IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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CHARLES E. SPARRGROVE, III
and JANE M. SPARRGROVE,

Plaintiff,

v.

CLIFFORD WACHTER, TRUDY WACHTER,
CLARK KEPPLINGER, ANDREA BAKER,
DEAN HOULBERG and
BANK OF MONTICELLO,

Defendants.

OPINION AND
ORDER

04-C-21-C

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This case began as a bankruptcy filing under Title 11 in the United States Bankruptcy Court in the Western District of Wisconsin, case number 03-18173. Plaintiffs filed this adversary complaint, which was automatically referred to the bankruptcy court. In an opinion and order dated February 20, 2004, I withdrew this reference. Now before the court is a motion filed by defendants Clifford Wachter, Trudy Wachter, Clark Kepplinger, Andrea Baker, Dean Houlberg and Bank of Monticello to dismiss pursuant to Fed. R. Civ. P. 37(b)(2) for failure to comply with discovery rules. In addition, defendants seek an award of costs and fees and an injunction barring plaintiffs from commencing any litigation against

any defendant without first obtaining leave of the court.

Defendants' motion to dismiss will be granted. This court instructed plaintiffs to submit to a deposition without evasion or improper invocation of a privilege. Plaintiffs have disregarded these instructions willfully and in bad faith by insisting that their answers to deposition questions are opinions only, that they have a right not to answer any questions and that opposing counsel must pay them $10,000 for each answer they give. In addition, plaintiffs will be jointly and severally liable for the reasonable costs and fees that defendants incurred at the failed deposition of June 4, 2004 and in bringing this motion. Defendants will not be granted an injunction barring plaintiffs from filing suit against them in the future without first obtaining leave of the court. Such an injunction, limited to enjoining plaintiffs from filing in *this* court, may be warranted in the future if plaintiffs persist in their vexatious conduct. However, plaintiffs have initiated only one suit in this district thus far.

PROCEDURAL HISTORY

In an opinion and order dated February 20, 2004, I withdrew automatic reference of plaintiff's adversary complaint to the United States Bankruptcy Court in the Western District of Wisconsin, case number 03-18173. On March 11, 2004, Magistrate Judge Stephen Crocker held a telephonic preliminary pre-trial conference with the parties during which he explained that the Federal Rules of Civil Procedure and the Federal Rules of

Evidence would govern their case and that the parties were responsible for learning the applicable rules.

On March 26, 2004, defendants attempted to depose plaintiffs. In response to virtually every substantive question, plaintiffs stated, "I am in want of counsel and won't be able to answer that question" and then, "same answer." See Jane Sparrgrove Dep., dkt. #28, at 9-95, 97-101, 103-113, 115-119; Charles E. Sparrgrove III Dep., dkt. #29, at 4-32. Plaintiffs submitted an "affidavit of purgation" in which they sought some form of relief for not being subpoenaed, not being given notice of who would be attending the deposition and being compelled to answer questions despite being "in want of counsel." In an order dated April 12, 2004, I informed plaintiffs that their objections were without legal merit. Defendants then filed a motion to compel discovery and for sanctions, which Magistrate Judge Crocker granted on April 29, 2004. He ordered each plaintiff to appear to be deposed by any or all defendants if requested to do so and to answer fully all questions without evasion or invocation of any privilege. In addition, Magistrate Judge Crocker held each plaintiff jointly and severally liable for the reasonable expenses that defendants had incurred at the March 26, 2004 depositions and barred them from seeking or obtaining discovery until they had been deposed successfully and paid all expenses ordered by this court.

Plaintiffs objected to Judge Crocker's ruling in an "Ancillary Motion to Stay Proceedings upon Proof of Courts Finding of Fact and Conclusion of Law." I construed the

motion as one arising under 28 U.S.C. § 636(b)(1)(A) and denied it, again informing plaintiffs that they are subject to deposition without being subpoenaed and are obligated to answer questions put to them despite being "in want of counsel." In the order, I observed that the magistrate judge acted well within his discretion and that plaintiffs risked being held in contempt of court or subject to other sanctions, including dismissal of their suit if they failed to comply with his order. Plaintiffs filed an interlocutory appeal of this order to the Court of Appeals for the Seventh Circuit, which denied the motion as moot and dismissed it for lack of jurisdiction on June 3, 2004.

On June 4, 2004, defendants attempted to depose plaintiffs a second time pursuant to the order of April 29. Before defendants' lawyers commenced questioning plaintiff Jane Sparrgrove, she insisted on reading aloud the following statement:

> Anything [that we] say today is my/our opinion, I will not state anything more than my opinion.
>
> I am not an attorney and I don't know the rules. Discovery rules are only for corporations and I am not a corporation. I have a right to not answer these questions.
>
> I believe the clients you are representing have committed fraud, If you continue with this deposition, you have also agreed to summary judgment. If you agree to go forward with this deposition and discovery, you have agreed to pay [us], the Sparrgroves, $10,000 per question asked to us that you want our opinion to.
>
> If you deem it appropriate to have us sanctioned, then please go ahead because on the last day, you are going to pay the Sparrgroves.

When plaintiff Jane Sparrgrove finished reading this statement, defendants' lawyers, Andrea Baker and Chad Koplien, called the magistrate judge, who recorded the conversation as did defendants' lawyers.

Baker read the text of plaintiff's statement aloud. Magistrate Judge Crocker asked plaintiff Jane Sparrgrove whether she recalled his previous order, directing her to submit to a deposition and answer all questions fully. She responded by stating that plaintiffs were not objecting to the deposition but were objecting to the magistrate judge's involvement in the case. He then advised plaintiffs as follows:

> But I'd like to make this as clear as I possibly can. You must answer the questions without reservation of right, without calling them opinions, without saying that the rules of discovery do not apply to you. All of this is just specious. That means its foolish, it's wrong.
> I am ordering you to submit to the deposition. If you do not, there will be consequences, I expect there will be orders or motions to dismiss and I predict that the judge will grant them. Do you understand that?
>
> . . .
>
> You do not have the right to say that the magistrate judge, namely me, does not participate in this case. Pursuant to Title 28 of the United States Code, Section 636(a) and (b) and pursuant to the local rules of this court, magistrate judges have the full power and have been delegated by the district judges, including Judge Crabb, to perform all functions which they have the statutory authority and power to perform. That includes resolving discovery disputes in civil cases. That would include this particular dispute. That would include previous disputes in

> this case.
>
> . . .
>
> Your statement that you wish to read is a nullity. You are subject to the rules of discovery under the Federal Rules of Civil Procedure. You cannot condition your answers. You cannot bind opposing counsel to your incorrect view of what they are agreeing to do and engaging in racketeering. You are simply incorrect.
>
> . . .
>
> You have previously been ordered by this court to submit to the deposition. What I am trying to make absolutely clear to you today so that you understand it on the record is that if you persist in this conduct this morning, you are in violation of the court order. You risk a possible civil citation for contempt if the defendants request it. You also face the potential dismissal of your case if the defendants move to dismiss it [for] violation of the Court's previous order.

Jane Sparrgrove Dep., dkt. #37, at 16-19. The magistrate judge repeated much of this in similar fashion numerous times. He asked plaintiffs whether they understood what he was telling them. For the most part, plaintiffs either denied understanding or responded that they did not recognize the magistrate judge's authority. Magistrate Judge Crocker told plaintiffs that by insisting that they did not understand his instructions, they were acting in an obstructionist and intentionally obtuse manner.

At one point, Koplien indicated that plaintiffs had a history of bringing lawsuits against opposing counsel and asked that plaintiffs state under oath that they would not bring

a lawsuit against him or Baker for continuing with the deposition. Plaintiff Charles Sparrgrove refused to agree, at which point the magistrate judge stated that the deposition was over because there was no point in going forward and that it would be a waste of time.

OPINION

A. Rule 37 Sanctions

Fed. R. Civ. P. 37(b)(2) provides that if a party fails to obey an order to provide or permit discovery, "the court in which the action is pending may make such orders in regard to the failure as are just," and may include dismissal of the action. District courts have discretion in deciding when to dismiss an action for failure to comply with discovery orders. Dotson v. Bravo, 321 F.3d 663, 666-67 (7th Cir. 2003). Dismissal is appropriate when a plaintiff fails to comply with a discovery order and that failure results from willfulness, bad faith, or fault. In re Golant, 239 F.3d 931, 936 (7th Cir. 2001); Long v. Steepro, 213 F.3d 983, 987 (7th Cir.2000); Ladien v. Astrachan, 128 F.3d 1051, 1056 n. 5 (7th Cir.1997). "Bad faith" is characterized by intentional or reckless disregard of an obligation to comply with a court order. Marrocco v. General Motors Corp., 966 F.2d 220, 224 (7th Cir. 1992). "Fault" refers to the reasonableness of the conduct that lead to the violation and not to the non-complying party's purpose. Id.

In this instance, I conclude that by insisting that their deposition answers constitute

only opinions, denying that they had an obligation to answer defendants' questions or conditioning their answers on opposing counsel agreeing to pay them $10,000 per question, plaintiffs failed to obey this court's order of April 29, 2004 willfully and in bad faith. Magistrate Judge Crocker made it clear that by insisting on such conditions, plaintiffs were in violation of the April 29 order directing them to submit to a deposition and answer all questions fully. To the extent that plaintiffs believe that the magistrate judge had no authority over their dispute or that his order was not binding on them, they are incorrect, a point that has been made clear to them on numerous occasions. Magistrate Judge Crocker is fully empowered to resolve discovery disputes in civil cases. 28 U.S.C. § 636(a) and (b). Not only did the magistrate judge inform plaintiffs of this fact, but my order of May 18 should have disabused plaintiffs of any contrary notion. In that order, I stated that "[t]he magistrate judge was well within his discretion to enter the order permitting defendants to depose plaintiffs a second time and directing plaintiffs to answer all questions put to them . . . ." See Op. & Order, dkt. #34, at 3.

Both the magistrate judge and I instructed plaintiffs that they were obligated to provide full answers to all questions put to them without evasion. Plaintiffs refused to satisfy this obligation and instead insisted that they had a right not to answer questions and provide only opinions. The pretrial conference report provided to plaintiffs makes clear that litigants have an obligation to learn the Federal Rules of Civil Procedure and the Federal

Rules of Evidence that apply to their case. Plaintiffs' belief that these rules do not apply to them either because they are "in want of counsel" or not a corporation is mistaken. Plaintiffs were informed of this both on and before June 4, 2004.

In addition, both the magistrate judge and I informed plaintiffs that they could face dismissal if they refused to comply with the order that they submit to a deposition and answer all questions fully. Cf. Hindmon v. National-Ben Franklin Life Ins. Corp., 677 F.2d 617, 620 (7th Cir. 1982) (upholding sanctions where district court warned party that suit may be subject to dismissal for failure to comply with discovery order). Plaintiffs protest that they did not refuse to submit to the deposition on either occasion. This argument is entirely without merit. Plaintiffs were not willing to answer questions but instead were willing only to negotiate to answer questions on terms both unreasonable and absurd.

As the magistrate judge explained during the telephonic conference, plaintiffs are entitled to their opinions about the law but are not entitled to have their opinions govern the case. Plaintiffs invoked the power of the federal court system by filling this complaint and may not evade the rules governing all litigants by pretending not to understand them, particularly when those rules have been explained in detail several times. They have already been sanctioned to no avail for their obstructionist behavior in answering deposition testimony to no avail. Because I conclude that plaintiffs' refusal to comply with this court's order of April 29, 2004 was both unreasonable and in bad faith, I will grant defendants'

motion to dismiss. Rule 37 provides that in addition to any other sanction the court deems appropriate, it "shall require the party failing to obey the order . . . to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust." Because I find neither substantial justification nor other circumstances in this case, plaintiffs will be held jointly and severally liable to defendants for the costs and fees they incurred as a result of the June 4 deposition and in filling this motion.

Plaintiffs object to defendants Trudy Wachter's and Clifford Wachter's involvement in this motion on the ground that they were not present at the June deposition. However, a dismissal pursuant to Rule 37 punishes a party that has failed to comply with court orders; it is not designed as a bonus to a party that has been inconvenienced by the non-compliance. National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639, 643 (1976) (per curium) (dismissal both punishes non-complying party and deters others from similar conduct). However, because it does not appear that either defendant Trudy Wachter or defendant Clifford Wachter incurred any expenses at the June 4 deposition or in filing this motion, see Dfts. Clifford Wachter and Trudy Wachter Ltr., dkt. #58 (requesting to join reply brief to motion to dismiss), it is unlikely that they will have any costs or fees.

B. Injunction Barring Future Claims Against Opposing Counsel

In addition to dismissal and costs, defendants ask the court to invoke its inherent authority to bar plaintiffs from filing any future lawsuits against any defendant without first obtaining leave of the court. In support of their argument, defendants chronicle a litany of abuses of the court system by plaintiffs and cite In re Chapman, 328 F.3d 903 (7th Cir. 2003) and Green v. Warden, U.S. Penitentiary, 699 F.2d 364 (7th Cir. 1983). In Chapman, an executive committee of the United States District Court for the Northern District of Illinois entered an injunction that required pre-screening of all materials submitted by a particular "prolific filer" in that court, except those pertaining to habeas corpus or criminal matters. The Court of Appeals for the Seventh Circuit upheld this injunction, reasoning that it preserved *meaningful* access to federal courts. In Green, the court of appeals issued a similar injunction, barring a pro se inmate litigant from filing any civil action in any district court within the circuit or any appeal to the court of appeals without first obtaining leave from the appropriate court and certifying that his claims were new and had not previously been disposed of on the merits. The inmate litigant had filed 14 appeals within three years, twelve of which had been dismissed for being vexatious, malicious, frivolous or not in good faith.

In contrast to these cases, plaintiffs have thus far filed only one bankruptcy petition in this district and this adversary complaint within that case. Most of the abuses defendants highlight took place in state courts. Authority to subject a party's future filings to screening

derives from a court's power to regulate its own case administration. Green, 699 F.2d at 368; Matter of Davis, 878 F.2d 211, 212 (7th Cir. 1989) ("Federal courts have both the inherent power and constitutional obligation to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions.") (additional citations omitted). This court has no inherent authority to regulate judicial administration within state circuit courts. Although I will not issue an injunction at this time, plaintiffs' submissions may be subject to judicial screening in the future if plaintiffs persist in filling frivolous suits and engaging in contumacious conduct in this court. In addition, plaintiffs should note that their claims are being dismissed with prejudice. This means that they are precluded from recovering on these claims in any other suit. If plaintiffs attempt to bring these claims against these defendants again in this or any court, the claims will be dismissed.

ORDER

IT IS ORDERED that

(1) The motion to dismiss of defendants Clifford Wachter, Trudy Wachter, Clark Kepplinger, Andrea Baker, Dean Houlberg and Bank of Monticello pursuant to Fed. R. Civ. P. 37(b)(2) is GRANTED and plaintiffs' claims are DISMISSED with prejudice. The clerk of court is directed to enter judgment in favor of defendants and close this case;

(2) Each plaintiff is jointly and severally liable to defendants for the reasonable

expenses that these defendants incurred at the June 4, 2004 failed deposition and in filling the instant motion. Each defendant may have until September 2, 2004 to file and serve an itemized accounting of claimed expenses (including each attorney's rate for each hour). Each plaintiff may have until September 17, 2004 to file and serve a response contesting the expense claims; and

(3) Defendants' request for an injunction subjecting plaintiffs' future filings to judicial oversight is DENIED.

Entered this 4th day of August, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge