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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

EASTSIDE LANDSCAPING INC.
Plaintiff

Case No: CV-04-520687

Judge: RONALD SUSTER

TERRY SHANE METZBAUM ETAL
Defendant

JOURNAL ENTRY

PLAINTIFF'S MOTION TO DECLARE DEFENDANT A VEXATIOUS LITIGATOR (FILED 6/09/2004) IS GRANTED. O.S.J.
THE CLERK IS ORDERED TO SEND A CERTIFIED COPY OF THIS ORDER TO THE OHIO SUPREME COURT FOR PUBLICATION.

Ronald Suster 7.12.04

Judge Signature Date

RECEIVED FOR FILING

JUL 13 2004

GERALD E. KUERST, CLERK--
BY *J. Porter* DEP.

07/12/2004

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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

EASTSIDE LANDSCAPING, INC.)	CASE NO. 520687
)	
)	
Plaintiff,)	JUDGE RONALD SUSTER
)	
-vs-)	<u>ORDER</u>
)	
)	
TERRY SHANE METZENBAUM)	
)	
Defendant.)	

Motion of Plaintiff Eastside Landscaping, Inc. to have Terry Shane Metzenbaum declared a vexatious litigator pursuant to Ohio Revised Code Section 2323.52 was heard on the 30th day of June 2004 at 11:00 a.m. Upon due consideration of the statutory standard and the facts of this case, the Court finds Plaintiff's motion well taken and that it should be granted.

This case was commenced in small claims court on May 21, 2003 as an action against Defendant Metzenbaum for collection on a landscaping/snow removal account. Defendant filed his answer pro se, with a counterclaim for \$1,307.47 in actual damages and one million dollars in punitive damages against Plaintiff; and filed cross-claims of one dollar in actual damages plus five million dollars in punitive damages against the municipal court judge, and \$1,321.05 in actual damages plus two million dollars in punitive damages against the attorney who notarized Plaintiff's complaint. The case was ultimately transferred to Common Pleas Court of Cuyahoga County, where Plaintiff brings its motion.

On June 9, 2004, Plaintiff filed a motion to declare Defendant a vexatious litigator under O.R.C. 2323.52. Supporting this motion, Plaintiff contends that Defendant's counterclaim in the instant action has no factual or legal merit, is nonsensical, and serves merely to harass and delay proceedings. Plaintiff is also the defendant in a case currently

pending on the docket of Judge Eileen Gallagher, in which Metzenbaum seeks exorbitant amounts in punitive damages on a breach of contract claim. Plaintiff argues this case also lacks factual and legal basis. Plaintiff contends that neither case/counterclaim has been filed in good faith, but rather for purpose of harassment.

Plaintiff continues, in its arguments, to note the activity of Defendant in the legal system, most particularly in the Common Pleas Court of Cuyahoga County, over the past several years. Since 1997, Metzenbaum has initiated 11 lawsuits, and has counterclaimed in a number of others. In several instances, Metzenbaum has alleged the impropriety of opposing counsel and/or the acting judge. Not one of these cases has been found to be of any legal merit. Most of the cases filed ultimately have been dismissed due to the failure to set forth a legitimate claim or for failure to prosecute.

Plaintiff maintains that Metzenbaum has a habit of using litigation as a means of amusement, arguing that filing a lawsuit has become a weapon to intimidate attorneys, opposing parties, and judges. Such conduct wreaks havoc on the judicial system and causes both emotional and financial distress for those involved.

Defendant's primary argument has been that this Court does not have the authority to rule on Plaintiff's motion. In Defendant's brief in opposition to Plaintiff's motion, Defendant argues that this Court is bound by the rulings of Judge Gallagher on a similar motion filed in the case before her. Defendant argues that any attempt to declare a party a vexatious litigator under the statute must be brought as a separately filed legal action. During oral arguments before this Court, Defendant Metzenbaum provided the Court with a litany of cases in which the statute was being invoked as a separately filed cause of action. Defendant does not, however, present this Court with any precedent prohibiting a court from ruling on a motion such as this. In fact, many cases in which a party has been found to be a vexatious litigator have been on motion, either on summary judgment, or through separate motions filed by other parties.

In 1997, the Ohio legislature created a legal cause of action to have a person declared a vexatious litigator. "The purpose of the vexatious litigator statute is clear. It seeks to prevent abuse of the system by those persons who persistently and habitually file lawsuits without reasonable grounds and/or otherwise engage in frivolous conduct in the trial courts of this state. Such conduct clogs the court dockets, results in increased costs,

and oftentimes is a waste of judicial resources - resources that are supported by the taxpayers of this state. The unreasonable burden placed upon courts by such baseless litigation prevents the speedy consideration of proper litigation." *Cent. Ohio Transit Auth. v. Timson* (1998), 132 Ohio App.3d at 50. The statute does not, however, contain any language that would prohibit a judge from ruling on a motion brought in an existing lawsuit, so long as the statutory guidelines have been met.

Defendant satisfies the criteria of the statute, engaging in conduct that serves merely to harass and / or injure another party to a civil action unwarranted under existing law, and thereby abuse the judicial process. Accordingly, in view of this conduct, and for the reasons set forth in Plaintiff's motion and oral arguments before this Court, Terry Shane Metzenbaum is hereby declared a vexatious litigator pursuant to R.C. 2323.52.

Consistent with this Court granting Plaintiff's Motion to Declare Defendant a Vexatious Litigator pursuant to Ohio Revised Code Section 2323.52, this Court orders as follows:

1. That Terry Shane Metzenbaum is found to be a vexatious litigator, in accordance with Ohio Revised Code Section 2323.52.
2. Terry Shane Metzenbaum is prohibited by the Court to do any of the following without first obtaining leave of court to proceed:
 - (a.) Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court;
 - (b.) Continuing any legal proceedings that Terry Shane Metzenbaum has instituted in the court of claims or in a court of common pleas, municipal court, or county court prior to the entry of this order;
 - (c.) Making any application, other than an application for leave to proceed, in any legal proceedings instituted by Terry Shane Metzenbaum in the court of claims or in a court of common pleas, municipal court, or county court.
3. This order shall remain in force for an indefinite period of time. See R.C. § 2323.52(E).
4. The Clerk of the Cuyahoga County Common Pleas Court shall send a certified copy of this order to the Ohio Supreme Court for publication. See

R.C. § 2323.52(H). In addition, any clerk of the court of claims, court of common pleas, municipal court, or county court is directed to refuse any filing by Terry Shane Metzenbaum, if Terry Shane Metzenbaum does not comply with the directives of Section 2 of this order.

5. Any proceeding instituted or continued, or any application made by Terry Shane Metzenbaum without leave of the Cuyahoga County Common Pleas Court to proceed shall be dismissed.

IT IS SO ORDERED.



JUDGE RONALD SUSTER

DATE: July 12th, 2004

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JUL 13 2004

GERALD E. FUERST, CLERK
BY J. Porter DEP.

THE STATE OF OHIO Cuyahoga County	} SS. I, GERALD E. FUERST, CLERK OF THE COURT OF COMMON PLEAS WITHIN AND FOR SAID COUNTY.
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL <u>Order</u>	
<u>7 of 3151 14 168-172</u>	
NOW ON FILE IN MY OFFICE.	
WITNESS MY HAND AND SEAL OF SAID COURT THIS <u>23rd</u>	
DAY OF <u>July</u> A.D. 20 <u>04</u>	
GERALD E. FUERST, Clerk	
By <u>J. Porter</u>	Deputy

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