

P-5
VEXAD

NO. 2014-67306

ALPER T. KARAALI,
Plaintiff

vs.

EXXONMOBIL CORP., INC. AND
PETROLEUM WHOLESALE, LP,
Defendants

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IN THE DISTRICT COURT OF

FILED

HARRIS COUNTY, TEXAS
Chris Daniel
District Clerk

DEC 03 2015

152nd JUDICIAL DISTRICT
Harris County, Texas

By _____
Deputy

ORDER

On November 18, 2014, a pro se plaintiff, Alper T. Karaali (Karaali), filed this suit against Exxon Mobil Corporation, Inc. (Exxon) and Petroleum Wholesale, LP. (PW). In his petition, Mr. Karaali alleged causes of action against the defendants for fraud, products liability, and breach of fiduciary duty. On September 14, 2015, PW filed a motion asking this Court to issue an order adjudicating Mr. Karaali, to be a vexatious litigant.

After reviewing the record, the pleadings, the evidence presented, and the applicable authority, the Court Grants Petroleum Wholesale, L.P.'s motion.

THE VEXATIOUS LITIGANT STATUTE

Chapter 11 of the Texas Civil Practice and Remedies Code governs suits brought by vexatious litigants and specifies that a Court may, on defendant's motion or *sua sponte*, designate a party as a vexatious litigant. *See* TEX. CIV. PRAC. & REM. CODE § 11.101.

A Court may declare a party to be a vexatious litigant if there **is not** a reasonable probability that he will prevail in litigation **and** the party has a history of filing or repeatedly re-litigating unsuccessful or frivolous suits. TEX. CIV. PRAC. & REM. CODE § 11.054. Specifically, during the seven year period immediately preceding the date the defendant files its motion to declare the plaintiff a vexatious litigant, the plaintiff has "commenced, prosecuted, or maintained at least five litigations as a pro se litigant" that have been "finally determined adversely to the plaintiff" or have been determined "by a trial or appellate court to be frivolous or groundless under state or federal law or rules of procedure." *See Id.* It is true that a court may find a plaintiff to be a vexatious litigant if the party has previously been declared to be a vexatious litigant by state or federal in an action or proceeding based on the same or substantially similar

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facts, transaction, or occurrence. However, such a factor is not a necessary criteria for a court to make such a determination. *See Id.*

BACKGROUND AND PREVIOUS LITIGATION

Mr. Karaali and Tien Shan, Inc. were the owners/operators of a convenience store located at 3151 South Dairy Ashford (the store) in Houston, Texas. Petroleum Wholesale, L.P. supplied branded and unbranded motor fuels to the store under an exclusive written contract.

On August 23, 2007, Mr. Karaali filed suit against Petroleum Wholesale in trial court cause number 2007-46858. In his petition he asked for a declaratory judgment against PW. He also plead promissory estoppel, wrongful foreclosure, duress, slander of title, and negligent misrepresentation. The petition also requested a temporary injunction and asked the 333rd District Court of Harris County to set aside the foreclosure of his gas station. On March 17, 2011, the trial court signed a final judgment in which it ordered, in part, that (1) Petroleum Wholesale, L.P. was the holder of the Real Estate Lien Note dated November 22, 2002, signed by Tien Shan, Inc., and Alper Karaali as Makers . . . ; (2) Tien Shan, Inc. and Alper Karaali were to take nothing from Petroleum Wholesale, L.P.; and (3) that Petroleum Wholesale L.P. was to recover arbitration fees, attorneys' fees and costs from Tien Shan, Inc. and Alper Karaali. Mr. Karaali filed a pro se appeal, appellate cause number 14-11-00577-CV. On November 26, 2013, the Fourteenth Court of Appeals overruled all of Mr. Karaali's appellate issues and affirmed the trial court's judgment. The March 17, 2011 judgment is final for all purposes.

In 2011, Petroleum Wholesale, L.P. filed an original petition, application for a temporary restraining order, temporary injunction and a request for disclosure against Alper Karaali and Tien Shan, Inc. PW pleaded causes of action for breach of contract, tortious interference with existing contract, conversion, and business disparagement. After a jury trial, the 333rd District Court signed a final judgment in trial court cause number 2011-44275, styled *Petroleum Wholesale, L.P. v. Alper Karaali and Tien Shan, Inc.*, on April 15, 2014. The trial court rendered judgment for Petroleum Wholesale, L.P. and awarded actual damages, pre-judgment interest, attorney's fees, court costs, and post judgment interest. Mr. Karaali's counter-claims against Petroleum Wholesale were denied. Mr. Karaali appealed. On November 13, 2014, the

Fourteenth Court of Appeals dismissed Mr. Karaali's appeal in appellate cause number 14-14-00583-CV. The judgment 2011-44275 is now final for all purposes.¹

A review of 2007-46858, 2011-44275, and the pleadings in this action revealed that Mr. Karaali is attempting to relitigate the issues raised by his original suit against PW and his counter claims relating to the foreclosure of his previously owned gas station. Finding that res judicata barred Mr. Karaali's case, this Court granted PW's motion for summary judgment on June 12, 2015.

On April 23, 2015, Mr. Karaali filed a pro se suit for fraud against American First National Bank, Henry Wu, and Kelvin Sin in trial court cause number 2015-23310 in the 11th District Court of Harris County. On June 22, 2015, the judge of 11th District Court signed a final summary judgment in which it ordered that "Plaintiff Alper T. Karaali takes nothing by his claims." There is no record of Mr. Karaali appealing the June 22, 2015 judgment. Accordingly, that judgment is final for all purposes

PREVIOUS ADJUDICATION AS A VEXATIOUS LITIGANT

On June 24, 2015, the 11th District Court of Harris County entered an order in 2015-23310 adjudicating Mr. Karaali as a vexatious litigant. There is no record of Mr. Karaali appealing the order adjudicating him to be a vexatious litigant.

UNSUCCESSFUL LITIGATION

It is evident from the record and the pleadings that during the seven year period immediately preceding the date PW filed its motion to declare the plaintiff a vexatious litigant, Mr. Karaali "commenced, prosecuted, or maintained at least five litigations as a pro se litigant" that have been "finally determined adversely to the plaintiff" or have been determined "by a trial or appellate court to be frivolous or groundless under state or federal law or rules of procedure." TEX. CIV. PRAC. & REM. CODE § 11.054. The cases noted above were prosecuted or maintained in courts other than small claims court and may be consider when determining whether a pro se plaintiff meets the criteria for a being declared a vexatious litigant. *See Id.*

NO REASONABLE PROBABLY PLAINTIFF WILL PREVAIL

¹ On March 19, 2015, Mr. Karaali attempted to file suit against the Judge of the 333rd District Court of Harris County in the United States District Court for the Southern District of Texas. That case is still pending as trial court cause number 4:15-mc-0078.

It is apparent from a review of the appropriate authority, the record, the evidence presented, and argument of counsel that all of Mr. Karaali's claims have been previously litigated and decided by other courts. Because res judicata bars relitigation of previously adjudicated matters, there is no reasonable probability Mr. Karaali will prevail in this suit.

The Court **FINDS:**

- (1) There **is not** a reasonable probability that Mr. Karaali will prevail in the current litigation.
- (2) Mr. Karaali has a history of filing or repeatedly re-litigating unsuccessful or frivolous suits.
- (3) During the past seven year period Mr. Karaali has "commenced, prosecuted, or maintained at least five litigations as a pro se litigant" that have been "finally determined adversely to him."
- (4) Alper T. Karaali has previously been adjudicated as a vexatious litigant; and
- (5) Alper T. Karaali meets the criteria for finding a plaintiff a vexatious litigant.

ORDER

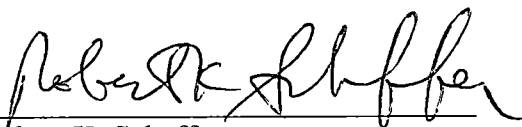
Accordingly, the Court GRANTS Petroleum Wholesale, L.P.'s motion to declare Alper T. Karaali a vexatious litigant. The Court ORDERS that Alper T. Karaali is prohibited from filing new litigation in a state court without first obtaining permission from the appropriate local administrative judge. *See* TEX. CIV. PRAC. & REM. CODE §11.101. Such permission shall be granted only if the litigation appears to have merit and is not filed for purposes of harassment or delay; such permission may also be conditioned on the furnishing of a security.

The Court also admonishes Alper T. Karaali that if he fails to obey this order, he may be sanctioned, found in contempt and subject to punishment.

The Court ORDERS the Harris County District Clerk to refuse the filing of any new litigation by Alper T. Karaali unless he first obtains written permission from the appropriate local administrative judge.

The Court further ORDERS the Harris County District Clerk to forward a copy of this Order to the Office of Court Administration. *See* TEX. CIV. PRAC. & REM. CODE §11.104(a).

Date Signed: DEC 03 2015


Robert K. Schaffer
Judge, 152nd District Court
Harris County, Texas



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this December 4, 2015

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Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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