

FILED
 at 2:10 o'clock PM
MAR 04 2019
Ronda Burchett
 Clerk of District Court Brazoria Co., Texas
 BY _____ DEPUTY

96820-CV

MICHAEL A. McCANN,

Plaintiff

vs.

**SPENCER PLANTATION
 INVESTMENTS, LTD.,**

Defendant

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IN THE DISTRICT COURT

OF BRAZORIA COUNTY, TEXAS

239TH JUDICIAL DISTRICT

FINAL JUDGMENT

On the 25th day of February, 2019, came on for hearing the Motion filed by the Defendant, Spencer Plantation Investments, LTD (hereinafter referred to as “SPENCER” or “Defendant-Spencer”), for dismissal of the above styled and numbered cause for the failure of the Defendant, MICHAEL A. McCANN (hereinafter referred to as “MICHAEL A. McCANN” or “Plaintiff-McCann”) to furnish the security required by this Court’s prior order, entitled “Order Determining ‘Vexatious Litigant’ Status and Requiring Security”, signed on June 26, 2018, and filed with the clerk of this Court of June 29, 2018 (hereinafter referred to as the “Vexatious Litigant Order”), and for related orders.

The Court, finding that due and proper notice of the hearing was provided to MICHAEL A. McCANN, called for announcements. The Defendant-Spencer, represented by attorneys, George Rau and Joseph Patterson, announced ready for hearing. The Plaintiff-McCann appeared and announced ready.

The Court heard the argument of the parties, and considered the evidence proffered (i) on behalf of Plaintiff-McCann, and Defendant-Spencer, the latter including specifically the evidence proffered by counsel for SPENCER, in support of its prior motion seeking to have Defendant-McCann identified as a “vexatious litigant”, as well as the findings contained in this

Court's prior Vexatious Litigant Order, as well as taking judicial notice of the fact that no security has been tendered by MICHAEL A. McCANN to the Clerk of this Court, in satisfaction of the requirement, set forth in the Vexatious Litigant Order that Plaintiff-McCann furnish the required security on or before the expiration of thirty (30) days after entry of the Vexatious Litigant Order.

The Court, finding that the issues of fact and law, determined adversely to the position of MICHAEL A. McCANN, as a matter of law, in that certain Cause No. 79855-CV, styled "*Michael A. McCann v. Spencer Plantation Investments, LTD and the Internal Revenue Service*", adjudicated in the 23rd Judicial District Court of Brazoria County, Texas, (which proceeding is hereinafter referred to as the "First District Court Case"), in which proceeding, on the motion of SPENCER, an Order Granting Summary Judgment was signed, denying MICHAEL A. McCANN's claim and all related relief, are the same issues raised by Plaintiff-McCann in the instant case; and, the Court further finds, in light of the pleading, by SPENCER, of the legal defense of *res judicata*, that there is not a reasonable probability that Plaintiff-McCann will prevail in the instant litigation against the Defendant-Spencer.

Therefore, as a consequence, this Court reaffirms its prior FINDINGS and DETERMINATIONS, in the Vexatious Litigant Order, that MICHAEL A. McCANN is, in fact a "vexatious litigant" pursuant to TEX CIV PRACTICE & REM CODE, Section 11.054(2), for the reason that, as a *pro se* litigant in the instant case, and, *after* litigation has been finally determined (and reference is here made to the claims asserted by MICHAEL A. McCANN in the First District Court Case, as detailed above, and the final disposition of that proceeding in all respects favorable to SPENCER), the Plaintiff-McCann has attempted to relitigate, *pro se*, (A) the validity of the determination against the same defendant as to whom the litigation was finally determined; as well as (B) the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same defendant as to whom the litigation was finally determined.

The Court further finds that the Defendant-McCann has not furnished the security required of him in the Vexatious Litigant Order, as a prerequisite to continuing to pursue the claims pleaded in the instant case, either within by the deadline expressed in said order, or to date.

It is, therefore,

ORDERED, pursuant to the provisions of the TEX CIV PRACTICE & REM CODE Section 11.056, that the above captioned cause is DISMISSED without prejudice, for Plaintiff-McCann's failure to furnish, by delivery to the Clerk of this Court, and approved by this Court, security for the benefit of the Defendant-Spencer; it being further,

ORDERED, pursuant to TEX. CIV. PRACTICE & REM CODE Section 11.101, that the filing of all new litigation, *pro se*, by the Plaintiff-McCann shall be, in the future, subject to a "pre-filing requirement" as set forth hereinbelow and in TEX. CIV PRACTICE & REM CODE Section 11.102; it being further specifically,

ORDERED that MICHAEL A. McCANN is prohibited from filing, *pro se*, any new litigation in a justice court, constitutional county court, district court, or statutory county court, in the state of Texas, without first seeking *and obtaining*, the permission of the following, as applicable:

(1) the local administrative judge of the type of court in which the vexatious litigant, MICHAEL A. McCANN, intends to file, or, if applicable,

(2) the local administrative district judge of the county in which the vexatious litigant, MICHAEL A. McCANN, intends to file if the litigant intends to file in a justice or constitutional county court; it being further,

ORDERED that, as specified in TEX. CIV. PRACTICE & REM CODE Section 11.104(a), the District Clerk of Brazoria County, Texas shall provide the Office of Court Administration of the Texas Judicial system a true and correct copy of this pre-filing order.

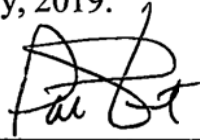
It is further ORDERED that that the document entitled "Notice of Claim" filed by McCann at Clerk's File No. 2018-004980 in the Official Records of Brazoria County, Texas, be formally removed as a cloud on the SPENCER title to the land in question.

It is further ORDERED that all costs incurred herein are taxed against the Plaintiff-MICHAEL A. McCANN.

All relief not expressly granted herein is denied.

THIS IS A FINAL JUDGMENT AND APPEALABLE AS SUCH.

SIGNED this the 28 day of February, 2019.



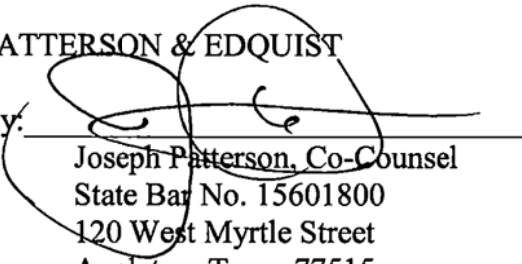
Pat Sebesta, Presiding Judge

*APPROVED AS TO FORM AND SUBSTANCE,
AND ENTRY REQUEST:*

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