

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

VINCENT LASORSA and
MARJORIE LASORSA
Plaintiffs,
v.
AMERIQUEST MORTGAGE CO. and
BLS FUNDING CORP.
Defendants.

: CIVIL ACTION
: NO. 06-944
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M E M O R A N D U M

EDUARDO C. ROBRENO, J.

December 29, 2006

Before the Court is a Rule to Show Cause as to why certain sanctions should not be entered against Plaintiffs or their counsel in this case (doc. no. 58).

I. BACKGROUND

On October 19, 2006, the Court entered a Rule to Show cause why this case should not be dismissed, or other sanctions imposed, because of Plaintiffs' counsel's violations of the Federal Rules of Civil Procedure, including but not limited to his failure to sign and serve on opposing counsel numerous papers presented to the Court, his failure to abide by numerous deadlines established by the Court's Pretrial Scheduling Order, and his communicating with the Court by way of letters indicating they were "dictated but not read".

A. Unsigned and "Ex Parte" Correspondence

One reason that the Court issued the instant rule to show cause is that, during the course of discovery in this litigation, Plaintiffs' counsel sent this Court a number of letters that, in Plaintiffs' counsel's own words, were of a "poor nature" as a result of his moving "too fast."

On August 29, 2006, Plaintiffs' counsel mailed a letter to the Court in which he, inter alia, requested "a continuance of all pending deadlines for thirty (30) days from the date this request would be granted." Plaintiffs' counsel did not send a copy of this letter to his opposing counsel.

On September 22, 2006, Plaintiffs' counsel reiterated his request for a 30-day extension in another letter faxed to the Court in which he referenced his earlier request for an extension. He did not sign the letter, which contained the notation "DICTATED BUT NOT READ."¹

On September 25, 2006, Plaintiffs' counsel faxed a letter to the Court stating that he objected to defendants' request for a conference. This letter too was unsigned and

¹ On September 25, 2006, Defendants jointly faxed a letter to the Court stating they were "extremely concerned about the numerous ex parte communications by Plaintiffs' counsel to the Court as well as multiple misrepresentations which we believe are contained in those communications." They cited as an example the September 22, 2006 letter that referenced an earlier request for an extension, noting that they were not aware of this earlier request. Defendants requested a conference to discuss these communications.

stated it was "Dictated but not read."

On October 2, 2006, Plaintiffs' counsel faxed a letter to the Court that purported to "to memorialize your chambers' last week's cell phone conversation with this office: Plaintiffs' request(s) for a continuance to respond has been granted, but will be memorialized by Order under separate cover." This letter also was unsigned and stated it was "DICTATED BUT NOT READ."

Finally, on October 11, 2006, Plaintiffs' counsel faxed a letter to the Court asking "may we assume that Plaintiffs have a like extension to respond to [defendants' recent additional motions] (which will also be memorialized presumably at the conclusion of our discovery conference)?" Although it did not contain the customary "dictated but not read" caveat, neither was it signed by counsel.

Federal Rule of Civil Procedure 11(a) mandates that "[e]very pleading, written motion, and other paper shall be signed by at least one attorney of record." Thus, a letter presented to the Court by mail or fax which requests action, whether or not filed with the Clerk of Court, is subject to the strictures of Rule 11. See Dunkin Donuts Inc. v. Guang Chyi Liu, 79 Fed. Appx. 543, 546 (3d Cir. 2003) (handwritten letter submitted by party did not comply with Rule 11 because "included neither his attorney's signature nor his address or telephone number"). Rule 11(a) provides that the appropriate sanction for

failing to sign a paper submitted to the Court (after the matter has been brought to the attention of the Court) is to strike the offending paper. Accordingly, plaintiffs' counsel's correspondence with the Court dated August 29, 2006, September 22, 2006, September 25, 2006, October 2, 2006, and October 11, 2006 will be stricken from the record. See *Elian v. Eastern Airlines, Inc.*, 1986 U.S. Dist. LEXIS 26185 at *3-*4 (E.D. Pa. Apr. 29, 1986) (Court refused to rule on a party's request for a 60 day discovery extension made in a letter from counsel that had been "DICTATED BUT NOT READ," because "(1) the court cannot act on informal unilateral requests, and (2) since [the] letter has been marked 'DICTATED BUT NOT READ,' the court is uncertain whether or not [the] request has been seriously submitted to the court for its consideration").²

An appropriate order will be entered.

² Although the Court finds that plaintiffs' counsel's conduct to be sanctionable under the Court's inherent power to protect the dignity of its proceedings, the Court will decline to impose sanctions on that basis. See *Chambers v. NASCO*, 501 U.S. 32, 50 (U.S. 1991) (a federal court may "resort to its inherent power to impose attorney's fees as a sanction"). The Court did not provide particularized notice to plaintiff's counsel of that basis for sanctions by invoking its inherent powers in its Rule to Show Cause. In re Prudential Ins. Co., 278 F.3d 175, 191 (3d Cir. 2002) ("Generally speaking, particularized notice will usually require notice of the precise sanctioning tool that the court intends to employ.") (internal citation omitted). Furthermore, BLS also did not invoke the Court's inherent powers to sanction plaintiff's counsel, instead requesting outright dismissal of the suit pursuant to Rule 16(f) and Rule 37. The Court cautions plaintiff's counsel, however, that such numerous missteps could constitute the basis for sanctions in the future.

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ORDER

AND NOW, this **29th** day of **December, 2006**, upon entry of a Rule to Show Cause as to why this case should not be dismissed, or other sanctions imposed as deemed appropriate by the Court, (doc. no. 58), and after consideration of plaintiffs' Response (doc. no. 59) and BLS Funding Corp.'s Response (doc. no. 64), it is hereby **ORDERED** that Plaintiffs' counsel, Matthew B. Weisberg, Esq.'s unsigned correspondence to this Court dated August 29, 2006, September 22, 2006, September 25, 2006, October 2, 2006, and October 11, 2006 is stricken and all requests therein are **DENIED**.

AND IT IS SO ORDERED.

EDUARDO C. ROBRENO, J.