

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: ARTHUR O. ARMSTRONG : MISCELLANEOUS
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 : NO:

M E M O R A N D U M

NEWCOMER, S.J.

July , 2001

Currently before the Court is pro se plaintiff, Arthur O. Armstrong, whose numerous recent filings fail to comply with prior court orders.

I. BACKGROUND

Pro se plaintiff Arthur O. Armstrong ("Armstrong") is a well known litigant in the Eastern District of Pennsylvania. Since 1994, he has commenced at least twenty-seven lawsuits in this district alone. Not only has Armstrong failed in each cause of action, but he has also been subject to numerous sanctions and injunctions. Armstrong's persistence in presenting this court with meritless actions and motions has become a vexatious abuse of the judicial process and has impeded the court's ability to fulfill its Article III functions. Armstrong has repeatedly failed to comply with court orders and injunctions set forth by Judge Herbert J. Hutton of the Eastern District of Pennsylvania and Judge William Osteen of the Middle District of North Carolina. Recently, Armstrong has inundated this Court with

numerous motions and pleadings that do not comply with Judge Osteen or Judge Hutton's orders. This court has had enough of Armstrong's behavior.

II. STATEMENT OF FACTS

Because Armstrong has filed so many lawsuits, the court will group his cases according to subject matter. The first set of lawsuits filed by Armstrong in the Eastern District of Pennsylvania involved asbestos related damages (hereinafter the "Asbestos Cases"). The first was Armstrong v. The Budd Company¹ where Judge Charles R. Weiner dismissed Armstrong's complaint with prejudice for failure to state a claim and ordered him to pay the defendant's costs and attorney's fees. Additionally, Judge Weiner prohibited Armstrong from filing further civil actions or motions relating to asbestos exposure against The Budd Company or its counsel, unless the action or motion is accompanied by a doctor's report. Nevertheless, Armstrong disregarded the court's order and filed a subsequent suit against The Budd Company.² Judge Joseph McGlynn dismissed the second suit and fined Armstrong \$500 for failure to comply with Judge Weiner's order.

Armstrong then commenced twenty-four lawsuits against

¹ Armstrong v. The Budd Co., No.95-07287 (E.D.Pa. filed Nov. 20, 1995).

² Armstrong v. The Budd Co., No.97-03887 (E.D.Pa. filed June 6, 1997).

the Philadelphia School District and the Philadelphia School Board (hereinafter the "School Board Cases").³ All of these suits related to his discharge from the Philadelphia School District, prompting Judge Hutton to characterize Armstrong's behavior as a "campaign of harassment." Armstrong v. School District of Philadelphia, No.99-0825, 1999 WL 773507 at *1 (E.D.Pa. Sept.29, 1999). Judge Hutton then enjoined Armstrong from filing federal lawsuits in any district and from filing papers regarding any case in the Eastern District of Pennsylvania without leave of the court (hereinafter "Hutton Order").⁴ Hutton Order at *3. The Hutton Order specified that the court would not grant leave unless Armstrong demonstrated, through a properly filed motion, that the proposed filing met certain specifications.⁵ Id. Additionally, Armstrong was to attach a copy of the Hutton Order to any petition for leave of the court.

³ These cases include: Armstrong v. Philadelphia Bd., No.94-3544 (E.D.Pa. filed June 9, 1994), Armstrong v.Philadelphia Fed'n of Teachers, No.96-4277 (E.D.Pa. filed June 10, 1996), Armstrong v. Sch. Dist. of Philadelphia, No.96-5480 (E.D.Pa. filed Aug. 7, 1996), Armstrong v.Sch. Dist. of Philadelphia, No. 96-5740 (E.D.Pa. filed Aug. 19, 1996), Armstrong v. Waiters, No.96-5925 (E.D. Pa. filed Aug. 28, 1996), Armstrong v. Sch. Dist. of Philadelphia, No.97-6130 (E.D.Pa. filed Sept.30, 1997), Armstrong v. Sch. Dist. of Philadelphia, No. 99-00825 (E.D.Pa. filed Feb. 16, 1999), Armstrong v. Sch. Dist. of Philadelphia, No. 99-03424 (E.D.Pa. filed July 6, 1999).

⁴ "The Court enjoins Armstrong, or any entity acting on his behalf, from filing any new action or proceeding in any federal court without first obtaining leave of this Court." Id. at *3.

⁵ The proposed filing: (1) must be able to survive a challenge under Federal Rule of Civil Procedure 12; (2) is not barred by principles of claim or issue preclusion; (3) is not repetitive or violative of a court order; and (4) is in compliance with Federal Rule of Civil Procedure 11. Id.

Id. Subsequently, the Third Circuit Court of Appeals also enjoined Armstrong from appealing decisions relating to his discharge against the Philadelphia School District, the Philadelphia Board of Education and the Philadelphia Federation of Teachers. Armstrong v. School District of Philadelphia, No.97-1094 (3d. Cir. Aug. 14, 1997).

The third group of cases Armstrong has filed challenge the IRS' seizure of his Philadelphia residence (hereinafter the "IRS Case").⁶ That case was filed here, and this Court dismissed Armstrong's amended complaint for lack of subject matter jurisdiction. Notwithstanding this court's determination, Armstrong filed two motions for summary judgment and one motion to reopen the action after the case had been decided. However, the court denied all of Armstrong's motions as moot. Even then, Armstrong filed a motion to reopen the case, two motions for summary judgment, and a motion for leave to file the amended complaint, all of which were denied.

Four days after the disposition of the IRS Case, Armstrong filed suit against the United States in this Court.⁷ However, the Court granted summary judgment in favor of the defendant. Six days after the case was closed, Armstrong filed

⁶ Armstrong v. Internal Revenue Serv., No.95-06642 (E.D.Pa. filed Oct. 18, 1995).

⁷ Armstrong v. United States, No.97-00393 (E.D.Pa. filed Jan. 17, 1997).

an amended complaint.

Then, in 1998, Mr. Armstrong filed a complaint against Firsttrust Bank (hereinafter "Firsttrust") for fraud.⁸ Once again, summary judgment was entered in favor of the defendant.

Following this court's decision, Armstrong filed an additional motion for summary judgment which the Court denied as moot.

Repeating his past behavior, Armstrong filed two motions for summary judgment and a motion for reconsideration of the court's order granting summary judgment. Armstrong appealed, but the Third Circuit affirmed this Court's decision.⁹

Disturbingly, Armstrong has not only been abusing this district. In 1998, Judge William Osteen of the Middle District of North Carolina, in Armstrong v. Koury Corporation, 16 F. Supp. 2d 616, 618 (M.D.N.C. 1998), issued an order and injunction in response to Armstrong's "predatory litigation in the face of sanctions and in disregard of injunctions"(hereinafter "Osteen Order"). The purpose of that order was to protect "the court...and any potential defendants from the harassment of

⁸ Armstrong v. Firsttrust Bank, No.98-00154 (E.D.Pa. filed Jan. 13, 1998).

⁹ The court notes that Armstrong has filed a second Notice of Appeal in this case, and that appeal is still pending. Generally, filing a notice of appeal "immediately confer[s] jurisdiction on a Court of Appeals and divest[s] a district court of its control over those aspects of the case involved in the appeal." Venen v. Sweet, 758 F.2d 120 (3d Cir. 1985). However, district courts retain jurisdiction to enforce and implement judgments and orders that "are the subject of pending appeals, as long as this enforcement, implementation, or treatment does not disturb the issues that are on appeal." Georgine v. Amchem Prod., Inc., No.CIV.A.93-0215, 1995 WL 561297 (E.D.Pa. Sept. 10, 1995) (citing Venen, 758 F.2d at 123). The issues the court considers today do not affect the issues on appeal.

frivolous and vexatious litigation initiated by Plaintiff." Id. at 622. Importantly, the court enjoined Armstrong from filing any new action or proceeding in any federal court without first obtaining leave of the court. Also, because Armstrong ignored previous injunctions, Judge Osteen ordered him to demonstrate that any proposed filing: (1) can survive a challenge under Rule 12 of the Federal Rules of Civil Procedure; (2) does not violate principles of issue or claim preclusion; (3) is not repetitive or violative of a court order; and (4) complies with Rule 11 of Federal Rules of Civil Procedure. Id. The appellate court upheld the injunction and thus, Armstrong must still seek leave of the court before initiating any federal lawsuit.

Currently, Armstrong has mailed to this court, but not filed, over thirteen motions pertaining to many of the aforementioned cases. With regard to the School District Cases, Armstrong has filed a motion alleging conspiracy between Judge Hutton and Third Circuit Judge Carol Mansmann and a motion for summary judgment.¹⁰ As to the IRS Case, Armstrong has sent the court seven motions, all of which are accompanied by motions for summary judgment.¹¹ Additionally, he has mailed one motion

¹⁰ Docket number not yet assigned.

¹¹ Motion for Permission to File a Supplementary Lawsuit for Wantonness (April 16, 2001); Motion for Summary Judgment for Gross and Wanton Negligence (April 16, 2001); Motion to Reopen the Action (April 16, 2001); Summary Judgment for Fourteenth Amendment Violation (April 16, 2001); Motion for Permission to file for Defamation (April 26, 2001); Motion for Summary Judgment for Libel (April 26, 2001); Motion for Summary Judgment for Constitutional Violation (May 14,

against Firsttrust for "constitutional violations," accompanied by a motion for summary judgment, and a motion to supplement the caption to include the City of Philadelphia. Furthermore, Armstrong has sent multiple motions and miscellaneous pleadings directly to the U.S. Attorney in the Armstrong v. United States case. In Armstrong v. United States, Armstrong has also sent a letter to this Court alleging conspiracy between the District Court and the IRS.¹² Finally, Armstrong has asked this court for permission to file a lawsuit against Comroe, Hing, & Associates¹³ for wantonness and grossness and has supplemented this request with a motion for summary judgment.

II. DISCUSSION

Armstrong's consistent failure to comply with court orders necessitates responsive action on the part of this Court. The Court has therefore chosen to take such action under Rule 11.

The purpose of Rule 11 of the Federal Rules of Civil Procedure is "to deter... frivolous lawsuits and to streamline the

2001).

¹² On July 2, 2001, this Court received Armstrong's "Petition for Mandamus", claiming that this Court has denied "plaintiff's entitlement by the adoption of the scorched earth approach in such instant actions... he [Judge Newcomer] must now act with appropriate disposition of plaintiff's cases." The Court construes Armstrong's nebulous language as requesting this court to take action on the numerous proposed filings. This Memorandum and Order meets that end.

¹³ Comroe, Hing & Associates is a Philadelphia law firm that Armstrong alleges represented Mel Stein Realty against Armstrong in a previous suit. Armstrong is attempting to sue Comroe, Hing & Associates for \$10,000,000.

administration of the federal courts." Martin v. Farmers First Bank, 151 F.R.D. 44, 47 (E.D.Pa. 1993). Section (b)(2) requires representations to the court to be warranted by existing law. Courts have interpreted this section to allow them to impose sanctions when pleadings are filed in contravention of court orders. See Morley v. Civa-Geigy Corp., 66 F.3d 21 (2d Cir. 1995), see also James Wm. Moore et al., Moore's Federal Practice §11.11[7][a] (3d ed. 2000)(explaining that section (b)(2) applies to the law of the case). Moreover, courts implement a standard of "objective reasonableness" when evaluating claims under Rule 11. Martin, 151 F.R.D. at 48. Therefore, a plaintiff must conduct a "reasonable inquiry" to ensure that this standard is met. Id. at 47. Although courts rarely use Rule 11, they may choose to impose sanctions in sufficiently extraordinary circumstances. See Id.

Pro se plaintiffs are held to less "stringent standards" than practicing attorneys. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, because federal courts must protect their Article III functions, pro se plaintiffs "are not entitled to any special handling or exceptions." Wexler v. Citibank, No. CIV.A. 95-40172, 1994 WL 580191 at *6 (E.D.Pa. Oct. 21, 1994). Further, pro se plaintiffs are not shielded from Rule 11 sanctions. See Brock v. Hunsicker, No.88-6488, 1988 WL 120742 at *3 (E.D.Pa. Nov. 9, 1988). Rule 11 (c)(2) states that the

court's discretion in sanctioning is limited by "what is sufficient to deter repetition of such conduct or comparable conduct from others similarly situated."

Armstrong, a pro se plaintiff and self described "semi-professional litigator," is subject to the requirements of Judge Hutton and Judge Osteen's orders, issued under the All Writs Act, section 1651(a), which enables district courts to limit access to federal courts of parties responsible for the filing of frivolous motions. Hutton Order at *2, Osteen Order at *620. Armstrong has disobeyed these orders by failing to demonstrate that his filings met each order's requirements. Indeed, he did not state that his proposed filings complied with the individual criteria set forth by the Hutton and Osteen orders. Instead, Armstrong merely attached a blanket statement of alleged compliance with Judge Osteen's order and entirely ignored Judge Hutton's order.

Armstrong's proposed filings are violative of the judges' orders and thus, cannot be warranted by existing law. Armstrong's delinquent behavior, coupled with his "intolerable abuse of [the] judicial process" justifies sanctions under Rule 11. Osteen Order at 621. However, as mandated by Rule 11, the Court will first order Armstrong to show cause why he should not be sanctioned.

Clarence C. Newcomer, S.J.

