

July 27, 2001

John Gregory Lambros
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Michael E. Gans, Clerk
United States Court of Appeals for the Eighth Circuit
Thomas F. Eagleton Court House
Room 24.329
111 S. 10th Street
St. Louis, Missouri 63102
U.S. INSURED MAIL NO. FF-414-830-701-03

RE: APPEAL NO. 01-2837, LAMBROS vs. FAULKNER, et al.

Dear Mr. Gans:

Attached for filing in the above-entitled action is one (1) original and three (3) copies of the following:

- a. APPELLANT LAMBROS REQUESTS THIS COURT TO SANCTION ATTORNEY DEBORAH KAY ELLIS AND ATTORNEY DORNA RAE JOHNSON FOR THE JULY 18, 2001, FILING PURSUANT TO RULE 47A, EIGHTH CIRCUIT RULES OF APPELLATE PROCEDURE. Dated: July 26, 2001.

Thanking you in advance for your continued assistance.

Sincerely,


John G. Lambros

CERTIFICATE OF SERVICE

I hereby state under the penalty of perjury that a true and correct copy of the above-entitled MOTION, dated July 26, 2001, was served on the following this 27th day of July, 2001, via U.S. Mail within an envelope, stamped, through the Mailroom at USP Leavenworth, to:

1. Attorney Dorna Rae Johnson and Attorney Deborah Ellis, 700 St. Paul Bldg., Six West Fifth St., St. Paul, Minnesota 55102
2. Internet release to the BOYCOTT BRAZIL web site and e-mail to human rights groups globally.


John Gregory Lambros, Pro Se

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

JOHN GREGORY LAMBROS,

Plaintiff - Appellant,

vs.

CHARLES W. FAULKNER, sued as Estate/
Will Business Insurance of Deceased
Attorney Charles W. Faulkner; SHEILA
REGAN FAULKNER; FAULKNER & FAULKNER,
Attorneys-at-Law; JOHN AND JANE DOE,
persons employed by Attorney C.W.
Faulkner, Sheila Regan Faulkner and
Faulkner and Faulkner in the represent-
ation of John Gregory Lambros,

Defendants - Appellees.

* Appeal File No. 01-2037

* On Appeal from U.S. District Court
for the District of Minnesota,
* Case No. CIV-98-1621-DSD/JM

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* AFFIDAVIT FROM

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APPELLANT LAMBROS REQUESTS THIS COURT TO SANCTION ATTORNEY
DEBORAH KAY ELLIS AND ATTORNEY DONNA RAE JOHNSON FOR THE
JULY 18, 2001, FILING PURSUANT TO RULE 47A, EIGHTH CIRCUIT
RULES OF APPELLATE PROCEDURE.

Plaintiff - Appellant JOHN GREGORY LAMBROS, Pro Se (hereinafter "MOVANT")
requests this Court to award sanctions to Movant and this Court under Title 28
U.S.C., Section 1927 and the Federal Rules of Civil Procedure, Rule 11, as to
Defendant - Appellees Attorney DEBORAH KAY ELLIS and Attorney DONNA RAE JOHNSON's,
July 18, 2001, Motion pursuant to Rule 47A, Eighth Circuit Rules of Appellate
Procedure, requesting waiver of brief and SUMMARY DISPOSITION.

The following information is being presented under the penalty of
perjury and is true and correct to the best of this Movant's knowledge:

FACTS:

1. This court docketed this appeal on May 3, 2001.
2. This Movant tendered his BRIEF OF APPELLANT on May 22, 2001,

(certificate of service) and this Court docketed same on May 29, 2001.

3. On July 18, 2001, Appellees PAULKNER, et al. filed a motion pursuant to RULE 47A, Eighth Circuit Rules of Appellate Procedure, requesting waiver of brief and summary disposition. See, REINITY A.

4. This Court's briefing schedule states that Appellee PAULKNER's et al. BRIEF is due on July 30, 2001.

5. Movant's reply brief is due on August 14, 2001.

DISCUSSION:

6. This court has a duty to examine its jurisdiction, and may do so on its own motion if necessary and obligated to dismiss an appeal if it is not within there jurisdiction, as per the Eighth Circuit Rules of Appellate Procedure, RULE 47A(a). See, IN RE HERBERT E. RUSSELL, 957 F.2d 534, 535 (8th Cir. 1992).

7. Court of Appeals will dispose of a case summarily only when merits of a claim are so clear as to justify expedited action. Before taking summary action, Court of Appeals must carefully evaluate the propriety of challenged dismissals. Appeals Courts are required to examine closely a PRO SE complaint, however inartfully pleaded, to determine whether any possibility exists that the plaintiff could prove a set of facts in support of his claim that would entitle him to relief. See, BAINES vs. KESNER, 404 U.S. 519, 520-21 (1972)(per curiam). Quoting, MARTIN-TRIGONA vs. SMITE, 712 F.2d 1421, 1424 (Dist. of Columbia, 1983).

8. This Court stated in LOWRY vs. McDONNELL DOUGLAS CORP., 211 F.3d 457, 459 (8th Cir. 2000) that its RULE 47A(b) is JURISDICTIONAL AND MUST BE FILED WITHIN FIFTEEN (15) DAYS AFTER THE FIRST APPEAL WAS DOCKETED:

"[T]his Court's Rule 47A(b) sets out the procedure for filing 's motion to dismiss a docketed appeal on the ground the appeal is not within the court's jurisdiction." LOWRY, at 459.

"[L]owry makes much of the fact that MDC did not file this initial motion to dismiss within fifteen (15) days after the first appeal was docketed, as provided in Eighth Circuit Rule 47A(b). See, LOWRY, Foot Note 2, at 459.

9. This Court has held, "[M]otions by appellees for SUMMARY DISPOSITION WILL NOT BE ALLOWED, as a matter of practice, to replace briefs of appellees." (emphasis added). See, FAYSOUND LTD. vs. WALTER FULLER AIRCRAFT SALES, INC., 952 F.2d 980, 981 Head Note 1 (8th Cir. 1991). The court further stated, "[W]e have before us appellee's MOTION FOR SUMMARY DISPOSITION. Neither the Federal Rules of Appellate Procedure nor the Local Rules of this Court expressly recognize such a motion. Eighth Cir.R. 47A(b), to which Faysound's Motion refers, has to do with motions to dismiss appeals on JURISDICTIONAL GROUNDS. There is no doubt of our jurisdiction over this appeal. The point of Faysound's motion is that the order from which the appeal is taken is so clearly correct that it should be summarily affirmed. Normally such motions by appellees are not entertained, because the time and effort required to decide them tend to approach the time and effort required to decide the appeal itself after full briefing. In other words, we do not believe that motions by appellees for summary disposition should be allowed, as a matter of practice, to replace briefs of appellees. Accordingly, the Motion for Summary Disposition is DENIED." (emphasis added) See, FAYSOUND LTD., at 952 F.2d 981.

STATEMENT OF LAW:

10. FEDERAL RULE OF CIVIL PROCEDURE 11: Rule 11 applies only to paper filings and enables a court to order that sanctions be paid to the U.S. Treasury. A lawyer may violate the objective criteria of Rule 11 in three (3) respects: (1) by failing to make a reasonable inquiry into the FACTS; (2) by failing to make a REASONABLE INQUIRY INTO THE LAW; (3) by failing to draw the reasonable CONCLUSION of a "COMPETENT" attorney. See, JACKSON vs. LAW FIRM OF O'HARA, RUBERG, OSBORNE AND TAYLOR, 875 F.2d 1224 (6th Cir. 1989). Alternatively stated, sanctions will lie where: (1) there was no reasonable inquiry into the basis of a pleading or document; (2) there is no chance of success under EXISTING PRECEDENT; and (3) there is no reasonable argument to extend, modify or reverse the controlling

law. See, KHULICH vs. HOWE, 848 F.Supp. 482, 494 (S.D.N.Y. 1994). The improper "purpose" provision, "to harass or cause unnecessary delay or needless increase in the cost of litigation," now in RULE 11(b)(1), provides a separate, independent basis for sanctions. See, U.S. vs. RAMIREZ, 162 F.R.D. 253 (D.Puerto Rico 1995). DUTY OF CANDOR, FALSE STATEMENTS in writing are, of course, subject to sanctions, See, IN RE KELLY, 808 F.2d 549 (7th Cir. 1986), as are misleading omissions of material fact. See, IN RE RONCO, INC., 838 F.2d 212 (7th Cir. 1988), Courts have found support for a duty of candor in the ABA's Model Rule of Professional Conduct, 3.9. "A court has a right to expect that counsel will state the controlling law fairly and fully; indeed, unless that is done the court cannot perform its tasks properly. A LAWYER MUST NOT MISSTATE THE LAW, fail to disclose adverse authority (not disclosed by his opponent), or omit facts critical to the rule of law espoused." See, 103 F.R.D. at 127. Liability can exist for a FRIVOLOUS MOTION TO DISMISS or STRIKE. See, TREADWELL vs. KENNEDY, 656 F.Supp. 442 (N.D.Ill. 1987).

11. TITLE 28 U.S.C., SECTION 1927: Section 1927 provides that any attorney who "so multiplies the proceedings in any case unreasonably and VEH-
MENTLY, may be required by the court to satisfy personally the excess costs, expenses and attorneys' fees reasonably incurred because of such conduct." Consequently, many courts have relied on Rule 11 or a COMBINATION of Rule 11 and Section 1927. See, IN RE CLITNER, 791 F.2d 1151 (5th Cir. 1986). A finding of an attorney's BAD FAITH is a predicate to liability under Section 1927. Subjective BAD FAITH, however, is NOT REQUIRED. Bad faith may include, "an intentional departure from proper conduct," an intent to harass, DILATORY TACTICS, or "a RECKLESS DISREGARD OF THE DUTY OWED BY COUNSEL TO THE COURT," see, NEW ALASKA DEV. CORP. vs. CUETSCHOW, 869 F.2d 1298 (9th Cir. 1989), such as ignoring a court order. Therefore, attorneys have been sanctioned under Section 1927 for asserting FRIVOLOUS, BAD FAITH DEFENSES, see, SMIGA vs. DEAN WITTER REYNOLDS, INC., 766 F.2d 698 (2nd Cir. 1985), cert. denied, 89 L.Ed.2d 607 (1986), or for abusing the court's

process. All Section 1927 Sanctions are made to opposing party.

CONCLUSION:

12. Appellees Attorney JOHNSON and Attorney ELLIS did not file there July 18, 2001, MOTION pursuant to Rule 47A, Eighth Circuit Rules of Appellate Procedure, requesting waiver of brief and SUMMARY DISPOSITION within fifteen (15) days from May 3, 2001, the day this appeal was docketed. Therefore, Appellees motion for SUMMARY DISPOSITION should be DENIED.

13. This Court has jurisdiction over this appeal.

14. Appellees Attorney JOHNSON and Attorney ELLIS should be both SANCTIONED due to there lack of reasonable inquiry into the law of this court which clearly states that there is no chance of success under existing precedent as to there motion for summary disposition pursuant to Eighth Cir.R. 47A(b), as this court has jurisdiction and there filing was not within the fifteen (15) day period from May 3, 2001. Also, this Court's existing precedent clearly states, "[M]otions by appellees for SUMMARY JUDGMENT WILL NOT BE ALLOWED, as a matter of practice, to REPLACE BRIEFS OF APPELLEES." See, FATPOUND LTD., 952 F.2d at 981, Head Note 1 (8th Cir. 1991).

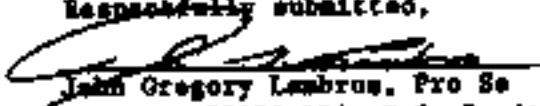
15. Appellees, as per the BRIEFING SCHEDULE of the Clerk, where to of filed there BRIEFS by July 30, 2001. This Movant believes appellees will not submit BRIEFS by July 30, 2001.

16. Movant believes SANCTIONS under Rule 11 and/or Section 1927, or a combination of both is correct.

17. I JOHN GREGORY LAMBROS declare under the penalty of perjury that the foregoing is true and correct pursuant to Title 28 U.S.C.A., Section 1746.

EXECUTED ON: July 26, 2001.

Respectfully submitted,


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July 14, 2007

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Chief of Court
Eighteenth Circuit Court of Appeals
111 South 10th Street
Suite 2A, J29
Saint Louis, MO 63102

Lawrence v. Paulsen et al.
Court File No. 01-2037

Dear Chief of Court:

Enclosed for filing in the above-referenced case, together with an affidavit of service upon respondents, are the original and three copies of:

APPELLATE'S WAIVER OF BRIEF

Yours truly,



Deborah Ellis

DNE:jb
encl.
cc: John Cargery Lawless

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

JOHN GIBBON'S LAW FIRM,

Appellant,

File No. 01-2037

v.

CHARLES W. FAULKENBERG, and as
Respondent
Assistant Charles W. Paulsen,
SHERILIA BROGAN PAULSEN,
PAULSEN & PAULSEN, and
JOHN & LAMB DOOR,
Respondents.

APPELLATE'S WAIVER OF BRIEF

Respondent, through counsel, Deborah Ellis, hereby certifies that she is a responsible party to Appellant's appeal pursuant to Rule 47A, Eighth Circuit Rules of Appellate Procedure. Respondent certifies that the filer's name is entered on the list of Appellant's interests.

Should this Court desire a response of legal argument on any of Appellant's interests, Respondent shall promptly comply.

Respectfully submitted,



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