

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION

ELIAS MAKERE, FSA, MAAA)	<u>Case No (LT)</u>
Plaintiff)	3:20-cv-00905-MMH-LLL
)	
v.)	
)	
ALLSTATE INSURANCE COMPANY,)	
Defendant)	

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF
‘PLAINTIFF’S MOTION FOR SANCTIONS’**

Plaintiff, ELIAS MAKERE, on this 9th day of January 2024, hereby files this memorandum of law in support of *‘Plaintiff’s Motion for Sanctions’* (hereinafter “That Motion”) {#59}. Pursuant to Local Rule 3.01(a) USFLMD, a motion may be filed together with any memorandum of law.

In short, Plaintiff hereby asks this Court to sanction Defendant for Defendant’s latest act of deceit (Rule 11 Fed. R. Civ. P.; Rule 37(b)(2)A) Fed. R. Civ. P.; Local Rule 2.01(e) USFLMD; RRTFB 3-4.3). An act that exhibited Defendant’s: (a) bad faith; and (b) commitment to defrauding this Court.

The parameters of the matter can be summarized as follows:

Brief History

1. On June 30, 2017, Plaintiff filed an employment discrimination charge with the FCHR (“First Charge”). Pursuant to §760.11(1) FS, he alleged that Defendant had violated his civil rights on the bases of race ***and*** sex.
2. On September 8, 2017, Defendant responded to the First Charge by denying ***both*** allegations. Importantly, the former employer explicitly acknowledged that Plaintiff’s First Charge contained “*allegations of discrimination based upon race and sex discrimination*”.
3. On December 15, 2017 the FCHR concluded its investigation. Notably affirming that race ***and*** sex were the bases of Plaintiff’s First Charge.
4. On January 19, 2018, Plaintiff filed his Petition for Relief (§760.11(6)-(7) FS; §120.569(2)(a) FS). Thus, the First Charge coursed through the State of Florida’s administrative circuit; where Defendant amplified its retaliation against Plaintiff (eg, lethal attack, smear campaigns, etc.) – among other things.
5. So, on April 10, 2019, Plaintiff filed his second discrimination charge against Defendant (“Second Charge”). Emailing it to the FCHR; who blessed it with a same-day timestamp (2:25 PM on 4/10/19). Despite more state-sponsored treachery (eg, phantom notices, refusal/reluctance to relinquish jurisdiction), Plaintiff was able to enter the court system.
6. On August 12, 2020, Plaintiff initiated this lawsuit.

7. On May 21, 2021, Defendant filed a document in this court; one which contradicted its/the-state's original [notarized] affirmation/confirmation (§2-3 *supra*). Defendant's document was titled "*Defendant's Response in Opposition...and Supporting Memorandum of Law*" ("That Response") {#53}.
 - a. That Response said that Plaintiff's First Charge was on the basis of race ***only*** (ie, Defendant thereby [falsely] claimed that Plaintiff's First Charge did not include a sex discrimination basis).
8. On May 27, 2021, Plaintiff moved this Court to take judicial notice of the facts underlying Defendant's unlawful change-of-tune. The paper was titled "*Plaintiff's Motion for Judicial Notice of Defendant's Official Position Statement...*" {#54}. Soon thereafter, Plaintiff followed up with That Motion.
9. Importantly, this Court has yet to rule on That Motion.

Recent Transgressions

10. On October 31, 2023, Defendant filed a motion for summary judgment ("That Request") {#99}.
 - a. Therein, the former employer claimed that Plaintiff's filing date was April 26, 2019.
 - i. A false claim that Defendant based its arguments on.
11. Fourteen days later – on November 14, 2023 – Plaintiff responded in opposition {#101}.

a. Thereby pointing out the fatal flaw in That Request.

i. Plaintiff's response took dozens of hours to complete (assembling evidence; researching; writing; proofreading; etc.).

12. On November 28, 2023, Defendant replied {#103}. Therein, it acknowledged that April 10, 2019 was – indeed – the date that Plaintiff filed his Second Charge. Defendant even attached the document (which featured the April 10, 2019 timestamp); referencing it as follows:

“...as evidenced by Ex. 1 attached hereto, the April 10, 2019, Complaint reveals the [Second Charge]...”

– Defendant | *Reply to ‘That Request’* | Page 4 | {103}

13. In summary, Defendant:

a. claimed that April 26, 2019 was the filing date of Plaintiff's Second Charge; and

b. acknowledged that April 10, 2019 was the filing date of Plaintiff's Second Charge.

i. corroborating the April 10th date by attaching Plaintiff's officially timestamped document.

Analysis

14. Defendant made those material contradictions, crucially, in its request for summary judgment (ie, *‘That Request’*). A request, importantly, that can only be proffered on the absence of contrary fact:

“As this court and other appellate courts have repeatedly held, the burden of proving the absence of a genuine issue of material fact is upon the moving party.”

- Holl v. Talcott, 191 So.2d 40 (Fla. 1966)

“Rather, as the Court confirms, a party who moves for summary judgment on the ground that the nonmoving party has no evidence must affirmatively show the absence of evidence in the record.”

- Celotex v. Catrett, 477 U.S. 317 (1986)

15. In fact, Defendant even acknowledged this requirement [for an absence of rebutting evidence]:

“...a court must grant summary judgment if the movant shows that there is no genuine dispute as to any material fact...”

- Defendant | *‘That Request’* | Page 10 | {99}

16. In short, Defendant presented a material contradiction in a document that [Defendant even acknowledged] could not have any contradictions.

17. Thus, Defendant has – once again – tried to capitalize on a self-contradicted argument/motion (ie, *That Request*). One that has continued to prejudice Plaintiff’s pursuit of justice.

- a. In addition to having to spend significant time debunking Defendant's nullified arguments, Plaintiff is losing the opportunity to fully litigate his case. For example:
 - i. Plaintiff has suffered a 2.5-year discovery stay;
 - ii. Plaintiff's interlocutory appeal was deemed premature; and
 - iii. Plaintiff has been unable to expound on additional topics, because this Court's local rules (ie, 3.01(a)(b)) limit the size of his motions/responses.

Legal Application

18. That Request was frivolous. It was frivolous because it contradicted itself in a material way; thereby making it meritless. The 11th Circuit deems meritless, self-contradicting claims to be frivolous:

"A claim is frivolous if it is without arguable merit either in law or fact."

- *Simmons v. Edmondson*, 225 Fed. App'x 787 (11th Cir. 2007)

19. That Request was also dilatory.
 - a. Two months have passed since Defendant filed it; and the parties still await a ruling.
 - b. Moreover, 3.5 years have passed since Plaintiff filed this lawsuit; and he still awaits his full & fair opportunity to litigate this matter.

i. Plaintiff has, of course, been mired in discovery stays and Defendant's past acts of extrinsic fraud (please see That Motion).

20. According to the 11th Circuit, the solution for Defendant's ongoing transgressions is a Court-ordered sanction:

"The goal of Rule 11 sanctions is to 'reduce frivolous claims, defenses, or motions, and to deter costly meritless maneuver'"

- Massengale v. Ray, 267 F. 3d 1298, (11th Cir. 2001)

"Rule 11 sanctions are designed to discourage dilatory or abusive tactics and help to streamline the litigation process by lessening frivolous claims or defenses."

- Donaldson v. Clark, 819 F.2d 1551 (11th Cir. 1987)

21. According to the appellate courts of Florida, sanctions are appropriate for repeated transgressions:

"It is well-settled law "that a party who has been guilty of fraud or misconduct in the prosecution or defense of a civil proceeding should not be permitted to continue to employ the very institution it has subverted to achieve her ends..."

The record reveals that plaintiff's misrepresentations and omissions about her accident and medical history in interrogatories and in deposition went to the heart of her claim and subverted the integrity of the action."

- Metro Dade-County v. Martinsen, 736 So.2d 794 (3DCA 1999)

22. In the instant case, Defendant has made repeated "*misrepresentations and omissions*" that have gone "*to the heart of*" its argued defenses. Namely, Defendant has:

- a. lied about [the fact that it was] being sued for sex discrimination; and
- b. lied about the [correct] April 10, 2019 filing date.

Requested Relief

23. As such, Plaintiff seeks to be relieved from Defendant's argument for collateral estoppel (and/or res judicata). An argument which Defendant has propped up with its:

- a. lies (dishonesty is sanctionable according to Jones v. International, 49 F.3d 692 (11th Cir. 1995));
- b. extrinsic frauds (fraud is sanctionable according to Martin v. Automobili, 307 F.3d 1332 (11th Cir. 2002));
- c. omissions (omissions are sanctionable according to Metro Dade-County v. Martinsen, 736 So.2d 794 (3DCA 1999)); and
- d. bad faith (bad faith transgressions are sanctionable according to In Re Mroz, 65 F.3d 1567 (11th Cir. 1995)).

24. In concert with That Motion, Plaintiff hereby reiterates his request for this Court to prohibit Defendant from arguing res judicata/collateral estoppel (authorized by Rule 37(b)(2)(A) Fed. R. Civ. P.). Defendant's own submitted documentation has proven the argument(s) to be based on a series of dogged lies. Evidencing the former employer's dogmatic indifference to obvious fact:

“sanctions are warranted when the [transgressor] exhibits a deliberate indifference to obvious facts”

- *Baker v. Alderman*, 158 F.3d 516 (11th Cir. 1998)

CONCLUSION

WHEREFORE, Plaintiff respectfully asks this Court to sanction Defendant for its repeated frauds, lies, and prejudicial deceit.

Dated this 9th day of January 2024.

Respectfully submitted,

/s/ Elias Makere

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CERTIFICATE OF COMPLIANCE

I certify that the size and style of type used in this document is Century Schoolbook 14-point font (contents); thus complying with the font requirements of Local Rule 1.08 (USFLMD).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of January 2024, I electronically filed the foregoing with the Clerk of Courts by using its online filing page.

/s/ Elias Makere

Endnotes:

1/

Electronic Copy: (text-searchable)

TextBookDiscrimination.com/Allstate/MemoSanctions01

[TextBookDiscrimination.com/Files/USFLMD/20000905 M 20240109 192030.pdf](http://TextBookDiscrimination.com/Files/USFLMD/20000905_M_20240109_192030.pdf)

[How-To Guide: How to Write a Motion for Sanctions](#)

Link to Complaint ([HTML](#), [PDF](#), [Video](#))

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