**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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| **In re: W.A.R. LLP** | ) | **Civil Action No. 11-1574 (RCL)** |

**MEMORANDUM AND ORDER**

Before the Court is appellee William Cartinhour's motion for sanctions [23]. Cartinhour seeks sanctions against appellant Wade Robertson and his lawyer, Ty Clevenger, for filing an allegedly frivolous appeal. The Court disposed of that appeal and affirmed the judgment of the Bankruptcy Court in an order [22] issued January 27, 2012. Upon consideration of the motion, Robertson and Clevenger's opposition [30] and Cartinhour's reply [32], the applicable law, and the entire record herein, the Court will enter sanctions against Robertson and Clevenger, jointly, in the amount of $7,249.00.

## I. BACKGROUND

The facts underlying the instant motion are described at length in this Court's January 27 order (as well as in various orders in related cases before Judge Huvelle); a comparatively brief summary will suffice here. This motion arises out of an appeal in a bankruptcy case that was in essence a tangent to previous litigation in this district court between the founding partners of the debtor partnership W.A.R. LLP, Wade Robertson and William Cartinhour. Robertson initially filed a declaratory judgment action, which was assigned to Judge Huvelle. Cartinhour counterclaimed, arguing that Robertson had fraudulently induced him to invest a total of $3.5 million in the partnership. Cartinhour later alleged that Robertson had caused W.A.R. LLP to lend to Robertson at least $3,405,000 of the $3.5 million invested in the partnership by Cartinhour. Cartinhour successfully moved for a preliminary injunction putting a freeze on what

remained of those assets in Robertson's bank accounts. Robertson then filed a suit implicating the same set of issues in the Southern District of New York. (This case was eventually transferred to this district, and reassigned to Judge Huvelle as a related case; Judge Huvelle granted Cartinhour and the other defendants' motion to dismiss.) Cartinhour sought an anti-filing injunction against Robertson in the original declaratory judgment case. Judge Huvelle declined, but not without noting:

> Robertson proceeded to file no less than fourteen motions, including a motion to reconsider an order granting Cartinhour leave to amend his counter-claims, a motion to quash a subpoena for documents that Robertson had already agreed to produce, and a motion to recuse. Two of those motions were sufficiently meritless, and were considered by the Court to have been filed recklessly and in bad faith, so as to justify the award of attorney's fees against Robertson under 28 U.S.C. § 1927, which permits the award of fees "against an attorney who frustrates the progress of judicial proceedings."
> The Court of Appeals has been equally frustrated by Robertson's vexatious litigation strategy, finding sanctions to be "abundantly justified" after Robertson filed his fourth motion to stay despite being warned, less than a week earlier, that the Court "looks with extreme disfavor upon unnecessary pleadings." . . . Prior to imposing those sanctions, the Circuit Court had summarily denied Robertson's motion for disqualification and sanctions against Cartinhour's counsel; Robertson's petition for mandamus seeking recusal; Robertson's motion for clarification and reconsideration, where the Court explicitly warned him that it "will not hesitate to impose sanctions" . . .; Robertson's emergency motion to stay a preliminary injunction; and Robertson's motion for sanctions and a stay, noting, *inter alia*, that certain orders of the district court were unappealable.
> In addition to the flurry of appellate activity and the sanctions imposed to date, this Court has had to rule on endless motions for recusal, motions to stay, motions for reconsideration, and motions to quash.
> . . .
> The Court . . . warns Robertson, as did the Court of Appeals, that if he should continue to pursue his strategy of unnecessarily proliferating this litigation, this Court will not hesitate to entertain a renewed motion for an injunction.

(internal citations and modifications omitted).

Around the same time, an outside W.A.R. LLP creditor filed an involuntary Chapter 7 bankruptcy petition in the Western District of Tennessee against W.A.R. LLP—the genesis of the instant bankruptcy case. Because the filing of a bankruptcy case automatically stays actions "to obtain possession of or to exercise control over property of the bankruptcy estate," 18 U.S.C. § 362(a)(1), Judge Huvelle held a hearing to determine whether the district court case could proceed. Judge Huvelle determined that it could, because the litigation involved solely claims by Robertson against Cartinhour and vice versa, and did not implicate partnership property. In ruling on a motion to enjoin the D.C. case filed in the Tennessee bankruptcy court, Judge Paulette J. Delk reached the same conclusion. However, "[o]ut of an abundance of caution," Judge Delk "expressly" found that "sufficient cause exists under 11 U.S.C. § 362(d)(1) to modify the stay to permit the D.C. lawsuit to go forward." The Tennessee court then transferred the case to the District of Columbia.

Following the bankruptcy court's adoption of the trustee's determination of no assets for distribution, and various other orders of the bankruptcy court, Robertson and W.A.R. LLP appealed to this Court. Meanwhile, the original declaratory judgment action in front of Judge Huvelle proceeded to trial, where the jury returned a verdict for Cartinhour in the amount of $3.5 million in compensatory damages and $3.5 million in punitive damages for Robertson's breach of fiduciary duty as business partner and for his legal malpractice. This Court upheld the bankruptcy court's orders in its January 27, 2012 order; this motion followed. Cartinhour requests the imposition of sanctions in the amount of $7,249.00, representing attorney's fees for the appeal and for preparation of the instant motion.

## II. DISCUSSION

Bankruptcy Rule 8020 authorizes a district court to impose sanctions in the form of single or double costs against an appellant and/or his attorney if the court determines that an appeal was frivolous. The Advisory Committee Note to the rule states that the standard for sanctions is the same as for circuit courts of appeals reviewing frivolous appeals from a district court under Fed. R. App. P. 38. *See, e.g.*, *In re Porto*, 645 F.3d 1294, 1306-07 (11th Cir. 2011).[1] An appeal is frivolous if "its disposition is obvious, and the legal arguments are wholly without merit." *Reliance Ins. Co. v. Sweeney Corp., Maryland*, 792 F.2d 1137, 1138 (D.C. Cir. 1986). Sanctions are warranted against a lawyer personally for prosecuting a frivolous appeal if the lawyer's conduct reflects "a reckless indifference to the merits of a claim." *Id.*

Although it will "tolerate[] and entertain[] marginal appeals," *Jenkins v. Tatem*, 795 F.2d 112, 113 (D.C. Cir. 1986), the Court of Appeals for the D.C. Circuit has awarded sanctions for frivolous appeals on numerous occasions. For example, in *Reliance Ins. Co.*, it sanctioned a party and its lawyer for the groundless claim that a surety was not bound by an arbitration award against the principal when the arbitration panel awarded damages slightly in excess of the plaintiff's request. 792 F.2d at 1138. In *Solomon v. Supreme Court*, it sanctioned a party for its attempt to collaterally challenge a judgment of the Florida Supreme Court and to hold members of that court liable for damages under 42 U.S.C. § 1983 despite judges' absolute immunity. No. 03-7002, 2003 U.S. App. LEXIS 6458 (D.C. Cir. Apr. 2, 2003) (unpublished opinion). In *El Paso Merch. Energy, L.P. v. Ferc*, it sanctioned a party for unfounded claims of procedural issues warranting review of a non-final agency proceeding. Nos. 02-1140, 02-1142, 2002 U.S. App. LEXIS 18357 (D.C. Cir. Sept. 5, 2002) (unpublished opinion). And in *South Star*

[1] Courts are empowered under Fed. R. App. P. 38 to award attorney's fees as part of "costs." *See, e.g.*, *Garden State Broadcasting Ltd. Partnership v. FCC*, 966 F.2d 386, 396 (D.C. Cir. 1993).

*Communications, Inc. v. FCC*, it sanctioned a lawyer for arguing his client could compete for a license even though his client lacked a transmitter site, a clear prerequisite. 949 F.2d 450, 452 (D.C. Cir. 1991).

The Court finds that the appellants' arguments in this case are similarly ill-founded and frivolous.[2] The appellants' fundamental argument on appeal was that W.A.R. LLP retained some form of property interest over the money held by the court in constructive trust. They pursued this argument despite the fact that those funds (with the exception of $4,611.66 to which Cartinhour made no claim) came from Robertson's personal bank account, Robertson having taken possession of said funds in exchange for unsecured promissory notes issued to W.A.R. LLP. The appellants cited no legal authority providing even a modicum of support to their proposition. They argued that W.A.R. LLP had an interest in those funds because W.A.R. LLP was a party to the underlying declaratory judgment suit, even though W.A.R. LLP most evidently was *not* a party to that suit, and even though the appellants made no effort to specify any legal claims W.A.R. LLP might have to those funds. They listed a variety of cases pertaining to other aspects of partnership law, even citing a case involving marital dissolution. They made a litany of other, unrelated, arguments. The complete lack of merit to these claims convinces the Court that they could have been brought for no "purpose other than to harass and

[2] As a preliminary matter, the appellants argue that the Court should delay action on Cartinhour's motion while the appeal of this Court's January 27 order is pending in the Court of Appeals. Post-judgment motions for sanctions are collateral to the court's judgment, *cf. Elec. Privacy Info. Ctr. v. Dep't of Homeland Security*, 811 F. Supp. 2d 216, 225 (D.D.C. 2011) (citing *Moody Nat'l Bank of Galveston v. G.E. Life & Annuity Assurance Co.*, 383 F.3d 249, 250 (5th Cir. 2004)), and the taking of an appeal from a district court's final judgment does not divest the court of jurisdiction over such motions, *see In re Schaefer Salt Recovery, Inc.*, 542 F.3d 90, 98 (3rd Cir. 2008). The appellants stress that the Court should refrain from ruling on the motion because the Court of Appeals might reverse its January 27, 2012 order. However, given the frivolous nature of the appellants' arguments, the Court sees no reason for further delay, especially since the appellants' pattern of conduct in this case suggests they will appeal this order as well.

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