

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

PEOPLE OF THE VIRGIN ISLANDS,

Plaintiff,

SX-09-CR-709

v.

RAYMOND SCOTT,

Defendant.

MEMORANDUM OPINION

THIS MATTER came before the Court on Defense Counsel Ernest Morris, Jr., Esq.'s (hereinafter, "Attorney Morris") Motion for Sanctions, filed on May 20, 2010. On May 26, 2010, Assistant Attorney General Zuleyma Chapman, Esq. (hereinafter, "Attorney Chapman") filed an Objection to Attorney Morris's Motion for Sanctions. On May 26, 2010, Attorney Morris filed a Reply to Attorney Chapman's Objection.

FACTS

On April 26, 2010, Defendant filed a Motion to Dismiss for lack of prosecution because as of the date of the filing, it has been more than four months after Defendant's arrest and People still have not submitted any discovery disclosing the results of the laboratory testing. On May 11, 2010, People filed an Opposition to Defendant's Motion to Dismiss, which contained languages and phrases that Attorney Morris found to be offensive. Subsequently, Attorney Morris filed a Motion for Sanctions, alleging that "[r]ather than attempt to give a valid reason for the People's failure to test the alleged controlled substance, Attorney Chapman chose instead to baselessly launch an *ad hominem* attack against defense counsel, alleging defense counsel attempted to defraud the Court." (Attorney Morris' Motion for Sanctions, at 1.) More specifically, Attorney Morris objects to Attorney Chapman's conclusion in her Opposition to Defendant's Motion to Dismiss:

“Defense Counsel is irresponsible in the premature filing of its Motion to Dismiss and is seeking to perpetuate a sham on the Court by filing the Motion which is without merit in law or fact. The Motion is nonsensical and a waste of both the Court’s time for entertaining the Motion and the People’s time for having to respond to a frivolous and irresponsible assertion by the Defense.”

DISCUSSION

Attorney Morris argues that Attorney Chapman “unabashedly insult[ed] counsel’s character, intelligence, and integrity,” and urges the Court to “not tolerate this type of irresponsible, unprofessional, and offensive behavior on the part of its officers, particularly those charged with representing the People of the Virgin Islands.”¹ Attorney Morris cites *Griffith v. Hess Oil Virgin Islands Corp.*, where the court stated that:

“[S]uch language is not only unenlightening, it is unnecessary and undignified. This [] exemplifies what happens when professionals allow their personal animosities to carry over into and infect the performance of their profession.” 5 F.Supp.2d 336, 340.

Accordingly, Attorney Morris requests the Court, pursuant to its inherent authority, sanction Attorney Chapman in the amount of ten thousand dollars (\$10,000) for her unprofessional conduct.

Attorney Chapman responds that *Griffith* does not apply here because the counsels in *Griffith* relied on federal law, Title 28 U.S.C.A. § 1927, in federal court. Furthermore, Title 28 U.S.C.A. § 1927² deals with “Counsel’s Liability for Excessive Costs” and Attorney Chapman contends that no excessive costs can be claimed in this matter since People did not file any

¹ Attorney Morris’ Motion for Sanctions, at 2.

² Title 28 U.S.C.A. § 1927 provides that:

Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.

additional or challenging motions to Defendant's filings; People only filed an Opposition to Defendant's Motion to Dismiss. Consequently, Attorney Chapman requests the Court to deny Attorney Morris' Motion for Sanctions.

The Court does not find *Griffith* applicable in this matter. In *Griffith*, what the court found sanctionable was the defense counsel's bad faith in attempting to prevent the court from considering an earlier decision on parallel facts. 5 F.Supp.2d at 339. Assuming *arguendo* that *Griffith* is applicable, the *Griffith* Court did not sanction the plaintiffs' counsel for his distasteful choice of words but reprimanded him subsequent to giving its reason for sanctioning the defense counsel. Here, the Court does not find any bad faith attempt by Attorney Chapman to prevent the Court from considering any relevant court decisions.

In *Saldana v. Kmart Corporation*, the Third Circuit stated that:

"...a court should normally look first to rule-based or statute based powers and reserve inherent powers for those times when rule- or statute-based powers are not 'up to the task.' As we put it in *Martin*, '[g]enerally, a court's inherent power should be reserved for those cases in which the conduct of a party or an attorney is egregious and no other basis for sanctions exists,'..." *Internal citations omitted.* 260 F.3d 228, 238 (2001).

In this matter, Attorney Morris requests the Court to sanction Attorney Chapman pursuant to the Court's inherent authority to sanction attorneys for unprofessional conduct.³ The Court finds Attorney Chapman's choice of words to be unprofessional and unwarranted, however, they are not so egregious to warrant invocation of the Court's inherent powers to sanction Attorney Chapman. The language used by Attorney Chapman that Attorney Morris objects to are: "Defense Counsel is irresponsible in the premature filing of its Motion to Dismiss." "[Attorney Morris] is seeking to perpetuate a sham on the Court by filing the Motion which is without merit in law or fact, "[the Motion to Dismiss] is nonsensical and a waste of both

³ Attorney Morris' Motion for Sanctions, at 2.

the Court's time for entertaining the Motion and the People's time for having to respond to a frivolous and irresponsible assertion by the Defense." While the Court finds Attorney Chapman's language reprimandable, it does not rise to the level necessary to trigger sanctions, at least not under the Court's inherent powers. Since the Court does not find Attorney Chapman's conduct in this matter to be sanctionable, at this juncture, the Court will not address the issue whether Attorney Morris' request for sanctions in the amount of ten thousand dollars (\$10,000) is excessive.

Counsels are reminded that litigations are adversarial in nature. It is common for opposing counsels zealously advocating their clients to engage in arguments using animated languages. However, counsels should keep in mind their responsibilities as officers of the Court to uphold the principles of civility and decorum in the legal process. Such standards are set forth in the Preamble to the Federal Bar Association Professional Ethics Committee's STANDARDS FOR CIVILITY IN PROFESSIONAL CONDUCT,

Civility in professional conduct is the responsibility of every lawyer practicing in the federal system. While lawyers have an obligation to represent clients zealously, we must also be mindful of our obligations to the administration of justice. Incivility to opposing counsel, adverse parties, judges inclusive of Article I, III and the administrative judiciary, courts and agency personnel, and other participants in the legal process demeans the legal profession, undermines the administration of justice, and diminishes respect for both the legal process and the results of our system of justice.

Our judicial system is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner and designed to be perceived as producing fair and just results. We must be careful to avoid actions or statements which undermine the system or the public's confidence in it.

The organized bar and the judiciary, in partnership with each other, have a responsibility to promote civility in the practice of law and the administration of justice. Uncivil conduct of lawyers or judges impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently. Such conduct may delay

or deny justice and diminish the respect for law, which is a cornerstone of our society and our profession.

While Attorney Chapman's conduct in this instance does not rise to the level necessary to trigger sanctions, it is wholly unacceptable. The Court will not tolerate any type of misconduct either through pleadings or before the bench. This warning is intended to make it clear to all counsels before the Court that any future violations will lead to sanctions. Such sanctions will be sufficiently severe to assure that counsels are deterred from further unprofessional conduct.

CONCLUSION

This serves as a warning for all counsels before this Court. This kind of behavior by counsels will not be tolerated and appropriate sanctions will be given for such unprofessional conduct. Accordingly, the Court will deny Attorney Morris' Motion for Sanctions.

DONE and so ORDERED this 27th day of October, 2010.

ATTEST:

Venetia Harvey-Velazquez
Clerk of the Court

By: [Signature]
Deputy Clerk

Dated: 11/8/10

[Signature]
HAROLD W. L. WILLOCKS
Judge of the Superior Court

CERTIFIED TO BE A TRUE COPY
This 15th day of NOV 20 10
VENETIA H. VELAZQUEZ, ESQ.
CLERK OF THE COURT
By [Signature] Court Clerk #