

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**

WILMINGTON, DELAWARE 19801

John K. Welch
Judge

November 27, 2012

Michael I Silverman, Esquire
Silverman McDonald & Friedman
101 N. Bancroft Parkway, Suite 22
Wilmington, DE 19805
Attorney for the Defendants

Ms. Marie Denson
Mr. Michael Newman
560 S. Basswood Drive, Apt. G
Bloomington, IN 47403
Pro-Se Plaintiffs

Re: *Marie Denson and Michael Newman v. Sam Shaer d/b/a Supreme Auto Body*
C.A. No.: CPU4-12-001462

Date Submitted: November 9, 2012

Date Decided: November 27, 2012

MEMORANDUM ORDER
GRANTING ATTORNEY'S FEES AND COSTS

Dear Mr. Silverman, Ms Denson and Mr. Newman,

This is the Court's decision on Defendant's Motion for Sanctions Pursuant to Court of Common Pleas Rule 11 as well as Dismissal of the instant action ("the Motion").

A hearing was held in this Court the Motion on Friday, November 9, 2012 at 9:00 a.m. in the Court of Common Pleas, New Castle County, State of Delaware. The Court heard argument from Mr. Silverman and Ms. Denson and reserved decision.

I. Procedural Posture

Defendant has filed the above referenced Motion through counsel seeking sanctions against plaintiff Marie Denson pursuant to *CCP Civ.R. 11*. In support of that Motion, defendant Sam Shaer d/b/a Supreme Auto Body ("Shaer") points out that the instant claim arises out of a civil property damage dispute wherein plaintiff and co-plaintiff Michael Newman ("Newman")

claimed defendant provided faulty maintenance and body work on a motor vehicle which the Court learned was owned solely by Newman. Plaintiff filed the instant complaint originally in her own name with the Civil Clerk on June 19, 2012 (*See Defendant's Motion; Exhibit "A", Complaint*).

That original civil action was dismissed by the Court and this Judge issued a Summary Judgment Order wherein the Court recognized because plaintiff was not the record owner of the subject motor vehicle at the time of the alleged loss and had no standing to bring the first complaint. (*See ¶2, Exhibit "B", Court Order*). The Court in that January 13, 2012 Order dismissed the original action without prejudice with the plaintiff's right to re-file the action within ninety (90) days with the Civil Clerk with the name of the record owner of the motor vehicle, Michael Newman.

The plaintiff then re-filed the second civil action with Michael Newman listed as a co-plaintiff on June 19, 2012, (outside 90 days). (*See ¶3, Defendant's Motion*).

In a letter dated June 12, 2012 Plaintiff requested this Court to remove Neman from the instant lawsuit. On November 9, 2012 through formal motion and without objection by the defendant, co-plaintiffs Newman and Denson formally moved to Dismiss Newman as a co-party-plaintiff. The Court granted this Motion removing Newman as co-plaintiff without objection by Shaer.^{1,2}

II. The Law

Rule 11. Signing of Pleadings, Motions, and Other Papers: Representations to Court, Sanctions

(a) Signature. Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record or bear the electronic signature in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party or bear the electronic signature of the

¹ Mr. Silverman cautioned plaintiff Denson on the record the effect of her Motion to remove Newman because he had filed a Rule 11 Motion.

² That motion jointly filed by Denson and Newman was filed with the Civil Clerk on September 12, 2012 and noticed for November 9, 2012.

party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by statute or rule, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless it is corrected promptly after the omission of the signature is called to the attention of the attorney or party. If a pleading, motion or other paper is not signed it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(b) Representations to Court. By representing to the Court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying to the best of the person's knowledge, information, and belief formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument, for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support, or if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice, and a reasonable opportunity to respond, the Court determines that subdivision (b) has been violated, the Court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

[Emphasis supplied]

(1) How Initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the Court unless, within 21 days after the service of

the motion (or such other period as the Court may prescribe), the challenged paper, claim, defense, contention, allegation or denial is not withdrawn or appropriately corrected. If warranted, the Court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the Court may enter an order describing a specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of Sanction: Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of or include, directives of a nonmonetary nature, an order to pay a penalty into Court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the Court's initiative unless the Court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party, which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the Court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) Inapplicability to Discovery. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

[Emphasis supplied]

Defendant points out in paragraph 6 in his Motion that if plaintiff Newman was removed in the instant matter, which the Court has now subsequently granted following Denson's/Newman's joint Motion to remove Newman, it would preclude the present action from

proceeding under the doctrine of *res judicata*. Defendant Shaer argued further that the current complaint would therefore be frivolous and purely designed merely to annoy and harass the defendant. (*See* ¶6, ¶7, *Complaint*).

II. Discussion.

Defendant now moves for sanctions pursuant to *CCP Civ. R. 11(b)(2)*. That rule provides as follows:

CCP Civ. R. 11(b):

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument, for the extension, modification, or reversal of existing law or the establishment of new law.

Set forth in paragraph 8 of defendant's Motion, the defendant's counsel requested an appropriate sanction under *CCP Civ. R. 11(b)(2)* because his client incurred attorney's fees and costs for the additional time to defend the second complaint which the plaintiff has now removed the co-party plaintiff Michael Newman through their joint Motion.³ Defendant asks for dismissal of the present action as well as attorney's fees and filing fees in the amount of \$1,500.00.

IV. Order and Opinion

The Court has heard from both Ms. Denson and counsel on the defendant's Motion for sanctions and dismissal on November 9, 2012. In lieu of dismissing the original action, the Court notes it exercised its discretion and granted plaintiff leave to refile her second complaint with the proper party plaintiff Michael Newman, who was, in fact, the record owner of the subject motor vehicle. There is no doubt that Mr. Shaer has incurred time, counsel fees and filing costs in defending the second civil action following the amended complaint. Remarkably, after that grant of discretion, both Ms. Denson and Mr. Newman signed the pleadings filed with the Civil Clerk and formally moved to remove his name from the caption after Denson was granted leave to add Newman as a co-plaintiff. Hence, as Mr. Silverman noted, the Court is now

³ Defendant cites *Bruce E.M. v. Dorothea A.M.*, 455 A.2d 866 (Del.Supr. 1983).

into the same original procedural posture in the first complaint was dismissed because Denson was not the record owner of the motor vehicle and had no legal authority to bring the complaint.

In addition, there is no doubt in the Court's judgment that in reviewing the case law in *C.C.P. Civ. R. 11(b)(2)* that the Court has now granted notice and opportunity for Ms. Denson to respond to the Motion for Sanctions and/or Dismissal. The Court determines on this record that subdivision §§(b)(1) and (2) have been violated by Denson. Therefore, the Court shall impose an appropriate sanction upon Ms. Denson for seeking a frivolous argument for a reversal of an existing or establishment of ruling as well as bringing the second complaint to cause unnecessary delay or needless increase of costs of litigation. (*See, CCP Civ.R. 11(b)(1)*). The Court can only reach on this record the in-escapable conclusion that Ms. Denson has filed the second lawsuit to harass and annoy defendant and cause the defendant additional attorney's fees, time and costs.

The Court was careful in its previous ruling to allow Ms. Denson to refile an amended complaint with the proper party plaintiff in lieu of outright dismissal. Today, however, Ms Denson and Mr. Newman sought without objection from the defendant removal of Newman's name. Hence, the Court finds that second complaint was clearly frivolous with no good faith effort to resolve the instant legal dispute.

So the instant record is clear in the trial, this Court finds Ms. Denson violated *C.C.P. Civ.R. 11(b)(1) and(2)* by filing the second amended complaint against the defendant; then seeking to remove him as an indispensable party from the instant action. This action by Denson caused unnecessary delay in disposition of the instant civil action and needless incurred costs of litigation. *C.C.P. Civ.R. 11(b)(1) and (2)*. The amended complaint adding a co-plaintiff advanced claims which were not warranted because Denson filed a Motion today to remove Newman as a co-plaintiff invokes the doctrine of *res judicata* and dismissal of the entire case.

