IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DTD 6/21/95,

Plaintiff,

v.

HERITAGE UNION LIFE INSURANCE CO.,

Defendant.

HERITAGE UNION LIFE INSURANCE CO.,

Counter-Plaintiff,

v.

SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DTD 6/21/95,

Counter-Defendant,

FIRST ARLINGTON NATIONAL BANK, et al.,

Third-Party Defendants.

ELIOT IVAN BERNSTEIN,

Cross-Plaintiff,

v.

TED BERNSTEIN,

Cross-Defendant,

PAMELA B. SIMON, et al.,

Third-Party Defendants.

Case No. 13 C 3643

Judge Amy St. Eve

ORDER

The Court, in its discretion, denies pro se Cross-Plaintiff Eliot Bernstein's motion to disqualify Plaintiffs' counsel and to strike the pleadings [63].

STATEMENT

On May 20, 2013, Defendant Jackson National Life Insurance Company ("Defendant" or "Jackson"), as successor in interest to Heritage Union Life Insurance Company ("Heritage"), filed an amended notice of removal pursuant to 28 U.S.C. § 1441, removing the present lawsuit from the Circuit Court of Cook County based on the Court's diversity jurisdiction. *See* 28 U.S.C. § 1332(a). In their First Amended Complaint, Plaintiffs allege a breach of contract claim against Defendant based on Defendant's failure to pay Plaintiffs proceeds from the life insurance policy of decedent Simon Bernstein. Before the Court is pro se Cross-Plaintiff Eliot Bernstein's ("Eliot") motion to disqualify Plaintiffs' counsel and to strike the pleadings. For following reasons, the Court, in its discretion, denies Eliot's motion.

BACKGROUND

In their First Amended Complaint, Plaintiffs, who are the Bernstein Trust and four of the five adult children of decedent Simon Bernstein, allege that at all times relevant to this lawsuit, the Bernstein Trust was a common law trust established in Chicago, Illinois by Simon Bernstein. (R. 73, Am. Compl. ¶¶ 1, 7.) Plaintiffs assert that Ted Bernstein is the trustee of the Bernstein Trust and that the Bernstein Trust was a beneficiary of Simon Bernstein's life insurance policy. (*Id*. ¶¶ 2, 4.) In addition, Plaintiffs allege that the beneficiaries to the Bernstein Trust are all of Simon Bernstein's children, including Eliot, although Eliot did not consent to being a Plaintiff in this lawsuit. (*Id*. ¶¶ 5, 8.) According to Plaintiffs, at the time of his death, Simon Bernstein was the owner of the life insurance policy and the Bernstein Trust was the sole surviving beneficiary under the policy. (*Id*. ¶ 20.) Following Simon Bernstein's death on September 13, 2012, the Bernstein Trust, by and through its counsel in Palm Beach County, Florida, submitted a death claim to Heritage under the life insurance policy at issue. (*Id*. ¶ 22.)

On June 26, 2013, Jackson filed a Third-Party Complaint and Counter-Claim for Interpleader pursuant to 28 U.S.C. § 1335(a) and Federal Rule of Civil Procedure 14 seeking a declaration of rights under the life insurance policy for which it is responsible to administer. In its Counter-Claim and Third-Party Complaint for Interpleader, Jackson alleges that it did not originate or administer the life insurance policy at issue, but inherited the policy from its predecessors. (R. 17, Counter ¶ 2.) Meanwhile, it is undisputed that no one has been able to locate a fully executed copy of the Bernstein Trust. (*Id*. ¶ 19.)

On September 22, 2013, Eliot filed pro se Cross-Claims against Ted Bernstein and Plaintiffs' counsel Adam Simon, among others. (R. 35, Cross-Claim.) Construing his pro se allegations liberally, *see Luevano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014, 1027 (7th Cir. 2013), Eliot alleges claims of fraudulent conversion, breach of fiduciary duty, legal malpractice, abuse

of the legal process, common law conversion, civil conspiracy, and negligence in connection with the administration of Simon Bernstein's Estate in the Probate Court of Palm Beach County, Florida.

I. Motion to Disqualify Plaintiffs' Counsel

A. Legal Standard

When determining a motion to disqualify counsel, courts must strike a balance between two important considerations — "the sacrosanct privacy of the attorney-client relationship (and the professional integrity implicated by that relationship) and the prerogative of a party to proceed with counsel of its choice." *Schiessle v. Stephens*, 717 F.2d 417, 419-20 (7th Cir. 1983). Disqualification of an attorney is a "drastic measure which courts should hesitate to impose except when absolutely necessary." *Id.* at 420. Motions to disqualify should be "viewed with extreme caution for they can be misused as techniques of harassment." *Freeman v. Chicago Musical Instrument Co.*, 689 F.2d 715, 722 (7th Cir. 1982). The moving party has the burden to establish facts warranting attorney disqualification. *See Black Rush Min., LLC v. Black Panther Min.*, 840 F.Supp.2d 1085, 1090 (N.D. Ill. 2012). Moreover, district courts have broad discretion in determining whether to disqualify counsel. *See Hutchinson v. Spanierman*, 190 F.3d 815, 822 (7th Cir. 1999).

B. Analysis

In his motion, Eliot argues that the Court should disqualify Plaintiffs' counsel Adam Simon and his law firm because it "appears" that counsel has personal feelings and emotions involving Eliot that interfere with counsel's ability to act independently and without malice toward Eliot. Also, Eliot bases his disqualification argument on the fact that he has named Adam Simon and his law firm as Cross-Defendants in the present matter. Eliot's claims against these Cross-Defendants are based on Adam Simon filing the present lawsuit instead of submitting this dispute to the Probate Court of Palm Beach County in conjunction with Simon Bernstein's Estate.

Typically, motions to disqualify are premised on an attorney's prior representation of a client in relation to counsel's present representation of another client and whether the matters are "substantially related." *See Westinghouse Elec. Corp. v. Gulf Oil. Corp.*, 588 F.2d 221, 223 (7th Cir. 1978) ("Where an attorney represents a party in a matter in which the adverse party is that attorney's former client, the attorney will be disqualified if the subject matter of the two representations are 'substantially related.'"). More specifically, "'substantially related' boils down to whether the lawyer could have obtained confidential information in the first representation that is potentially relevant in the second." *Analytica, Inc. v. NPD Research, Inc.*, 708 F.2d 1263, 1266 (7th Cir. 1983).

Here, Eliot's disqualification motion is based on Adam Simon's conduct in the present lawsuit as it relates to Simon Bernstein's Estate — not any previous representation of Eliot —

which calls into question whether Eliot has standing to bring the present motion to disqualify because he is a third-party to the attorney-client relationship at issue. Although district courts in this Circuit have concluded that a third-party to the attorney-client relationship has standing to bring a motion to disqualify, the third-party must provide evidence "clearly calling into question the fair or efficient administration of justice." *See Tizes v. Curico*, No. 94 C 7657, 1997 WL 116797, at *2 (N.D. Ill. Mar. 12, 1997) (Williams, J.); *see also Rudzinski v. Metropolitan Life Ins. Co.*, No. 05 C 0474, 2007 WL 3171338, at *4 (N.D. Ill. Oct. 25, 2007) ("courts in this Circuit largely have ... found that a third party has standing to move to disqualify opposing counsel only if it has 'evidence clearly calling into question the fair or efficient administration of justice.'"); *Emmis Operating Co. v. CBS Radio*, Inc., 480 F.Supp.2d 1111, 1116 (S.D. Ind. 2007) (collecting cases).

Eliot has not presented any evidence that calls into question the fair or efficient administration of justice in the present matter to support his motion to qualify. Instead, Eliot attaches various unauthenticated documents concerning the Bernstein Trust, the life insurance policy, emails, and other materials regarding the probate proceedings in Palm Beach County. *See Devbrow v. Gallegos*, 735 F.3d 584, 587 (7th Cir. 2013); Fed.R.Evid. 901. Moreover, none of these documents speak to Adam Simon or his representation in this matter. In addition, Eliot's motion and legal memoranda are not verified pursuant to 28 U.S.C. § 1746, therefore, Eliot bases his motion on bare-boned allegations that Adam Simon facilitated insurance fraud in connection with bringing this lawsuit. Without more, Eliot has not provided sufficient evidence that clearly calls into question the fair or efficient administration of justice, and thus he does not have standing to bring the present motion to disqualify. Therefore, the Court denies his motion to disqualify Plaintiffs' counsel.

II. Motion to Strike the Pleadings

A. Legal Standard

Next, Eliot moves to strike Plaintiffs' pleadings, which is governed by Federal Rule of Civil Procedure 12(f). "Rule 12(f) provides that a district court 'may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.'" *Delta Consulting Group, Inc. v. R. Randle Const., Inc.*, 554 F.3d 1133, 1141 (7th Cir. 2009) (quoting Fed.R.Civ.P. 12(f)). District courts have considerable discretion to strike allegations under Rule 12(f). *See id.* at 1141-42.

B. Analysis

In support of his motion to strike the pleadings, Eliot gives his version of the proceedings in the Probate Court of Palm Beach County, including the proceedings regarding his mother's estate. According to Eliot, the alleged misconduct in probate court involves Robert Spallina, his parent's estate planner and attorney, as well as Spallina's law firm and its staff. In this context, Eliot maintains that because the Bernstein Trust is lost, the insurance policy proceeds should be paid to the Simon Bernstein Estate in the Probate Court of Palm Beach County. In essence,

Eliot's motion to strike is a motion to dismiss this lawsuit and remand it to the Probate Court of Palm Beach County. Not only does the Court lack jurisdiction to remand this matter to the Florida probate court, but Eliot's motion seeks a final determination of the merits of Plaintiffs' claims, which is a remedy the Court cannot grant at this procedural posture. To clarify, Eliot's pro se status does not absolve him from complying with the federal and local procedural rules. *See Pearle Vision, Inc. v. Romm,* 541 F.3d 751, 758 (7th Cir. 2008). As the Supreme Court instructs, "we have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel." *McNeil v. United States,* 508 U.S. 106, 113, 113 S.Ct. 1980, 124 L.Ed.2d 21 (1993). Accordingly, Eliot, just like other civil litigants, must follow the procedural rules and bring the proper dispositive motions at the appropriate time. In addition, Eliot must follow the Northern District of Illinois Local Rules, such as Local Rule 7.1, in which he must ask for leave of court before filing a brief over fifteen pages long. His memorandum in support of the present motion is over 60 pages long and his reply brief is approximately 132 pages long.

Moreover, Eliot's memoranda in support of the present motion is filled with accusations and allegations that he has also brought in the Probate Court for Palm Beach County regarding the Simon Bernstein Estate and his mother's estate. (R. 35, Ex. 1, Probate Hr'g Tr.; R. 75-3, Ex. B, 1/04/14 Probate Motion.) As discussed, the Federal Rules of Civil Procedure apply to the present proceedings, including Rule 11, which grants the Court discretion to sanction a litigant's misconduct, including a pro se litigant's misconduct. *See Cooney v. Casady,* 735 F.3d 514, 518, 523 (7th Cir. 2013). Conduct that warrants Rule 11 sanctions includes filing claims that are frivolous or malicious, filing legally baseless claims, or bringing claims for an improper purpose, such as for the purpose of harassing parties or counsel. *See Fabriko Acquisition Corp. v. Prokos,* 536 F.3d 605, 610 (7th Cir. 2008); *Brunt v. Serv. Emp. Int'l Union,* 284 F.3d 715, 721 (7th Cir. 2002); *Independent Lift Truck Builders Union v. NACCO Materials Handling Grp., Inc.,* 202 F.3d 965, 968–69 (7th Cir. 2000). Rule 11 sanctions can include monetary fines, fees, expenses, or non-monetary sanctions. *See* Fed.R.Civ.P. 11(c)(4); *United States Bank Nat'l Ass'n, N.D. v. Sullivan-Moore*, 406 F.3d 465, 471 (7th Cir. 2005) ("The district court has wide latitude to determine what sanctions should be imposed for a Rule 11 violation, and may impose non-monetary sanctions when appropriate to deter repetition of the offending conduct.").

In addition to Rule 11, "federal courts have the inherent power to impose a wide range of sanctions upon parties for abusive litigation," in "cases in which a litigant has engaged in bad-faith conduct or willful disobedience of a court's orders." *Grochocinski v. Mayer Brown Rowe & Maw, LLP,* 719 F.3d 785, 799 (7th Cir. 2013) (citation omitted). In other words, "[s]anctions imposed pursuant to the district court's inherent power are appropriate where a party has willfully abused the judicial process or otherwise conducted litigation in bad faith." *Tucker v. Williams,* 682 F.3d 654, 661-62 (7th Cir. 2012). Under these circumstances, the sanction of dismissal is well within the district court's discretion. *See Salmeron v. Enterprise Recovery Sys., Inc.,* 579 F.3d 787, 793 (7th Cir. 2009).

As this case proceeds, the Court expects the litigants to act according to their Rule 11 obligations.

Dated: February 6, 2014

AMY J. ST. EVE
United States District Court Judge