

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RYAN J. OSWALD,

Plaintiff,

v.

NCO FINANCIAL SYSTEMS, INC.,

Defendant.

MEMORANDUM

11-cv-217-bbc

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Defendant NCO Financial Systems, Inc. has filed a notice of removal of a state small claims case filed in the Circuit Court for Dane County, Wisconsin. In the underlying state case, plaintiff Ryan J. Oswald alleges that defendant has violated the Fair Debt Collection Practices Act by making numerous harassing phone calls.

In a July 19, 2010 order, I sanctioned plaintiff under Support Systems International, Inc. v. Mack, 45 F.3d 185 (7th Cir. 1995), for failing to prosecute the numerous recent cases he has filed in this court. Oswald v. Viking Collection, no. 10-cv-31-bbc (W.D. Wis. July 19, 2010). In that order, I directed “the clerk of court to return unfiled plaintiff’s filings in pending and future cases until he has paid the \$1400 he owes for his cases before this court.”

In In re Skupniewitz, 73 F.3d 702 (7th Cir. 1996), the Court of Appeals for the

Seventh Circuit provided some guidelines to the courts for applying a Mack sanction to a plaintiff who has had his state case involuntarily removed into a federal court:

The circuit clerk's construction of the order to permit [plaintiff] to file an answer when he was cast as a respondent to a petition, but not to allow him to file his own petition for a writ of mandamus, motion for change of venue, or motion for production of documents, is consistent with [Mack] and lawful.

...

* * *

... Consistent with our interpretations of [Mack] the district court should permit [plaintiff] to file a response to any motion made by the defendants which could result in a final judgment. The panel decision in [Mack] clearly prohibits [plaintiff] from initiating complaints, petitions, or motions until he complies with the court's sanction order.

In re Skupniewitz, 73 F.3d at 705-06. Therefore, plaintiff should be aware that, going forward in this case, he will not be able to file his own motions unless he pays the \$1400 he owes under the Mack order. However, he will be able to respond to any motion filed by defendant that could result in a final judgment.

Finally, given that the hallmark of plaintiff's behavior in this court has been his failure to prosecute his cases in any fashion, there is no reason to waste judicial resources on this action unless plaintiff shows that he is willing to participate in this case. A preliminary pretrial conference in this case has been set for May 13, 2011 at 10 a.m. Plaintiff is responsible for calling the court at (608) 264-5153 at 9:55 a.m. on May 13, 2011, in order to take part in this conference. Should plaintiff fail to call the court at this time or fail to let the court know at least one day *in advance* that he is unable to participate in that

conference, I will dismiss the case with prejudice for his failure to prosecute it.

Entered this 1st day of April, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge