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July 12, 2011

VIA HAND DELIVERY
Honorable Joseph S. Conte, J.S.C.
Superior Court of New Jersey
Bergen County Justice Complex
10 Main Street
Hackensack, New Jersey 07601

Re: Alliance Laundry Systems, LLC v. Joey Nemetz, et als.
Docket No.: BER-L-424-11
Plaintiff's Motion for Sanctions
Return Date: August 6, 2011

Dear Sir/Madam:

This firm represents Alliance Laundry Systems, LLC ("Alliance") in reference to the above replevin action. Please accept this letter memorandum, Certification of Services, and proposed form of Order in support of Alliance's motion for sanctions against the pro se defendants Mr. and Mrs. Baldev Bharaj (the "Bharaj Defendants").

PRELIMINARY STATEMENT

Alliance is attempting to recover possession of 4 washing machines based on its perfected security interest. The machines are currently being held by the Bharaj Defendants. By Order entered on July 7, 2011, the Court granted Alliance the right to repossess these machines but imposed a two (2) week delay to allow the parties to discuss a consensual sale. The Bharaj Defendants have rejected Alliance's sale offer, and have moved to stay enforcement of the July 7, 2011 Order pending their alleged appeal.

Alliance brings the within motion requesting reimbursement of $18,437.50 in legal fees from the Bharaj Defendants for engaging in frivolous litigation, including interposing frivolous defenses and making numerous false statements and material misrepresentations of fact in several pleadings filed in opposition to Alliance's motions, and needlessly expanding the scope of this litigation by filing the stay motion without posting a bond or security as required by R. 2:9-5(a). The relevant period of the fee request is from March 4, 2011 through and including July 12, 2011. Detailed billing and time records supporting this fee request are appended as Exhibit 11 to the Certification of Services.

FACTUAL STATEMENT

In the instant case, the Bharaj Defendants have made multiple false statements in various certifications submitted to the Court. For example, in their certifications dated May 4, 2011 filed in opposition to plaintiff's motion to enforce a settlement, the Bharaj Defendants collectively represented:

- To recoup the losses, the contents of the premises were sold on or about December 30, 2010 subject to due diligence. However, the deal fell through and the contents became available for sale again on or about February 24, 2011.
- On or about March 15, 2011, the contents of the premises were sold to recoup the losses.
- At present, I have no control over the machinery which the plaintiff wants to remove.

See Exhibit 4 to Certification of Services.

Not only did Alliance rely on the veracity of the above statements, the Court did as well when issuing its May 13, 2011 opinion, to wit:

> Notwithstanding, the Court must stress that even though the Bharaj Defendants were aware that Alliance was claiming priority interest in the equipment, they sold the equipment for an undisclosed

> amount to an undisclosed purchaser during the pendency of this replevin action. Bharaj claims that the sale was done with "due diligence." The Court finds it odd that only twelve days after Mr. and Mrs. Bharaj sent an e-mail to Wayne Cosby of Alliance advising that they are ready have the equipment removed, they sold the collateral on March 15, 2011. Thus, the Court finds good cause to compel the Bharaj Defendants to immediately disclose all information pertaining to the alleged sale of the collateral including the date of the sale, purchase amount, name and address of the purchaser, and the current location of the collateral. Given the sale of the collateral, the Court also notes that Plaintiff may find it necessary to amend its Complaint in accordance with the Court Rules.

See May 13, 2011 Order, Rider at p. 3 (emphasis added), annexed as Exhibit 5 to Certification of Services.

In duplicate Certifications dated June 20, 1011 filed in opposition to plaintiff's Order to Show Cause for the issuance of a Writ of Replevin, each of the Bharaj Defendants repeated their false statements about the alleged sale of Alliance's equipment:

> 19. On or about December 28, 2010 Defendant Bharaj agreed to sell the contents of the premises to Hollywood Laundromat LLC subject to due diligence.
>
> 20. During due diligence period, Hollywood Laundromat, LLC decided not to continue with the sale.
>
> * * *
>
> 23. On or about March 15, 2011, defendant Bharaj sold the contents of the premises and leased the premises to Hollywood Laundromat LLC.

See Exhibits 7 and 8 to Certification of Services.[1] Each of these statements is blatantly false and misleading. The Bharaj Defendants never sold Alliance's 4 machines, nor entered into any transactions with a good faith third party purchaser subject to any due diligence investigation.

[1] Of significance, in paragraph 18 of his June 20, 2011 Certification, Mr. Bharaj represents that he signed a mutual release with Mr. Nemetz "on or about December 26, 2010 where both parties released each other of their obligations." See Exhibit 7 to Certification of Services. Yet in open Court on June 29, 2011, Mr. Bharaj represented that he possesses a civil judgment against his former tenant Nemetz for the alleged past due rent.

Rather, they wrongfully retained Alliance's equipment all along, formed their own limited liability company listing Mr. Bharaj as the sole member and using the same trade name as the former tenant Nemetz - Hollywood Laundromat -, and continued using Alliance's equipment for free while they operate the same laundromat business previously run by Nemetz. As a direct and proximate result of Mr. Bharaj's material misstatements, and in reliance thereof, Alliance either took certain actions and/or refrained from exercising certain remedies because Alliance believed that the Bharaj Defendants no longer possessed the machines.

The legal and factual arguments advanced by the Bharaj Defendants are nothing but a farce. Does Mr. Bharaj, as the sole member of Hollywood Laundromat LLC, truly expect the Court to believe that he cancelled the December 2010 sale of the 4 machines to his own company because he was dissatisfied with his own due diligence investigation? What due diligence investigation could Mr. Bharaj be referring to – the one where he decided to create false statements in his Court pleadings so that he could avoid an order for replevin and continue wrongfully possessing Alliance's equipment and profiting from it? If Mr. Bharaj was not in possession of the machinery at the time he filed his June 20, 2011 opposition to Alliance's Order to Show Cause then who was - his limited liability company which he failed to disclose his sole ownership interest in? Where is proof of the actual appellate filing that Mr. Bharaj claims he made in the context of his motion to stay? These are just but a few of the rhetorical questions that come to mind illustrating the absurdity and frivolous nature of the Bharaj Defendants' representations.

LEGAL ARGUMENT

POINT I

THE COURT SHOULD IMPOSE SANCTIONS AGAINST THE BHARAJ DEFENDANTS FOR COMMITTING A FRAUD ON THE COURT

The Court should sanction the Bharaj Defendants by awarding Alliance its reasonable attorneys' fees in the amount of $18,437.50 incurred as a result of their deliberate and knowing misrepresentations to Alliance and the Court. The relevant attorney time entries which form the basis of Alliance's fee application are detailed in the accompanying Certification of Services submitted herewith.

As a direct and proximate consequence of the wrongful actions of the Bharaj Defendants which have resulted in protracting this litigation beyond any level of reasonableness, Alliance has incurred substantial legal fees in pursuing what is considered to be a very basic remedy – the repossession of 4 used washing machines that it financed to its customer and which it has a perfected security interest.

As noted herein, there are three (3) alternative mechanisms for the Court to impose sanctions against the Bharaj Defendants; namely, (i) the Court's inherent power to sanction; (ii) by statute, N.J.S.A. 2A:15-59.1; or (iii) by Court Rule, R. 1:4-8. Each remedy is discussed herein, though Alliance is primarily relying on the Court's inherent powers and N.J.S.A. 2A:15-59.1.

A. Inherent Power to Sanction

"A court has the inherent power to impose sanctions on litigants. Trieste, Inc. II v. Twp. of Gloucester, 215 N.J. Super. 184, 188 (App. Div. 1987). The courts' inherent power includes "the ability to do whatever is reasonably necessary to deter abuse of the judicial process." Eash v. Riggins Trucking Inc., 757 F.2d 557, 567 (3rd Cir.1985) (en banc); "[T]he threshold for the use

of inherent power sanctions is high." Dziubek v. Schumann, 275 N.J. Super. 428, 440 (App. Div. 1994) (quoting Reed v. Iowa Marine & Repair Corp., 16 F.3d 82, 84 (5th Cir. 1994)). The United States Supreme Court has made it clear that the court may exercise inherent power to sanction a party when he or she has, "acted in bad faith, vexatiously, wantonly or for oppressive reasons." Chambers v. Nasco, 501 U.S. 32, 45, 111 S.Ct. 2123, 2133, 115 L.Ed. 2d 27, 45 (1991).

The Court's inherent power to sanction litigants encompasses those who, like the Bharaj Defendants, commit a fraud on the Court. See Triffin v. Automatic Data Processing, Inc., 394 N.J.Super. 237, 251 (App. Div. 2007)(The historical basis for the claim of fraud on the court came from the court's inherent power to levy sanctions against those who abused the legal process.). As the Appellate Division explained:

> ...a fraud on the court occurs "where it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense." Ibid. (quoting Aoude v. Mobil Oil Corp., 892 F.2d 1115, 1118 (1st Cir. 1989); Perna v. Elec. Data Sys. Corp., 916 F. Supp. 388, 397 (D.N.J. 1995)). We further noted that unlike common law fraud on a party, fraud on a court does not require reliance. Ibid. We noted that "[s]eparate and distinct from court rules and statutes, courts possess an inherent power to sanction an individual for committing a fraud on the court."

Triffin, 394 N.J.Super. at 253

There is no doubt that the Bharaj Defendants set an unconscionable scheme in motion and otherwise abused the legal process by making numerous false statements of fact in their pleadings, including the omission of material facts; i.e., that Mr. Bharaj is the sole member of Hollywood Laundromat. The Court should exercise its inherent power to sanction and require the Bharaj Defendants to reimburse Alliance in the amount of $18,437.50 or such lesser amount

as the Court deems is reasonable. In fact, false swearing, whether in court papers, in witnessing of affidavits or elsewhere, has often been the basis for discipline of attorneys. See Matter of Kernan, 118 N.J. 361 (1990); Matter of Lunn, 118 N.J. 163 (1990); Matter of Kotok, 108 N.J. 314 (1987); Matter of Yacavino, 100 N.J. 50 (1985); In re Labendz, 95 N.J. 273 (1984).

B. Frivolous Litigation Statute

The Court can also sanction a litigant for engaging in frivolous litigation in violation of N.J.S.A. 2A:15-59.1. This statute states in relevant part:

> A party who prevails in a civil action, either as plaintiff or defendant, against any other party may be awarded all reasonable litigation costs and reasonable attorney fees, if the judge finds at any time during the proceedings or upon judgment that a complaint, counterclaim, cross-claim or defense of the nonprevailing person was frivolous.

N.J.S.A. 2A:15-59(1)(a).[1]

A claim or defense is frivolous only "when `no rational argument can be advanced in its support, or it is not supported by any credible evidence, or it is completely untenable.'" First Atl. Fed. Credit Union v. Perez, 391 N.J.Super. 419, 432 (App. Div. 2007) (quoting Fagas v. Scott, 251 N.J.Super. 169, 190 (Law Div. 1991)). When considering sanctions for frivolous litigation, a court must give a "`restrictive interpretation'" to the term "`frivolous'" in order to avoid limiting access to the court system. Id. at 433. (quoting McKeown Brand v. Trump Castle Hotel and

[1] According to N.J.S.A. 2A:15-59.1(b):

(a) In order to find that a complaint, counterclaim, cross-claim or defense of the nonprevailing party was frivolous, the judge shall find on the basis of the pleadings, discovery, or the evidence presented that either:

(1) The complaint, counterclaim, cross-claim or defense was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or

(2) The nonprevailing party knew, or should have known, that the complaint, counterclaim, cross-claim or defense was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

Casino, 132 N.J. 546, 561-62 (1993)); see also Trocki Plastic Surgery Ctr. v. Bartkowski, 344 N.J.Super. 399, 406-407 (App. Div. 2001).

Under these standards, the Bharaj Defendants' pleadings filed in opposition to Alliance's motion to enforce the settlement and its Order to Show Cause Application are clearly frivolous. The proverbial "ping pong" ball put into play by the Bharaj Defendants – one day they claim they sold the equipment and turned over the excess proceeds to the former tenant, then the next day they claim to possess it, but the day after claim they sold it again – underscores the bad faith and unscrupulous litigation tactics in which they have engaged in. The Court should not countenance their unclean hands, the end result which caused Alliance to suffer harassment, delay and unnecessary legal fees. Therefore, the Court should sanction the Bharaj Defendants in the amount of $18,437.50 or such lesser amount as the Court determines is reasonable.

C. Sanctions Authorized by Court Rule

The Bharaj Defendants status as *pro se* litigants does not relieve their obligation to comply with the court rules. See Venner v. Allstate, 306 N.J.Super. 106, 110 (App. Div. 1997). One such requirement is R. 1:4-4(b) providing for the use of certification in lieu of an affidavit provided that the following statement shall be dated and immediate precede the affiant's signature: "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment." Ibid. The effect of a party's representations in signing a pleading is detailed in R. 1:4-4(a).[2] A party who files a pleading designed to defeat the purpose of R. 1:4-4 may be sanctioned. Ibid.

[2] R. 1:4-4(a) states in pertinent part:

> (a) Effect of Signing, Filing or Advocating a Paper. The signature of an attorney or pro se party constitutes a certificate that the signatory has read the pleading, written motion or other paper. By signing, filing or advocating a pleading, written motion, or other paper, an attorney or pro se party certifies that to the best of his or her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

R. 1:4-8 supplements N.J.S.A. 2A:15-59.1 and governs the procedure for sanctioning a litigant for violating R. 1:4-4. The Rule provides in pertinent part as follows:

> (a) Effect of Signing, Filing or Advocating a Paper. The signature of an attorney or pro se party constitutes a certificate that the signatory has read the pleading, written motion or other paper. By signing, filing or advocating a pleading, written motion, or other paper, an attorney or pro se party certifies that to the best of his or her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> (1) the paper is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) the factual allegations have evidentiary support or, as to specifically identified allegations, they are either likely to have evidentiary support or they will be withdrawn or corrected if reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support; and
>
> (4) the denials of factual allegations are warranted on the evidence or, as to specifically identified denials, they are reasonably based

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(1) the paper is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the factual allegations have evidentiary support or, as to specifically identified allegations, they are either likely to have evidentiary support or they will be withdrawn or corrected if reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support; and

(4) the denials of factual allegations are warranted on the evidence or, as to specifically identified denials, they are reasonably based on a lack of information or belief or they will be withdrawn or corrected if a reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support.

If the pleading, written motion or other paper is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken and the action may proceed as though the document had not been served. Any adverse party may also seek sanctions in accordance with the provisions of paragraph (b) of this rule.

> on a lack of information or belief or they will be withdrawn or corrected if a reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support.
>
> If the pleading, written motion or other paper is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken and the action may proceed as though the document had not been served. Any adverse party may also seek sanctions in accordance with the provisions of paragraph (b) of this rule.

R. 1:4-8

A prerequisite for seeking sanctions under R. 1:4-8 is the issuance of a safe harbor letter under subsection (b) of R. 1:4-8, which generally requires a minimum 28-days' notice of a written demand to withdraw the offending pleading. The 28-day time period is modified by the rule in respect of an allegedly frivolous motion having a shorter return date.

Because the 28-day notice period is simply impractical under these circumstances – with the repossession to take place after July 13th assuming the Court does not issue any stay - Alliance is not relying on R. 1:4-8 as a basis to impose sanctions against the Bharaj Defendants. Alliance nevertheless sent a written notice to the Bharaj Defendants under R. 1:4-8 offering them the opportunity to withdraw the motion, and informing them that sanctions would be sought.

POINT II

THE COURT SHOULD REQUIRE THE BHARAJ DEFENDANTS TO REIMBURSE ALLIANCE FOR ITS REASONABLE ATTORNEYS' FEES INCURRED AS A RESULT OF THEIR FRAUD AND MISREPRESENTATION

R. 4:42-9(b) requires that all applications for attorney's fees "shall be supported by an affidavit of services addressing the factors enumerated by R.P.C. 1.5(a)." Twp. of W. Orange v. 769 Assocs., LLC, 198 N.J. 529, 542 (2009). Triffin v. Automatic Data Processing, Inc., 394 N.J.Super. 237 (App. Div. 2007).

Among the factors to be considered in determining the reasonableness of a fee are the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

(8) whether the fee is fixed or contingent.

R.P.C. 1.5(a)(1)-(8). The list is not exhaustive and all factors will not be relevant in every case. Twp. of W. Orange, 198 N.J. at 542.

As set forth in the accompanying Certification of Services submitted by Alliance's counsel, LoFaro & Reiser, LLP, the firm is charging Alliance at the hourly rate of $295/hr. The firm has provided the Court with copies of its time records maintained in this matter, and has identified those time entries for which Alliance seeks reimbursement for and which Alliance maintains is due to the frivolous actions of the Bharaj Defendants. Each of the above factors outlined in R.P.C. 1.5(a) are discussed at length in the Certification of Services, and thus need not be repeated here.

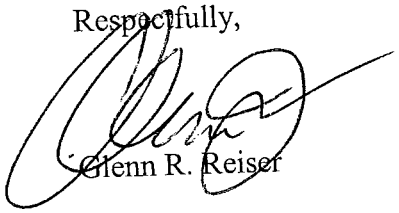
Considering the totality of the circumstances of this particular case, Alliance respectfully submits that its request for $18,437.50 in legal fees is not only warranted but reasonable.

CONCLUSION

For the foregoing reasons and authorities cited, the Court should impose sanctions against the Bharaj Defendants in the form of attorneys' fees in the amount of $18,437.50 due to their engaging in frivolous litigation and otherwise multiplying these proceedings through their various false sworn statements and misrepresentations. A proposed form of Order is submitted herewith.

Thank you for Your Honor's careful consideration of this matter.

Respectfully,



Glenn R. Reiser

Cc: Mr. & Mrs. Baldev Bharaj (w/encl.)(Via E-Mail & Fedex)
Joey Nemetz (w/encl.)(Via E-Mail & Fedex)
Wayne J. Crosby (w/encl.)(Via E-Mail)

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Attorneys for Plaintiff

ALLIANCE LAUNDRY SYSTEMS, LLC, Plaintiff, vs. JOEY NEMETZ, LLC d/b/a HOLLYWOOD LAUNDROMAT, JOEY NEMETZ a/k/a JOSEPH P. NEMETZ a/k/a/ JOSEPH P. HEMETS, BALDEV BHARAJ, PUSHPA BHARAJ, ABC COMPANY, and JOHN DOES 1-5, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY DOCKET NO: BER-L-424-11 CIVIL ACTION **ORDER TO PAY**

This matter being opened to the Court by plaintiff, by and through its attorneys, LoFaro & Reiser, L.L.P., for an Order imposing sanctions against defendants Baldev Bharaj and Pushpa Bharaj (the "Motion"); and whereas in support of the motion plaintiff having filed a Certification of Services and Letter Memorandum of Law; and whereas the Court having considered the supporting pleadings and any opposition filed by the defendants Baldev Bharaj and Pushpa Bharaj; and the Court having conducted oral argument on the Motion; and for the reasons set forth on the record; and for good cause appearing;

It is on this _____ day of _____, 2011;