

FILED

Chris Daniel
District Clerk

APR 28 2015

Time: 1:41pm
Harris County, Texas
By: [Signature]
Deputy

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Vexat

NO. 2015-05013

ALI YAZDCHI,
Plaintiff

vs.

MIKE JONES and SAM ADAMO,
Defendants

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

11th JUDICIAL DISTRICT

ORDER

On January 29, 2015, Ali Yazdchi (Yazdchi) filed this suit against Mike Jones (Jones) and Sam Adamo (Adamo) alleging breach of contract, breach of fiduciary duty, and conversion. On March 6, 2015, Sam Adamo filed a motion asking this Court to issue an order adjudicating the Plaintiff, Ali Yazdchi (Yazdchi), to be a vexatious litigant and requiring Mr. Yazdchi to furnish security before being allowed to prosecute the above matter.

After reviewing the record, the pleadings, the evidence presented, and the applicable authority, this Court grants Mr. Adamo's motion in part.

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

On November 17, 2010, Mr. Yazdchi was convicted of aggregate theft of over \$20,000 and under \$100,000, and with falsely holding himself out to be a lawyer. He appealed. The Court of Appeals and the Court of Criminal Appeals affirmed. *See: Yazdchi v. State*, 2012 WL 5381211 (Tex. App. – 1st Dist. [Houston]; *Yazdchi v. State*, 428 S.W. 2d 831 (Tex. Crim. App. 2014). The U.S. Supreme Court denied his petition for writ of certiorari on January 20, 2015, and denied his motion for rehearing on April 6, 2015. *See: Yazdchi v. Texas*, 135 S.Ct. 1158.

2008

PREVIOUS LITIGATION

In *Yazdchi v. Cornelius*, the First Court of Appeal listed Mr. Yazdchi's unsuccessful appeals as of 2009:

We note that, in each of the following appeals brought by Ali Yazdchi, the trial courts' judgments have been affirmed or the appeals brought by Ali Yazdchi have been dismissed. *Yazdchi v. Nexcess Motorcars*, No. 01-07-00185-CV, 2007 WL 1844901 (Tex. App.-Houston [1st Dist.] June 28, 2007, no pet.) (mem. op.); *Yazdchi v. Allstate Ins. Co.*, No. 01-05-00327-CV, 2007 WL 1152983 (Tex. App.-Houston [1st Dist.] Apr. 19, 2007, no pet.) (mem. op.); *Yazdchi v. Am. Honda Fin. Corp.*, No. 05-10479, 2007 WL 464705 (5th Cir. Feb. 6, 2007); *Auto v. Travelers Ins. Co.*, No. 01-05-00327-CV, 2006 WL 2893324 (Tex. App.-Houston [1st Dist.] Oct. 12, 2006, no pet.) (mem. op.); *Yazdchi v. S. County Mut. Ins. Co.*, No. 11-06-00166-CV, 2006 WL 2253940 (Tex. App.-Eastland Aug. 3, 2006, no pet.) (mem. op.); *Yazdchi v. Am. Nat'l Prop. and Cas. Co.*, No. 01-05-00750-CV, 2005 WL 3454142 (Tex. App.-Houston [1st Dist.] Dec. 15, 2005, no pet.) (mem. op.); *Yazdchi v. Citicorp Credit Serv., Inc.*, No. 01-05-00740-CV, 2005 WL 2989699 (Tex. App.-Houston [1st Dist.] Nov. 3, 2005, no pet.) (mem. op.); *Yazdchi v. State*, No. 14-04-00500-CV, 2005 WL 2149416 (Tex. App.-Houston [14th Dist.] Sept. 8, 2005, no pet.) (mem. op.); *Yazdchi v. Am. Arb. Ass'n*, No. 01-04-00149-CV, 2005 WL 375288 (Tex. App.-Houston [1st Dist.] Feb. 17, 2005, no pet.) (mem. op.); *Yazdchi v. Bennett Law Firm, P.C.*, No. 14-01-00928-CV, 2002 WL 1163568 (Tex. App.-Houston [14th Dist.] May 30, 2002, no pet.) (not designated for publication); *Bouja v. State*, No. 14-00-00072-CV, 2000 WL 674850 (Tex. App.-Houston [14th Dist.] May 25, 2000, no pet.) (not designated for publication); *Yazdchi v. City of Houston*, No. 14-98-01296-CV, 1999 WL 219381 (Tex. App.-Houston [14th Dist.] Apr. 15, 1999, no pet.) (not designated for publication).

Yazdchi v. Cornelius, No. 01-07-00844-CV, 2009 WL 214547, n.1 (Tex. App. – Houston [1st. Dist.] Jan. 29, 2009, (pet. denied)(mem. op., not designated for publication))

The record further indicates that Mr. Yazdchi has unsuccessfully engaged in the following unsuccessful litigation since 2008:

- (1) *Yazdchi v. Gage*, (151st District Court, tc# 2010-50511). The trial court entered an order dismissing all of Mr. Yazdchi’s claims against the defendant on June 29, 2012.
- (2) *Yazdchi v. Walker*, (295th District Court, tc# 2008-07115A). The trial court dismissed the case for want of prosecution on February 15, 2010.
- (3) *Yazdchi v. Wang*, (County Civil Court at Law No. 3, Harris County Texas, tc# 951408). Trial court issued a summary judgment disposing of all claims on April 22, 2010.
- (4) *Yazdchi v. Wang*, 14-10-00572-CV, 2011 WL 61859 (Tex. App. – Houston [1st Dist.] (January 6, 2011, no pet.). The appellate court dismissed the appeal.
- (5) *Yazdchi v. Unauthorized Practice of Law Committee*, 01-09-00065-CV, 2010 WL 2650563 (Tex. App. – Houston [1st Dist.] (July 1, 2010). The appellate court affirmed the trial court’s judgment in trial court cause number 1999-57020 against Mr. Yazdchi.
- (6) *See Yazdchi v. Cornelius*, No. 01-07-00844-CV, 2009 WL 214547, n.1 (Tex. App. – Houston [1st Dist.] Jan. 29, 2009, (pet. denied)(mem. op., not designated for publication)

It is evident from the record and the pleadings that during the seven year period immediately preceding the date the defendants filed their motion to declare the plaintiff a vexatious litigant, Mr. Yazdchi 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.” TEX. CIV. PRAC. & REM. CODE § 11.054. Despite Mr. Yazdchi’s arguments to the contrary, 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. It is irrelevant that the cases were originally filed in a justice court or a small claims court. *See Id.*

NO REASONABLE PROBABLY PLAINTIFF WILL PREVAIL

Breach of Contract Claim. Mr. Yazdchi's petition specifically denies that this suit is one for legal malpractice. Instead, he alleges that "the fees charged by Defendant Sam Adamo were excessive for the services rendered which breached Defendant Sam Adamo's contract with Plaintiff and also breached the fiduciary duty that Defendant Sam Adamo owed to Plaintiff." In rebuttal, Mr. Adamo argues that Mr. Yazdchi's claims for breach of contract, breach of fiduciary duty and fraud are barred by the statute of limitations.

The record shows that Mr. Yazdchi paid Mr. Adamo a cashier's check on December 3, 2010, and signed a contract with Mr. Adamo on December 5, 2010. Once Mr. Adamo filed a motion for new trial on Mr. Yazdchi's behalf on December 14, 2010, he claims their contract was concluded. He argues that any cause of action Mr. Yazdchi might have had against him would have accrued on that date.

The Civil Practice and Remedies Code states that a person must bring suit on debt, fraud, or breach of fiduciary duty "not later than four years after the day the cause of action accrues." TEX. CIV. PRAC. & REM. CODE §§ 16.004 & 16.051.

The clerk's record indicates that Mr. Yazdchi did not file his petition until January 29, 2015, after the expiration of the four year statute of limitations period. Mr. Yazdchi's claims for breach of contract, breach of fiduciary duty, and fraud are time barred.

Conversion of Funds. Mr. Yazdchi also argues that "unlawfully and without authorization [,] [Mike Jones] assumed and exercised dominion and control over [Mr. Yazdchi's] funds to the exclusion of, or inconsistent with[] Plaintiff's rights as owner." Mr. Yazdchi alleges that on October 19, 2010, Mike Jones wrote check number 102 on Mr. Yazdchi's account which was processed on February 17, 2011. Later, on April 6, 2011, Mr. Jones wrote a second check, number 103, on Mr. Yazdchi's account. The statute states that a person must bring suit for conversion of personal property or taking or detaining the personal property of another "not later than two years after the day the cause of action accrues." TEX. CIV. PRAC. & REM. CODE § 16.003. Any suit against Mr. Jones for conversion of funds should have been filed no later than April 6, 2013.

After reviewing the record, the evidence presented, and consulting the appropriate authorities, the Court concludes that Mr. Yazdchi's claims against Mr. Adamo and Mr. Jones are barred by the statute of limitations.

FINDINGS

The Court FINDS:

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

ORDER

Accordingly, the Court GRANTS Sam Adamo’s motion to declare Ali Yazdchi a vexatious litigant.

The Court ORDERS that Ali Yazdchi 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.

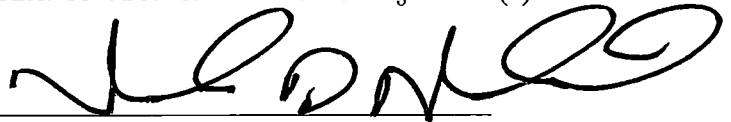
The Court also admonishes Ali Yazdchi that if he fails to obey this order, he may be found in contempt and subject to punishment.

The Court ORDERS the Harris County District Clerk to refuse the filing of any new litigation by Ali Yazdchi 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: _____

APR 28 2015



Mike Miller
Judge, 11th 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 April 29, 2015

Certified Document Number: 65207185 Total Pages: 6

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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