EXHIBIT "R"

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WADE ROBERTSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil Action No. 11-1919 (ESH)**
	)	
WILLIAM C. CARTINHOUR, JR., *et al.*,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OPINION

Yet again, this Court must confront the issue of sanctions arising from the litigation brought by Wade Robertson against Dr. William Cartinhour. This time the issue is whether to impose sanctions against Ty Clevenger for filing excessive and frivolous pleadings on behalf of his client, Wade Robertson, in violation of 18 U.S.C. § 1927. To date, in related litigation, Clevenger has been sanctioned by the D.C. Circuit in orders issued on October 19 and December 14, 2010;[1] by Chief Judge Lamberth in a related bankruptcy proceeding on April 2, 2012;[2] and by Bankruptcy Judge Teel in a seventy-nine page opinion where Clevenger was fined for, *inter alia*, his "complete disregard for the facts and law in advancing . . . frivolous argument[s] [which] generated a staggering amount of work for the court, and has put Cartinhour and his attorney to the unnecessary burden of defending against frivolous arguments in this and other

[1] Order at 1, *Robertson I*, No. 10-7033 (D.C. Cir. Dec. 14, 2010); Order at 1, *Robertson I*, No. 10-7033 (D.C. Cir. Oct. 19, 2010) (imposing costs for unwarranted filing of fourth motion to stay district court proceedings).

[2] Order, *In Re: W.A.R. LLP*, No. 12-cv-1574 (D.D.C. Apr. 2, 2012).

courts."[3] If anything, Clevenger's conduct here is even more egregious than in these related cases. Therefore, this Court will grant the motion and sanction Clevenger for his vexatious and abusive litigation tactics in this case.[4]

BACKGROUND

This Court's involvement in Robertson's suits against Cartinhour dates back to 2009 when Robertson unsuccessfully sued Cartinhour, which ultimately resulted in a jury verdict in favor of Cartinhour for $7 million, including punitive damages of $3.5 million. The tortured history relating to that case, "*Robertson I*," and the current one, which has been referred to as "*Robertson II*," was last set forth in detail in a Memorandum Opinion dated March 16, 2012. In that opinion, this Court granted a motion to dismiss all counts, including charges of RICO and state common law claims, that Clevenger initially brought on Robertson's behalf against Cartinhour, his attorneys ("Kearney Attorneys") in *Robertson I* and others in the Southern District of New York.[5] Given the detailed recitation that appears in that Memorandum Opinion, the Court will only to summarize the relevant events that occurred subsequent to March 16, 2012.

1. On April 2, 2012, Chief Judge Lamberth imposed sanctions of $7,249.00 against Robertson and Clevenger jointly, recognizing that they had filed a frivolous bankruptcy case in an "attempt to stall litigation in this district in front of Judge Ellen Huvelle"[6] and finding that sanctions were warranted because

[3] *In re W.A.R. LLP*, No. 11-00044, 2012 Bankr. LEXIS 1989, at *73 (Bankr. D.D.C. May 3, 2012).

[4] Clevenger has also recently been sanctioned for similar conduct in the Fifth Circuit. *Erwin v. Russ*, No. 10-51125, 2012 U.S. App. LEXIS 11101, at *9-11 (5th Cir. June 1, 2012)

[5] *See Robertson II*, No. 11-cv-1919, 2012 U.S. Dist. LEXIS 35217, at *2 (D.D.C. Mar. 16, 2012).

[6] Order at 1, *In re: W.A.R. LLP*, No. 11-cv-1574 (D.D.C. June 25, 2012) (describing Order of April 2, 2012).

of "the groundless nature of the [bankruptcy] appeal, unfounded whatsoever in the law . . . ."[7]

2. On April 3, 2012, in an unpublished opinion, the D.C. Circuit affirmed the jury's $7 million verdict in *Robertson I* and found that Robertson presented "no meritorious argument on appeal."[8]

3. On May 4, 2012, Bankruptcy Judge Teel granted a motion for sanctions and fined Clevenger and Robertson $10,000 each, finding that "Clevenger joined Robertson in knowingly and in bad faith advancing frivolous arguments in [the] bankruptcy case."[9]

4. On June 12, 2012, Clevenger filed an appeal in the D.C. Circuit seeking review of this Court's dismissal of *Robertson II.*

5. On June 25, 2012, Chief Judge Lamberth ordered Clevenger and Robertson to show cause why they "should not be enjoined from further filings [in the bankruptcy-related matters], filing further appeals from the underlying bankruptcy case, and from filing new related matters in this district court."[10] In response to their objections, Chief Judge Lamberth responded to their objections on July 25, 2012, by listing the egregious behavior that Robertson and Clevenger have engaged in dating back to the inception of *Robertson I.*[11]

Understandably with this history as backdrop, Cartinhour has now moved for sanctions against Clevenger for attorney's fees and costs incurred in *Robertson II* in the amount of $158,954.28. (*See* Cartinhour Mot. For Sanctions Against Ty Clevenger, Esq. ("Cartinhour

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[7] Memorandum Order at 6-7, *In re: W.A.R. LLP,* No. 11-cv-1574 (D.D.C. Apr. 2, 2012). As set forth by Chief Judge Lamberth, the April 2, 2012 Order produced a veritable onslaught of motions, all of which were denied. Order at 1-3, *In re: W.A.R. LLP*, No. 11-cv-1574 (D.D.C. June 25, 2012).

[8] *Robertson I*, No. 11-7076, 2012 U.S. App. LEXIS 6674, at *3 (D.C. Cir. 2012).

[9] *In re W.A.R. LLP*, No. 11-00044, 2012 Bankr. LEXIS 1989, at *4 (Bankr. D.D.C. May 3, 2012).

[10] Order at 3, *In re: W.A.R. LLP*, No. 11-cv-1574 (D.D.C. June 25, 2012).

[11] Order at 1-3, *In re: W.A.R. LLP*, No. 11-cv-1574 (D.D.C. July 25, 2012).

Mot.").)[12] In his initial response, Clevenger sought extensive discovery relating to the bills of Cartinhour's New York attorneys ("Yuzek Attorneys"); challenged whether Cartinhour actually incurred these fees in this litigation and whether the Yuzek Attorneys were acting under the direction of the Kearney Attorneys; and sought discovery from Cartinhour relating to whether he authorized the lawyers to act on his behalf.[13] Clevenger also sought 90 days to oppose the sanctions motion.[14] These motions were denied and finally, on May 21, 2012, Clevenger filed his response, in which he characterizes the Kearney Attorneys as "not honest men by nature" (Clevenger's Response to Mot. for Sanctions Purportedly Filed on Behalf of Def. Cartinhour ("Clevenger's Opp'n") at 6) and argues that they have failed to meet their burden under 28 U.S.C. § 1927; that the Court cannot award sanctions for events that occurred in the Southern District of New York; and that the motion is brought for an improper purpose. (*Id.* at 2, 4, 6.) These arguments are, as demonstrated below, utterly frivolous.

ANALYSIS

I. LEGAL STANDARD

Cartinhour seeks sanctions under 28 U.S.C. § 1927, which provides that an attorney who "so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred

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[12] Cartinhour does not seek attorney's fees from Robertson because it would be "objectively futile" since he is unable to pay the approximately $6.35 million outstanding from the jury verdict in *Robertson I*. (*Id.* at 7.)

[13] Mot. to Permit Discovery, to Compel Disclosure, and to Compel a Showing of Authority to Act, *Robertson II* (D.D.C. May 7, 2012) ("Clevenger's Mot. to Compel Discovery").

[14] Mot. to Enlarge Time in Which to Respond in Which to Respond to Mot., with Notice of Movant's Intended Opp'n, *Robertson II* (D.D.C. Apr. 27, 2012) ("Clevenger's Mot. for an Extension of Time").

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