his attorneys

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CERTIFICATE OF SERVICE

I, Peter S. Lubin, the undersigned attorney, hereby certify that on May 19, 2017, I caused the foregoing **Rule 11 Motion** to be served upon all counsel of record via the Court's CM/ECF System.

/s/ Peter S. Lubin