IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

WADE ROBERTSON, Plaintiff, vs. WILLIAM C. CARTINHOUR, JR., et al., Defendants	Case No. 11-cv-01919 (ESH) (On Transfer From The United States District Court For The Southern District Of New York; Case No 10-cv-8442 (LTS))

TY CLEVENGER'S RULE 59 MOTION AND OBJECTIONS

NOW COMES Ty Clevenger and, pursuant to Fed. R. Civ. P. 59, moves this Court to *correct the errors*[1] in its August 10, 2012 Order, and further objects to the Order as follows:

1. In its Order, the Court wrote that Judge Royce Lamberth sanctioned "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…'" Order at 2. As a matter of public record, that statement is false. "Robertson and Clevenger" didn't file the bankruptcy case at all. As set forth in my declaration (attached as Exhibit A), the debtor in that bankruptcy case was originally sued in state court. I contacted the plaintiff's counsel in that state case, William Wooten, and I told him the debtor had no money because all its funds had been seized. *Id*. The plaintiff then filed an involuntary bankruptcy petition against the debtor. *Id*. All of this can be verified by checking the record, particularly the fact that the bankruptcy in question was an involuntary bankruptcy and therefore not filed by "Robertson and Clevenger." Granted, Judge

[1] I am *not* asking the Court to reconsider the entire sanctions order, lest the Court sanction me again. I am simply asking the Court to correct objectively false statements in its Order.

Lamberth refused to correct his portion of the false statement excerpted above, and then he repeated the false statement even after he knew it was false. If necessary, his actions will be addressed further through appropriate avenues. Regardless, the Court needs to correct the false statement in its Order in *this* case.

2. In its Order, the Court wrote that "Clevenger's decision to file *Robertson II* in the Southern District of New York, while *Robertson I* was pending in this Court, served to multiply proceedings, and, as recognized by this Court *and the judge in the Southern District of New York*, it was done for the improper purpose of forestalling litigation in *Robertson I*." Order at 6 (emphasis added). Here is what the judge in New York actually wrote:

> Robertson's decision to file suit in the Southern District of New York appears to have been principally a tactical maneuver to avoid the jurisdiction of the D.C. court, and so should be accorded little deference.

Robertson v. Cartinhour, 2011 U.S. Dist. LEXIS 126030, at *13 (S.D.N.Y.). She made no finding that it was filed "for the improper purpose of forestalling litigation in *Robertson I*." Insofar as the statement is false, it needs to be corrected.

3. In its Order, the Court prohibited me from filing a motion for reconsideration. Accordingly, the remaining issues will be raised as objections for purposes of appeal, and they are proffered as grounds for reconsideration under Rule 59 should the Court decide to follow the Federal Rules of Civil Procedure. Defendant Kearney, purportedly acting on behalf of Defendant Cartinhour, belatedly faulted me for failing to offer evidence that I had acted in good faith. I thought good faith would be assumed until proven otherwise, but I am providing such evidence in the interest of completeness. Regardless, the Court's arbitrary refusal to reconsider its Order is an abuse of discretion, and it is further evidence of the profound bias of the presiding

judge. It is also a violation of due process. I was never told in advance the time period for which I would be liable for sanctions, therefore I had no opportunity to raise some of the arguments set forth below. In its May 7, 2012 docket order, the Court wrote that it "intends to determine first if sanctions are appropriate and, if so, what period of time is covered." However, after determining the time period, I was never afforded an opportunity to present arguments / evidence specific to that time period. Instead, the Court arbitrarily decided that I could only address the *amount* of the fees for that time period. In particular, I had no opportunity to present arguments / evidence specific to my decision to continue with this case after the jury verdict in *Robertson I*, and I object accordingly. Those arguments are set forth below in Paragraph 7.

4. I have attached a letter to the chairman of the Judiciary Committee of the U.S. House of Representatives (Exhibit B) and a copy of a blog post (Exhibit C), all related to the evidence that Judge Ellen S. Huvelle has engaged in gross judicial misconduct. The letter is incorporated herein by reference, and I intend to file a judicial misconduct complaint on the same grounds. For all the reasons set forth therein, I object to Judge Huvelle's participation in this case, including the consideration of the foregoing Rule 59 motion and these objections. I was denied due process because the August 10, 2012 Order was entered by a deeply conflicted judge. As noted in the letter to the Judiciary Committee, the pleadings in this case implicated Judge Huvelle (albeit not by name) in gross misconduct, including misprision of a felony. No judge should ever preside over a case that implicates her in a crime, much less knowingly *assign* herself to a case that implicates her in a crime. Yet that is exactly what happened here. The grossly excessive sanction only adds to the appearance that Judge Huvelle is retaliating against me because I threatened to expose her involvement in misconduct. If I were permitted to request reconsideration of the Order under Rule 59, I would do so on the foregoing grounds.

6. I was denied due process because I was denied a jury trial. The sanction was tantamount to a felony punishment and was outrageously excessive. If I were permitted to request reconsideration of the Order under Rule 59, I would do so on the foregoing grounds.

7. There is no evidence – absolutely none – that I acted in bad faith. And that is because I consistently acted in good faith. *See* Declaration of Ty Clevenger. I have attached a March 16, 2011 motion for stay (Exhibit D), wherein I explained in detail why I thought this case was not foreclosed by the jury verdict in D.C. As set forth therein, an interlocutory appeal was still pending, and I believed that verdict in *Robertson I* was void because it violated a bankruptcy stay. I raised similar issues in a pre-trial report to the New York court (Exhibit E), which I also incorporate by reference. Moreover, I anticipated a final appeal, and I felt strongly that *Robertson I* would be reversed on appeal. *See* Declaration of Ty Clevenger. The issue of voidness (due to the bankruptcy stay) is pending before the U.S. Court of Appeals *right now*, as is Mr. Robertson's petition for certiorari to the Supreme Court. Accordingly, *Robertson I* could yet be voided or reversed. It is thus all the more relevant that I requested a stay of this case: rather than running up the Defendants' attorney fees needlessly, I requested a stay until all these dispositive matters could be finally determined. The Defendants *opposed* the stay, yet they want to charge me for the attorney fees that Defendant Cartinhour allegedly incurred by opposing the stay and charging ahead with the case. In other words, the Defendants ran up their own attorney fees, and now they seek to blame me for it. That result is absurd and perverse. If I were permitted to request reconsideration of the Order under Rule 59, I would do so on the foregoing grounds.

8. In the Order, the Court accused me of seeking "burdensome" discovery. There is nothing burdensome about producing proof of authority, *e.g.*, a retainer agreement. But regardless of whether the Court thinks it burdensome, I am *legally entitled* to proof that

Defendant Cartinhour is indeed the real party in interest with respect to fees. In fact, that principle is so well established that the D.C. Circuit has summarily reversed this Court for refusing to permit discovery:

> The merits of the parties' positions are so clear as to warrant summary action. *See Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). An opponent of a fee application "is entitled to the information it requires ... in order that it may present any legitimate challenges to the application to the District Court." *National Ass'n of Concerned Veterans v. Secretary of Defense*, 675 F.2d 1319, 1329 (D.C. Cir. 1982). Appellant raised a legitimate challenge that appellee is not the real party in interest responsible for paying its legal fees. *See Unification Church v. INS*, 762 F.2d 1077, 1081-83 (D.C. Cir. 1985). Therefore, the district court abused its discretion in denying the motion to compel discovery. On remand the district court shall permit reasonable discovery into the identity of the real party in interest obligated to pay appellee's attorney's fees.

Thrift Depositors of America, Inc. v. Office of Thrift Supervision, 1996 WL 247971 (D.C. Cir. 1996). While *Thrift* was unpublished, *Concerned Veterans* and *Unification Church* are still binding on this Court. If I am to pay Defendant Cartinhour's attorney fees, I am *entitled* to proof that he was actually liable for those fees. Moreover, a retainer agreement clearly is subject to discovery. *See National Union Fire Ins. Co. of Pittsburgh v. Aetna Cas. & Sur. Co.*, 384 F.2d 316, 317 n.4 (D.C. Cir. 1967). If I were permitted to request reconsideration of the Order under Rule 59, I would do so on the foregoing grounds.

9. Some of the Defendants in this case were served with considerable difficulty but had already defaulted, therefore it made more sense to stay this case rather than dismiss it, wait for the outcome of appeals, and try to re-file later. *See* Declaration of Ty Clevenger. And if I had dismissed the case, waited for the outcome of all appeals, and then re-filed, the limitations period would not have been tolled. *Id*. Accordingly, a voluntary dismissal rather than a request for a stay would have been malpractice. My actions were therefore objectively reasonable and not grounds for sanctions. If I were permitted to request reconsideration of the Order under Rule 59,

I would do so on the foregoing grounds.

CONCLUSION

The Order should be amended to correct its objective errors. Should the Court decide to follow the Federal Rules of Civil Procedure and the Due Process Clause, the entire Order should be reconsidered.

Respectfully submitted,

/s/ Ty Clevenger
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing, with the accompanying memorandum of law, and the proposed order, has been electronically filed through the court's ECF system and served this day by ECF service upon the parties indicated below, this 7th day of September 2012 upon:

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