

FILED

DEC 16 2016

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U.S. COURT OF APPEALS**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

R. PRASAD INDUSTRIES, a Guyanese
company,

Plaintiff-Appellee,

v.

FREDERIC M. DOUGLAS,

Defendant-Appellant,

v.

FRANKLIN THOMAS HOVORE; JANE
DOE HOVORE; POWERS & HOVORE
PLLC; HOVORE LAW PLLC,

Third-party-defendants-
Appellees.

No. 14-17088

D.C. No. 3:12-cv-08261-JAT

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
James A. Teilborg, District Judge, Presiding

Argued and Submitted November 15, 2016
San Francisco, California

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

Before: SCHROEDER, REINHARDT, and OWENS, Circuit Judges.

Frederic M. Douglas appeals the order of the district court imposing sanctions pursuant to 28 U.S.C. § 1927. The sanctions were imposed after Douglas filed a document entitled “First Amended Answer Counterclaims, Cross-Claims and Jury Demand” (“FAACC”), in contentious proceedings arising out of a fertilizer contract. Although sanctions had been sought by Plaintiff and its counsel, Hovore, the court imposed sanctions only for the filings aimed at attorney Hovore. The district court correctly observed that Hovore was not a party to the action. The claims Douglas attempted to assert in those filings were not authorized by the Federal Rules of Civil Procedure and included claims based on allegations of extortion founded on conduct that was lawful under the relevant Arizona statute.

Section 1927 authorizes the imposition of sanctions against an attorney who “multiplies the proceedings in any case unreasonably and vexatiously” The filings unreasonably multiplied proceedings for, as the district court observed, Douglas failed to respond to Plaintiff’s and Hovore’s original motions to dismiss the counterclaims and instead realigned the claims and added an additional claim. The district court found this a transparent attempt to preserve diversity jurisdiction and re-raise baseless claims, instead of responding to the pending motions. The

district court's finding that Douglas acted recklessly is fully supported by the record.

Douglas contends that, as a matter of law, the FAACC was an "initial pleading" to which § 1927 does not apply. *See Moore v. Keegan Mgmt. Co.*, 78 F.3d 431, 435 (9th Cir. 1996). Douglas's sanctioned filings did not initiate this litigation. It was already underway. Sanctions were not imposed upon Douglas's original pleadings, but on the claims as asserted in the FAACC. These unreasonably prolonged and complicated the litigation. We cannot conclude the district court abused its discretion by imposing sanctions. *See MGIC Indem. Corp. v. Moore*, 952 F.2d 1120, 1122 (9th Cir. 1991).

Douglas also challenges the amount of the award. It was determined by use of the lodestar method after careful review of the record. We have recognized that lodestar is the appropriate method for calculating attorney's fees. *See Jordan v. Multnomah County*, 815 F.2d 1258, 1262 (9th Cir. 1987). There was no abuse of discretion in the district court's refusal to reduce the award, because Douglas's mere assertion of financial hardship provided no basis on which the court could tailor a reduction.

Whatever improprieties there may have been in the documentation provided in support of Hovore's reply, they were not material, as the district court did not rely on those exhibits.

AFFIRMED.

FILED**Douglas v Hovore 14-17088**

DEC 16 2016

REINHARDT, Circuit Judge, dissenting:MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

This litigation began when Hovore, on behalf of Prasad Industries, filed thirteen civil claims -- including RICO -- in what Hovore's counsel on appeal described at oral argument as a "simple contract case." Hovore followed up with a demand letter threatening criminal action if a large sum of money was not immediately transferred. Douglas filed the "First Amended Answer, Counterclaims, Cross-Claims and Jury Demand" in response. I do not believe that Douglas's action was sufficiently reckless to justify sanctions under 28 U.S.C. § 1927. Contrary to the District Court's conclusion, a "cursory reading" of the Federal Rules of Civil Procedure does not show that the filing was improper. Moreover, the filing did not require Prasad "to obtain independent representation during the pendency of the improperly pleaded claims against Hovore," as the District Court incorrectly stated. I would, therefore, reverse the award of sanctions against Douglas.

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings**Judgment**

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)**Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)****(1) A. Purpose (Panel Rehearing):**

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - ▶ A material point of fact or law was overlooked in the decision;
 - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
 - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; St. Paul, MN 55164-0526 (Attn: Jean Green, Senior Publications Coordinator);
 - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

United States Court of Appeals for the Ninth Circuit**BILL OF COSTS**

This form is available as a fillable version at:

<http://cdn.ca9.uscourts.gov/datastore/uploads/forms/Form%2010%20-%20Bill%20of%20Costs.pdf>.

Note: If you wish to file a bill of costs, it MUST be submitted on this form and filed, with the clerk, with proof of service, within 14 days of the date of entry of judgment, and in accordance with 9th Circuit Rule 39-1. A late bill of costs must be accompanied by a motion showing good cause. Please refer to FRAP 39, 28 U.S.C. § 1920, and 9th Circuit Rule 39-1 when preparing your bill of costs.

v. 9th Cir. No.

The Clerk is requested to tax the following costs against:

Cost Taxable under FRAP 39, 28 U.S.C. § 1920, 9th Cir. R. 39-1	REQUESTED <i>(Each Column Must Be Completed)</i>				ALLOWED <i>(To Be Completed by the Clerk)</i>			
	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST
Excerpt of Record	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Opening Brief	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Answering Brief	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Reply Brief	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
Other**	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	\$ <input type="text"/>
TOTAL:				\$ <input type="text"/>	TOTAL: \$ <input type="text"/>			

* *Costs per page:* May not exceed .10 or actual cost, whichever is less. 9th Circuit Rule 39-1.

** *Other:* Any other requests must be accompanied by a statement explaining why the item(s) should be taxed pursuant to 9th Circuit Rule 39-1. Additional items without such supporting statements will not be considered.

Attorneys' fees **cannot** be requested on this form.

Continue to next page

Form 10. Bill of Costs - Continued

I, , swear under penalty of perjury that the services for which costs are taxed were actually and necessarily performed, and that the requested costs were actually expended as listed.

Signature

("s/" plus attorney's name if submitted electronically)

Date

Name of Counsel:

Attorney for:

(To Be Completed by the Clerk)

Date

Costs are taxed in the amount of \$

Clerk of Court

By:

, Deputy Clerk