

Case Nos. 12CV723 & 13CA26

On July 5, 2012, BNY Mellon filed a complaint in foreclosure with this Court against William Casey, the Wolfes, and other lienholders (Case No. 12CV723). On February 7, 2013, the Court issued a final judgment entry, finding that the subject Note and Mortgage on the property were in default for failure to make payments, and that BNY Mellon was entitled to foreclose on the property.

On March 6, 2013, the Wolfes appealed the Court's ruling (Case No. 13CA26). On October 21, 2013, the Court of Appeals again affirmed this Court's decision. (The Supreme Court declined to accept jurisdiction of any further appeal.)

Case No. 13CV933

On November 26, 2013, the Wolfes filed a Complaint against BNY Mellon, asking the Court for a "Hearing on Fraudulent Documents" (Case No. 13CV933). On March 10, 2014, the Wolfes voluntarily dismissed this action.

Case Nos. 14CV231 & 2:14-CV-366

On March 25, 2014, the Wolfes filed a Complaint against BNY Mellon, William Casey, and MERS (Case No. 14CV231). The case was subsequently removed to federal court.

On March 16, 2015, the United States District Court for the Southern District of Ohio dismissed all of the Wolfes' claims, finding their claims were barred by *res judicata* and failed as a matter of law (Case No. 2:14-CV-366). The Wolfes did not appeal this decision.

Case No. 14-54523

In July 2014, the Wolfes filed for Chapter 13 Bankruptcy in the United States Bankruptcy Court Southern District of Ohio (Case No. 14-54523). On April 10, 2016, the Wolfes and BNY Mellon entered into a Settlement Agreement in conjunction with the bankruptcy case. As part of the agreement, BNY Mellon was to pay the Wolfes \$40,000 in exchange for the Wolfes vacating the property in "broom clean" condition by July 11, 2016 and relinquishing all past and present claims, counterclaims and actions against BNY Mellon (including specifically agreeing to take no further action to inhibit or delay foreclosure proceedings). Following the settlement agreement, the Wolfes voluntarily dismissed their bankruptcy action.

The Wolfes did not vacate the Rockmill Road premises by July 11, 2016, and in fact, still resided there until a couple of weeks ago. BNY Mellon deemed this a material

breach of the agreement and did not pay the Wolfes the remaining \$35,000 due under the contract.

Case No. 16CV416

On July 18, 2016, the Wolfes filed the present action against BNY Mellon and MERS. The Complaint in this matter is identical to the Complaint filed in Case No. 14CV231, although the Wolfes crossed out the name of Defendant William Casey from the case caption. Upon motion of the Defendant, the Court dismissed the Wolfes' claims for fraud and slander of title on February 21, 2017. However, the Court denied Defendant's motion for default judgment on its counterclaims. Defendant subsequently dismissed its counterclaims for breach of contract and ejectment and moved for summary judgment on its vexatious litigator claim, which is now before the Court.

STANDARD OF REVIEW

The parties bring their motions pursuant to Rule 56 of the Ohio Rules of Civil Procedure. Rule 56 states, in pertinent part:

Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

The party moving for summary judgment has the initial burden of demonstrating the absence of any genuine issues of material fact, and must "specifically delineate the basis for which summary judgment is sought in order to allow the opposing party a meaningful opportunity to respond." *Mitseff v. Wheeler*, 38 Ohio St. 3d 112, 116 (1988). In so doing, the moving party cannot rest on bare conclusory assertions that the non-movant lacks evidence or cannot prove its case. "Rather, the moving party must be able to specifically point to some *evidence* of the type listed in Civ. R. 56(C)[.]" *Dresher v. Burt*, 75 Ohio St. 3d 280, 293 (1996) (emphasis in original).

If the moving party fails to meet its burden, summary judgment must be denied. See Civ. R. 56(C). If, however, the moving party satisfies this initial evidentiary hurdle, the burden then shifts to the non-movant to set forth specific facts showing that genuine issues of material fact remain for trial. *Id.* at 294. Importantly, in considering the parties' competing arguments and evidence, the Court "may not resolve ambiguities in evidence, and must construe all reasonable inferences arising from undisputed facts in

filed four identical lawsuits against a previous employer; deemed vexatious litigator); *Lasson v. Coleman*, 2d Dist. No. 21983, 2008-Ohio-4140, ¶ 36 (“[T]he consistent repetition of arguments and legal theories that have been rejected by the trial court numerous times can constitute vexatious litigation.”); *Helfrich v. Madison*, 5th Dist. No. 11 CA 26, 2012-Ohio-551 (litigator who habitually filed “unnecessary, inappropriate, or supernumerary pleadings and motions” deemed vexatious litigator); *Farley v. Farley*, 10th Dist. No. 02AP-1046, 2003-Ohio-3185 (the filing of several pleadings containing repetitive criticism of prior court decisions or actions that were “settled and far beyond appeal” constituted vexatious conduct).

Although the term “vexatious” has a tendency to implicate ill-will or malice in a colloquial sense, the Court must emphasize that these connotations have no bearing on the statutory definition of “vexatious conduct” or “vexatious litigator.” Otherwise stated, it is not necessary for vexatious litigators to *intend* their conduct to be harassing or *know* that their claims are baseless; “rather, it is sufficient that [their] conduct serves the purpose, or has the effect, of harassing [the opposing party] by obligating [it] to respond to a legal action for which there is no objective, reasonable grounds.” *Borger v. McErlane*, 1st Dist. No. C-010262, 2001 WL 1591338, at *5.

Finally, the Court acknowledges that declaring one to be a vexatious litigator is “an extraordinary remedy” that should apply only when a litigant “persistently and habitually uses the legal process solely to harass another party or delay an ultimate resolution in the legal proceeding.” *Lasson v. Coleman*, 2d Dist. No. 21983 2008-Ohio-4140, ¶ 33; *see also Helfrich v. Madison*, 2012-Ohio-551 at ¶ 60 (referring to the vexatious litigator determination as “an extreme measure”). Nonetheless, the statute is a necessary and appropriate means to protect the court system against vexatious conduct that “undermines the people’s faith in the legal system, threatens the integrity of the judiciary, and casts a shadow upon the administration of justice” by “depleting judicial resources and unnecessarily encroaching upon the judicial machinery needed by others for the vindication of legitimate rights.” *Mayer v. Bristow*, 91 Ohio St. 3d 3, 13, 740 N.E.2d 656 (2000).

Defendant urges the Court to deem the Wolfes vexatious litigators in light of their conduct in this case as well as the previously litigated cases before this Court. Defendant argues that the Wolfes continually attempt to re-litigate issues (specifically their rightful ownership of the Rockmill Road property) that have already been decided

not only by this Court, but by a federal district court and the Court of Appeals. Defendant also argues that none of the Wolfes' pleadings, motions, requests, or letters in this case have had any basis in law. Finally, Defendant surmises that unless the Wolfes are deemed vexatious litigators, this matter will never rest.

In response, the Wolfes argue that it is the Defendant who is the vexatious litigator because it has filed lawsuits against the Wolfes "against a legal deed." (See Wolfes' MSJ at 2). The Wolfes repeatedly state that they have a legally recorded deed to the Rockmill Road property, that the Defendant breached the parties' settlement agreement, that the Defendant's attorneys have "committed crimes" using the court system, that the Court's previous decisions were wrong, and that, because of all of the above, the Court should return the deed to the Rockmill Road property to them. (See *generally* Wolfes' MSJ).

After reviewing the procedural history of this litigation, but focusing predominantly on the record in this case, the Court finds Defendant's motion well-taken and that the Wolfes' conduct in this case qualifies as vexatious.

First, the Complaint in this case is identical to the Complaint the Wolfes filed in Case No. 14CV231, which was ultimately dismissed by the federal district court on *res judicata* grounds. The Wolfes were therefore put on notice that these claims had no basis in law. The Wolfes also did not file an appeal of the district court's decision, but instead attempted to re-litigate matters in this Court.

Second, the Wolfes have repeatedly attempted to raise issues that are not before the Court throughout this case. Specifically, the Wolfes continue to demand the Court to (1) declare them the rightful owners of the Rockmill Road property and (2) allow them to retain possession of their home. The Court has issued several opinions and orders explaining that the Wolfes' title and possession arguments have already been resolved and have no bearing on the claims presented in this case.¹ The Court has avoided confusing legalese and been purposefully direct and clear in its orders to ensure the Wolfes, who are self-represented litigants, understood these decisions. Nonetheless,

¹ As just one example, since this case was filed less than one year ago, the Wolfes have filed seven motions asking the Court to stay the sheriff's sale and corresponding set out orders on the Rockmill Road property. The Court denied each motion with an order explaining that the foreclosure proceedings complained of by the Wolfes related to separate actions not currently before the Court. Despite the Court's several rulings, the Wolfes continued to file requests for stays and argue about their alleged rightful possession of the Rockmill Road property.

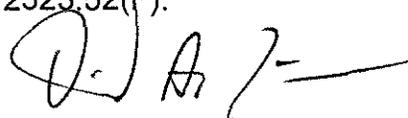
Based on these rulings, it is further **ORDERED** that Helen and Richard Wolfe are prohibited from doing all of the following without first obtaining leave of this Court to proceed:

- Institute any legal proceedings in the Fairfield County Court of Common Pleas or Fairfield County Municipal Court;
- Continue any legal proceedings that the Wolfes had instituted in the Fairfield County Court of Common Pleas or Fairfield County Municipal Court; and
- File any document, other than an application for leave to proceed under O.R.C. § 2323.52(F), in any legal proceeding instituted by Richard or Helen Wolfe in the Fairfield County Court of Common Pleas or Fairfield County Municipal Court.

Therefore, to proceed with any civil action in this Court or the Fairfield County Municipal Court, the Wolfes must first file an Application for Leave pursuant to O.R.C. § 2323.52(F). The Court will then review the Application and either grant or deny it by written order. The Wolfes may not file any other documents with the Clerk of Courts unless leave has been previously granted by the Court.

This Order shall remain in force indefinitely. The Clerk of this Court shall send a certified copy of this Order to the Supreme Court of Ohio pursuant to O.R.C. § 2323.52(H). As set forth above, the Clerk of Courts is further **ORDERED** to reject and not accept for filing any documents from Helen or Richard Wolfe, unless the filing is an application for leave to file pursuant to O.R.C. § 2323.52(F).

It is so **ORDERED**.



DAVID A. TRIMMER, JUDGE

Copies to:

Richard & Helen Wolfe
955 Rockmill Rd. NW
Lancaster, OH 43130

James Sandy
25550 Chagrin Blvd., Ste. 406
Cleveland, OH 44122

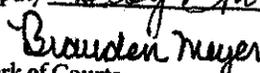
Branden Meyer, Clerk of Court

Ohio Supreme Court, Office of the Clerk,
65 South Front Street, 8th Floor
Columbus, Ohio 43215-3431

Pursuant to Civ.R. 58(B), the Clerk is hereby directed to serve upon all parties not in default for failure to appear, notice of this Judgment and its date of entry upon the journal. This is a final appealable order.

THIS IS A TRUE and CERTIFIED COPY OF ORIGINAL ON FILE COMMON PLEAS COURT FAIRFIELD COUNTY, OHIO

JUN 15 2017

Deputy 

Clerk of Courts