

CAUSE NO. 380-1387-2009

LOWELL MERRITT	§	IN THE DISTRICT COURT
	§	
vs.	§	380 TH JUDICIAL DISTRICT
	§	
ROBERT J. DAVIS	§	COLLIN COUNTY, TEXAS

ORDER GRANTING DEFENDANT'S MOTION FOR SANCTIONS

CAME ON to be considered Defendant's MOTION FOR SANCTIONS. The Court, after examining the pleadings and evidence and briefs submitted, together with authorities, and having considered arguments of pro se Plaintiff and counsel and evidence before the Court, is of the opinion and finds that Defendant's MOTION FOR SANCTIONS be and hereby is GRANTED.

In support of this ORDER, the Court finds that good cause exists for the imposition of sanctions and that the conduct of Plaintiff Lowell Merritt is violative of Rule 13 of TEXAS RULES OF CIVIL PROCEDURE and Chapters 9 and 10 of TEXAS CIVIL PRACTICE & REMEDIES CODE. The discussion, analysis, comments, and ruling of the Court during the hearing on Defendant's MOTION FOR SANCTIONS are incorporated in this ORDER as if fully set forth herein. Specifically, the Court finds the following is good cause in support of its award of Sanctions against Plaintiff:

- (1) The same civil lawsuit was filed by Plaintiff against the Defendant in the 74th District Court of McLennan County in Cause No. 2009-1182-3, County Court At Law No. 2 of McLennan in County Cause No. 2009-0500-C2 and County Court No. 3 of Collin County in Cause No. 003-00849-2009, as well as the instant case pending in this Court. Two of the cases [the McLennan County cases] were transferred to this Court and the other case [Collin County Court at Law No. 3] was dismissed. The filing of the Plaintiff's four lawsuits against Robert J. Davis in two different Counties - - and the allegations and pleadings by Plaintiff in such cases - - was a calculated measure to harass Robert Davis for his role as retained counsel for Collin County in the underlying civil cases involving the Plaintiff, thereby resulting in harassment, unnecessary delay, and the needless increase in the cost of litigation;
- (2) The Plaintiff has no good faith argument for the extension, modification or reversal of existing law or the establishment of new law, which would justify the filing of the Plaintiff's lawsuits against Robert J. Davis since the evidence conclusively establishes that Robert J. Davis obtained and filed the ABSTRACT OF JUDGMENT legally, in good faith, and in accordance with the laws and procedures of the State of Texas, as more fully set out in Defendant's Motion for Summary Judgment;

(3) The allegations contained in Plaintiff's lawsuits and other pleadings filed by Plaintiff misrepresent facts; are groundless and were made in bad faith; are groundless and were made for the improper purpose of delay; lack evidentiary support; were made for the improper purpose to harass Robert J. Davis, cause unnecessary delay, and needlessly increase the cost of litigation; and are not warranted by the existing law or nonfrivolous argument for the extension or modification or reversal of current law, or establishment of new law. These groundless allegations include, but are not limited to, the following:

- "There is No Provision in the Law for an Attorney who may claim to be a Doofus or a Shyster and NOW wants to Retract what he did AFTER being Caught and Sued for his Illegal Acts because Mr. Davis did witness Mr. Merritt's Acquittal on 06/11/08 and Witnessed the Violations of Judge Douglas on 01/30/08 when he DID NOT abide by the Duty Imposed Upon him by Civil Law and Mr. Davis Knew Better than to File the Invalid Lien against Mr. Merritt for 5,500 on 10/09/09." ["PLAINTIFF'S CIVIL LAWSUIT FOR VIOLATION OF CIVIL LAW CIVIL PRACTICE AND REMEDIES CODE CHAPTER 12 FOR RECORDING AN INVALID LIEN" filed in Collin County Court at Law No. 3, paragraph VII, page 7, emphasis, capitalization, and spacing in original];
- "Mr. Davis knew the LIEN was void having no force of law because he is an attorney . . . yet . . . figured Mr. Merritt would Never Check County Records." [PLAINTIFF'S CIVIL LAWSUIT FOR VIOLATION OF CIVIL LAW CIVIL PRACTICE AND REMEDIES CODE CHAPTER 12 FOR RECORDING AN INVALID LIEN filed in 380th District Court, Collin County, paragraph X, p. 8, emphasis, capitalization, and spacing in original];
- "Mr. Davis had already Illegally Charged Collin County Funds for being counsel for Collin County Officials that Denied Mr. Merritt's Protected Rights . . . refer to Texas Civil Practice & Remedies Code Section 104.002 STATE LIABILITY (2) for Violation of Texas Constitution Art. 1, Sec. 19 by Sgt. Vance and Art. 1 Sec 13 by Judge Douglas." [PLAINTIFF'S CIVIL LAWSUIT FOR VIOLATION OF CIVIL LAW CIVIL PRACTICE AND REMEDIES CODE CHAPTER 12 FOR RECORDING AN INVALID LIEN filed in 380th District Court, Collin County, paragraph X, p. 8, emphasis, capitalization, and spacing in original]; and
- "I now Compel the Court to Up-hold the Laws of this State by Arresting Mr. Robert J. Davis for his CRIMINAL Acts against the Plaintiff, Mr. Merritt via his actions to ILLEGALLY obtain a Judge's Signature to make his BOGUS LIEN appear to be legal which is a FELONY CRIME and his Refusal to Remove the Bogus Lien which is a CLASS A Misdemeanor . . . all found in the Texas Penal Code Chapter 32 FRAUD Sec. 32.46(a)(4) Fraud by Deception. And see 32.49 Fraud by refusing to Remove the INVALID LIENS." [MOTION TO INVOKE CRIMINAL VIOLATIONS OF LAW AGAINST MR. ROBERT DAVIS, paragraph IV(4), p. 4, emphasis, capitalization, and spacing in original].

- (4) Other examples of pleadings or motions filed by the Plaintiff which are groundless and were made for the improper purpose of delay; lack evidentiary support; were made for the improper purpose to harass Robert J. Davis, cause unnecessary delay, and needlessly increase the cost of litigation; and are not warranted by the existing law or nonfrivolous argument for the extension or modification or reversal of current law, or establishment of new law include, but are not limited to, the following:
- * MOTION FOR BENCH TRIAL, filed in the 74th District Court of McLennan County
 - * MOTION PLAINTIFF BE ALLOWED TO "ARGUE IN PERSON" AT ANY HEARING, filed in the 74th District Court of McLennan County;
 - * MOTION TO CONSTITUTIONALLY DISQUALIFY JUDGE GARY COLEY OF THE 74TH DISTRICT COURT filed in the 74th District Court of McLennan County;
 - * MOTION FOR NEW TRIAL, filed in the 74th District Court of McLennan County;
 - * MOTION FOR BENCH TRIAL, filed in the instant cause;
 - * MOTION TO INVOKE CRIMINAL VIOLATIONS OF LAW AGAINST MR. ROBERT DAVIS, filed in the instant cause;
 - * MOTION TO REPLY TO DEFENDANT'S RULE 166a(1) CLAIM, filed in the instant cause;
 - * MOTION OBJECTING TO COMBINING THE SEPARATE VIOLATIONS OF LAW BY DEFENDANT INTO ONE FINE VIA TRIAL, filed in the instant cause;
 - * MOTION TO REMAND MCLENNAN COUNTY VENUE TRANSFER BACK TO MCLENNAN COUNTY WHERE MANDATORY VENUE LIES, filed in the instant cause;
 - * MOTION TO CONSIDER THE FACT THAT A MOTION TO CONSTITUTIONALLY DISQUALIFY JUDGE COLEY WAS FILED 06/10/09 YET WAS NEVER PROCESSED, filed in the instant cause;
 - * MOTION TO SANCTION DEFENDANT FOR NOT COMPLYING WITH PROVISIONS IN RULE 166a(1), filed in the instant cause;
 - * MOTION TO APPEAL IMPROPER VENUE TRANSFER OF CASE 2009-1182-3, filed in the instant cause;
 - * MOTION TO SANCTION DEFENDANT FOR AGGRAVATED PERJURY, filed instant cause;
 - * MOTION FOR VOLUNTARY RECUSAL OR CONSTITUTIONALLY DISQUALIFY OF JUDGE WOOTEN PLUS FACTS OF THE CASE STATED HEREIN, filed in the instant cause; and
 - * MOTION TO RECUSE PER TEXAS RULES OF CIVIL PROCEDURE 18a, filed instant cause.

- (5) The harassment by Plaintiff of Defendant is evidenced by the fact that Plaintiff requested that both the McLennan and Collin County District Attorney's Office investigate and prosecute the Defendant for purported violations of the law concerning the ABSTRACT OF JUDGMENT and both of those Offices declined to do so. Moreover, on June 11, 2009, the Plaintiff filed a report with the Collin County Sheriff's Office claiming that Defendant had committed criminal acts [Securing Execution of A Document by Deception] related to the procurement of the ABSTRACT OF JUDGMENT. The Sheriff's Office fully investigated this alleged criminal offense, determined the claims were unfounded, and actually determined that the making of the report by Plaintiff was false;
- (6) The harassment by Plaintiff of Defendant is evidenced by the filing of Plaintiff's MOTION TO INVOKE CRIMINAL VIOLATIONS OF LAW AGAINST MR. ROBERT DAVIS wherein the Plaintiff falsely avers that the Defendant committed both felony and misdemeanor criminal offenses related to the ABSTRACT OF JUDGMENT and requests this Court to "arrest" the Defendant. [See, MOTION TO INVOKE CRIMINAL VIOLATIONS OF LAW AGAINST MR. ROBERT DAVIS, paragraph IV(4), p. 4];
- (7) The bad faith motive of and harassment by the Plaintiff is evidenced by the efforts of Robert J. Davis to obtain voluntary dismissal and avoidance of unnecessary costs and attorney's fees. The Court takes notice that on June 12, 2009, and July 6, 2009, Robert J. Davis sent Plaintiff letters requesting dismissal, but Plaintiff refused and continued with his lawsuit against Robert J. Davis, evidencing the Plaintiff's bad faith motive;
- (8) The Pro se Plaintiff has filed at least ten prior civil lawsuits, all of which (except the current three cases in this Court) have been dismissed against him. The Court finds that the filing of Plaintiff's four lawsuits against the Defendant herein is a calculated measure to harass, harm, and retaliate against the Defendant for his role as Collin County's retained counsel. The Plaintiff's improper motive of retaliation through the filing of frivolous litigation is particularly true when viewed in light of Plaintiff's pattern of harassing and retaliating against (1) witnesses who complain about him¹ (2) County employees who investigate criminal matters related to him², (3) Judges who preside over frivolous cases filed by him³, (4) the County's retained counsel who represents the subjects of his litigation scourge⁴, and (5) State employees who have dealt with him⁵; and

¹ *Lowell Merritt v. James Andrews*, Cause No. 02-1-CV-08-00047 and *Lowell Merritt v. James Slayton*, Cause No. 02-1-CV-08-00048

² *Lowell Merritt v. Sgt. Mike Vance*, Cause No. 02-1-CV-08-00049

³ *Lowell Merritt v. Judge Terry Douglas, et. al*, Cause No. 001-00798-2008, and *Lowell Merritt v. Judge Terry Douglas*, Cause No. 001-02632-2008.

⁴ *Lowell Merritt v. Robert J. Davis*, Cause No. 003-00849-2009; *Lowell Merritt v. Robert J. Davis*, Cause No. 2009-1182-3; *Lowell Merritt v. Robert J. Davis*; and *Lowell Merritt v. Robert J. Davis*, Cause No. 380-01387-2009.

⁵ *Lowell Merritt v. Gus Cannon*, Cause No. 004-00675-2009

- (9) The Court further notes that Plaintiff has previously been sanctioned in the case styled *Lowell Merritt v. Sgt. Mike Vance*, Cause No. NO. 02-1-CV-08-00049 in the Justice Court Precinct Two of Collin County, Texas, for filing frivolous lawsuits and an ORDER GRANTING SGT. MIKE VANCE'S MOTION FOR SANCTIONS was entered, but such prior sanctions do not appear to deter Plaintiff from continuing to engage in sanctionable conduct.

The Court further expressly finds that the Plaintiff Lowell Merritt, through the filing of four frivolous lawsuits, has retaliated against Robert J. Davis as prohibited by TEXAS PENAL CODE Section 36.06. Specifically, the Court finds that the Plaintiff Lowell Merritt has intentionally and knowingly harmed the Defendant Robert J. Davis by an unlawful act⁶ in retaliation for and on account of Mr. Davis' role as a public servant in serving as Collin County's retained counsel.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Plaintiff **LOWELL MERRITT** be and hereby is **SANCTIONED** and **ORDERED** to pay to Collin County, on behalf of Robert J. Davis, the sum of \$ 11,248.00 for Defendant's **ATTORNEY'S FEES** and **COSTS** incurred in defending against this action, plus post-judgment interest at the rate at the highest lawful rate per annum on such amount from the date of this ORDER until paid. Such attorneys fees and costs shall be paid by cashiers' check or money order to Defendant within 30 days from the signing of this ORDER.

IT IS FURTHER ORDERED that Plaintiff **LOWELL MERRITT** conditionally pay to Collin County, on behalf of Robert J. Davis, the sum of \$ 10,600.00 for its **ATTORNEY'S FEES** and **COSTS** in the event this matter is unsuccessfully appealed to the Dallas Court of Appeals; and the sum of \$ 10,000.00 for its **ATTORNEY'S FEES** and **COSTS** in the event this matter is unsuccessfully appealed to the Texas Supreme Court. This award of conditional appellate attorneys' fees is designed to compensate Collin County, on behalf of Robert J. Davis for the expense of having to defend his sanctions award and dismissal in the event the Plaintiff pursues an unsuccessful appeal. The award of conditional attorney's fees is

⁶The Court finds that the unlawful act(s) include, but are not limited to, filing four frivolous civil lawsuits against Mr. Davis in violation of Rule 13 of TEXAS RULES OF CIVIL PROCEDURE and Chapters 9 and 10 of TEXAS CIVIL PRACTICE & REMEDIES CODE, as well as requesting that this Court "arrest" Mr. Davis. This finding is does not, nor is it intended to, limit any subsequent tribunal's determination of what unlawful acts, civil or criminal, that Mr. Merritt may have committed.

expressly contingent upon an unsuccessful appeal by the Plaintiff. Post-judgment interest on such conditional attorneys fees shall be at the rate of ten percent (10%) per annum on such amounts, commencing from the date the notice of appeal is filed, or in the case of an appeal to Supreme Court of Texas, the date the Plaintiff files his petition for review, until paid.

~~IT IS FURTHER ORDERED Plaintiff LOWELL MERRITT pursuant to TEX. CIV. PRAC. & REM. CODE SECTION 10.004(c)(2), be and hereby are SANCTIONED and ORDERED to deposit the sum of \$ _____ into the registry of the 380th District Court of Collin County, Texas, as a penalty and in order to prevent and deter such improper conduct in the future by the Plaintiff and others similarly situated. Such sanctions shall be paid into the registry of the Court within 30 days from the signing of this ORDER.~~

IT IS FURTHER ORDERED that Plaintiff LOWELL MERRITT and all his agents, attorneys, employees, officers and elected or appointed representatives and all other persons, firms, organizations, or corporations in privity therewith be and hereby are prohibited from initiating any more lawsuits of any kind or nature concerning the previously dismissed lawsuits filed in Justice Court Two [*Lowell Merritt v. James Andrews*, Cause No. 02-1-CV-08-00047; *Lowell Merritt v. James Slayton*, Cause No. 02-1-CV-08-00048; and *Lowell Merritt v. Sgt. Mike Vance*, Cause NO. 02-1-CV-08-00049] against (1) Judge Terry Douglas, (2) Collin County, (3) any officers, agents, servants or employees of Collin County, (4) the undersigned Counsel Robert J. Davis and his Firm MATTHEWS, STEIN, SHIELDS, PEARCE, KNOTT, EDEN & DAVIS, and any officers, agents, servants or employees of said Firm; (5) James Andrews, and (6) James Slayton;

The Court declares Plaintiff to be a vexatious litigant. Therefore,

IT IS FURTHER ORDERED that Plaintiff LOWELL MERRITT and all his agents, attorneys, employees, officers and elected or appointed representatives and all other persons, firms, organizations, or corporations in privity therewith be and hereby are prohibited from initiating any more lawsuits of any kind or any nature against (1) Judge Douglas, (2) Collin County, (3) any officers, agents, servants or employees of Collin County, (4) The State of Texas, (5) any officers, agents, servants or employees of the State of Texas, (6) James Andrews, and (7) James Slayton and (8) the undersigned Counsel Robert J. Davis and his Firm MATTHEWS, STEIN, SHIELDS, PEARCE,

KNOTT, EDEN & DAVIS, and any officers, agents, servants or employees of said Firm until such proposed Lawsuit has first been reviewed by the Administrative Judge of Collin County for a determination that the claims set forth a legitimate request for relief and approved by the Administrative Judge of Collin County for filing and service;

Defendant Robert J. Davis is allowed such writs and processes as may be necessary in the enforcement and collection of this ORDER. All costs of Court are taxed against the Plaintiff. For all of foregoing let execution issue.

Signed this the 17 day of September, 2009.



JUDGE PRESIDING

RECEIVED

OCT 21 2009

COURT OFFICE OPERATION
COURT ADMINISTRATION

No. 380-01387-2009

LOWELL MERRITT

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IN THE DISTRICT COURT

v.

380TH JUDICIAL DISTRICT

ROBERT DAVIS

COLLIN COUNTY, TEXAS

ORDER DECLARING PLAINTIFF TO BE A VEXATIOUS LITIGANT

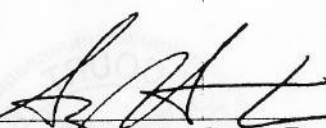
After considering Defendant's Motion for Sanctions, the response, all of the pleadings, and argument of the parties during the pendency of this case, the Court:

DECLARES Plaintiff, Lowell Merritt, to be a vexatious litigant. IT IS ORDERED that Plaintiff, Lowell Merritt, and his agents, attorneys, employees, officers and elected or appointed representatives and all other persons or entities acting on his behalf are prohibited from initiating any more lawsuits or any kind or nature concerning the previously dismissed lawsuits filed in Justice Court Two (*Lowell Merritt v. James Andrews*, Cause No. 02-1-CV-08-00047; *Lowell Merritt v. James Slayton*, Cause No. 02-1-CV-08-00048; and *Lowell Merritt v. Sgt. Mike Vance*, Cause No. 02-1-CV-08-0049) against Judge Terry Douglas; Collin County; any officers, agents, servants or employees of Collin County; Robert J. Davis and/or his firm Matthews, Stein, Shiels, Pearce, Knott, Eden & Davis, and any officers, agents, servants or employees of said firm; James Andrews; and James Slayton.

IT IS FURTHER ORDERED that Plaintiff, Lowell Merritt, and his agents, attorneys, employees, officers and elected or appointed representatives and all other persons or entities acting on his behalf are prohibited from initiating any more lawsuits or any kind or nature against Judge Terry Douglas; Collin County; any officers, agents, servants or employees of Collin County; Robert J. Davis and/or his firm Matthews, Stein, Shiels, Pearce, Knott, Eden & Davis, and any officers, agents, servants or employees of said firm; James Andrews; and James Slayton until such proposed lawsuit has first been reviewed by the Administrative Judge of Collin County for a determination that the claims set forth a legitimate request for relief and approved by the Administrative Judge of Collin County for filing and service.

Signed on this the 9 day of October, 2009.

COLLIN COUNTY CLERK
HARRAH KEMMEL DISTRICT CLERK
ALB 10
This court has the honor to certify that the above and foregoing is a true and correct copy of the original document as the same appears on the file in the Justice Court, Collin County, Texas. Witness my hand and seal of office this 9th day of October, 2009.


Suzanne H. Wooten, Judge Presiding