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

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

**REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR SANCTIONS**

Attorney Joel Brodsky's acknowledgment that his behavior was uncivil is appreciated but it does not obviate the need for sanctions. Plaintiff seeks sanctions not for a single uncivil remark or an isolated frivolous argument but rather for a pattern of uncivil and vexatious behavior that has unreasonably prolonged these proceedings, increased the cost of litigating this case, and demonstrated a lack of respect for the Court and opposing counsel.

Far from a single moment of indiscretion, Mr. Brodsky has repeatedly made personal attacks and baseless accusations against Plaintiff's counsel, Peter Lubin, throughout this case. Worse, most of these attacks came *after* the Court warned Mr. Brodsky that he would be sanctioned if he continued to make such attacks. Mr. Brodsky's filings in this case demonstrate the sheer breadth and number of personal attacks. Mr. Brodsky also demonstrated his animus towards Mr. Lubin by adopting a strategy of uncooperativeness and opposition to even the most routine motion or scheduling request.

Mr. Brodsky's sanctionable conduct also includes filing a number of frivolous motions and briefs, leaving Plaintiff to do the research and explain to the Court why Mr. Brodsky's arguments were baseless and counter to established law. *See In re TCI Ltd.*, 769 F.2d 441, 446 (7th Cir. 1985) (explaining that "[o]ne of the costs of a lawsuit is research" and that an attorney violates Rule 11

and Section 1927 by simply making an argument and then "requir[ing] the adversary to do both the basic research to identify the claim and then the further work needed to craft a response."). Perhaps most egregious, Mr. Brodsky made a number of misrepresentations to this Court. See, e.g., Dkt. 155 at ¶¶4, 8 (Mr. Brodsky's statements to the Court that he did not improperly instruct the witness Hasan not to answer questions, did not coach Mr. Hasan, and did not interfere with Mr. Lubin's questioning were proven untrue by the deposition transcript); compare with Dkt. 159 (Plaintiff citing to the specific parts of the deposition transcript that contradict Mr. Brodsky's statements).

Mr. Brodsky's Rambo-like behavior has undeniably prolonged these proceedings. *See* Final Report of the Committee on Civility for the Seventh Federal Judicial Circuit, 143 F.R.D. 441 (1992) (noting that a lack of civility can "escalate clients' litigation costs," "prevent litigation parties from getting to the heart of the important contested issues," and waste "judicial time. . . resolving needless (often petty) disputes"). A simple review of the number of docket entries in this case, currently 208, confirms this. In a case that Mr. Brodsky repeatedly referred to as a small claims case, Mr. Brodsky filed 14 motions, including multiple motions for a protective order which the Court denied, and requested sanctions against Mr. Lubin on 9 occasions. In addition, at least 27 of the filings in this case by Plaintiff were directly attributable to Mr. Brodsky's sanctionable behavior.

The damage from Mr. Brodsky's conduct has been done. Plaintiff's attorney's fees have been increased (i.e. the time has already been spent trying to schedule depositions, filing motions to compel, responding to baseless arguments and accusations, and attending court). Disregard for the Court has been demonstrated. Mr. Brodsky's Response cannot undo this harm. The Seventh Circuit has been clear about the proper remedy in such situations: the attorney responsible must

pay for the harm and costs he caused. *In re TCI Ltd.*, 769 F.2d 441, 446 (7th Cir. 1985) ("When an attorney recklessly creates needless costs the other side is entitled to relief. . . . Lawyers who litigate carelessly now must take the consequences."); *see Kapco Mfg. Co. v. C & O Enterprises, Inc.*, 886 F.2d 1485, 1491 (7th Cir. 1989) ("The purpose of both Rule 11 and section 1927 is to deter frivolous litigation and abusive practices by attorneys, [citation], and to ensure that those who create unnecessary costs also bear them.").

Even in his response, Mr. Brodsky continues to cast aspersions. He accuses Mr. Lubin of "over litigating" the case and makes vague, unsubstantiated references to improper pleadings and condescending communications (the pleadings and communications are unidentified because they do not exist). He also inaccurately claims that Plaintiff did not comply with the safe harbor requirements of Rule 11 which is disproven by the letter attached to Plaintiff's sanctions motion. *See* Dkt. 166-1 at Ex. F. The truth of the matter is that any over litigating in this case is the direct result of Mr. Brodsky's conduct (e.g. requiring Plaintiff to file multiple motions to compel because Mr. Brodsky refused to resolve discovery disputes or requiring Plaintiff to file multiple motions to extend expert discovery because Mr. Brodsky would not cooperate in scheduling depositions).[1]

[1] As the Ninth Circuit noted, Plaintiff's counsel had no incentive to over litigate the case and had to spend time obtaining complete discovery and responding to Mr. Brodsky's frivolous arguments lest Plaintiff have lost the case when a key fact was not discovered or a baseless argument was successful:

> It must also be kept in mind that lawyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee. It would therefore be the highly atypical civil rights case where plaintiff's lawyer engages in churning. By and large, the court should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case; after all, he won, and might not have, had he been more of a slacker.

*Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008).

While Mr. Brodsky pays lip service to remorse, the substance of his response brief belies this. He devotes the bulk of his response to redirecting the spotlight from his own conduct and onto Mr. Lubin, claiming that Mr. Lubin acted inappropriately and caused "additional stress to Mr. Brodsky." Resp. at 8. This is not the response of one who has learned his lesson. It is the response of one desperate to avoid the consequences of his actions. The Court should not allow him to do so. *See, e.g.*, *Redwood v. Dobson*, 476 F.3d 462, 469 (7th Cir. 2007) ("Mutual enmity does not excuse the breakdown of decorum that occurred at Gerstein's deposition. Instead of declaring a pox on both houses, the district court should have used its authority to maintain standards of civility and professionalism. It is precisely when animosity runs high that playing by the rules is vital."). Mr. Brodsky disregarded the Court's warning against uncivil behavior, defamed Plaintiff's counsel in the public record, and caused Plaintiff to incur additional attorney's fees.

As Plaintiff has demonstrated, Mr. Brodsky's conduct in this case is typical of his conduct in litigation. Without sanctions, Mr. Brodsky is unlikely to be deterred from engaging in similar conduct in the future. Further, without sanctions, Mr. Brodsky will be foisting the cost of the additional attorney's fees he caused Plaintiff to incur onto his former clients who still face a fee petition in this case. Accordingly, the Court should sanction Mr. Brodsky for his conduct in this case.

DONALDSON TWYMAN

By: /s/ Peter Lubin
One of his attorneys

Peter S. Lubin
Andrew C. Murphy
DITOMMASO LUBIN AUSTERMUEHLE, P.C.
17 W 220 22nd Street – Suite 410
Oakbrook Terrace, IL 60181
(630) 333-0000

**CERTIFICATE OF SERVICE**

I, Peter S. Lubin, the undersigned attorney, hereby certify that on the July 6, 2017, I caused a true and correct copy of the foregoing **REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR SANCTIONS** to be served all counsel of record via the Court's CM/ECF System

/s/ Peter S. Lubin