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[*1]

Strunk v New York State Bd. of Elections
2013 NY Slip Op 50445(U)
Decided on March 29, 2013
Supremet Court, Kings County
Schack, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on March 29, 2013

Supremet Court, Kings County

Christopher-Earl Strunk, in esse , Plaintiff,

against

New York State Board of Elections; JAMES A. WALSH/Co-Chair, DOUGLAS A. KELLNER/Co-Chair, EVELYN J. AQUILA/ Commissioner, GREGORY P. PETERSON/ Commissioner, Deputy Director TODD D. VALENTINE, Deputy Director STANLY ZALEN; ANDREW CUOMO, ERIC SCHNEIDERMAN, THOMAS P. DINAPOLI, RUTH NOEMI COLON, in their Official and individual capacity, FR. JOSEPH A. O'HARE, S.J.; FR. JOSEPH P. PARKES, S.J.; FREDERICK A. O. SCHWARZ, JR.; PETER G. PETERSEN; ZBIGNIEW KAIMIERZ BRZEZINSKI; MARK BRZEZINSKI; JOSEPH R. BIDEN, JR.; SOEBARKAH (a.k.a Barry Soetoro, a.k.a. Barack Hussein Obama, a.k.a Steve Dunham); NANCY PELOSI; DEMOCRATIC STATE COMMITTEE OF THE STATE OF NEW YORK; STATE COMMITTEE OF THE WORKING FAMILIES PARTY OF NEW YORK STATE; ROGER CALERO; THE SOCIALIST WORKERS PARTY; IAN J. BRZEZINSKI;

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JOHN SIDNEY MCCAIN III; JOHN A. BOEHNER; THE NEW YORK STATE REPUBLICAN STATE COMMITTEE; THE NEW YORK STATE COMMITTEE OF THE INDEPENDENCE PARTY; STATE COMMITTEE OF THE CONSERVATIVE PARTY OF NEW YORK STATE; PENNY S. PRITZKER; GEORGE SOROS; OBAMA FOR AMERICA; OBAMA VICTORY FUND; MCCAIN VICTORY 2008; MCCAIN-PALIN VICTORY 2008; JOHN AND JANE DOES; and XYZ ENTITIES., Defendants.

6500/11

Plaintiff

Christopher Earl Strunk, Pro Se
Brooklyn NY

Defendant Zbigniew
McGuire Woods, LLP

Marshall Biel, Esq.
NY NY

Defendants Pres. Obama and VP Biden
Harris Beach, PLLC
Keith Corbett, Esq.
Uniondale NY

Defendants Sen John McCain
Caplin and Drysdale
Todd E Phillips, Esq.
Washington DC

Defendant George Soros
Wilkie Farr, LLP
Teri Seigal, Esq.
NY NY

Def Gregory Peterson
Simpson Thacher, LLP
Erica H. Burk, Esq.

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NY NY

Def Joseph Ohare NYC Law Department
Chlarens Orsland, ACC
NY NY

Defs Gov Controller Sec of State AG
State of New York AG Office
Joel Graber, AAG
NY NY

Defs: Socialist Workers Party
Rabinowitz Boudin, PC
Daniel S. Reich, Esq.
NY NY

Arthur M. Schack, J.

Pro se plaintiff CHRISTOPHER EARL STRUNK brought the instant action, with plaintiff's complaint described, in my April 11, 2012 decision and order (35 Misc 3d 1208[A]), at *1, as "a rambling, forty-five page variation on birther cases.'" I observed, at *2 - 3, of my April 11, 2012 decision and order:

Plaintiff's central allegation is that defendants President OBAMA and Senator McCAIN, despite not being "natural born" citizens of the United States according to plaintiff's interpretation of Article II, Section 1, Clause 5 of the U.S. Constitution, engaged with the assistance of other defendants in an extensive conspiracy, on behalf of the Roman Catholic Church to defraud the American people and usurp control of the Presidency in 2008. Most of plaintiff STRUNK's complaint is a lengthy, vitriolic, baseless diatribe against defendants, but most especially against the Vatican, the Roman Catholic Church, and particularly the Society of Jesus (the Jesuit Order).

Plaintiff STRUNK alleges seven causes of action: breach of state constitutional fiduciary duty by the NEW YORK STATE BOARD OF ELECTIONS and public officer defendants; denial of equal protection for voter expectation of a correct ballot; denial of substantive due process for voter expectation of a correct ballot; interference with the right to a republican form of government by the two Jesuit defendants and defendant F.A.O. SCHWARZ, JR., who were all members of the New York City Campaign Finance Board; interference with plaintiff's election franchise; a scheme to defraud plaintiff of a reasonable expectation of successful participation in the suffrage process; and, a scheme by all defendants for unjust enrichment.

Plaintiff requests a declaratory judgment and a preliminary injunction against defendants, including: enjoining the NEW YORK STATE BOARD OF ELECTIONS from putting Presidential candidates on the ballot for 2012 unless they provide proof of eligibility, pursuant to Article II, Section 1, Clause 5 of the U. S. Constitution; ordering that this eligibility

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certification be submitted to the Court for proof of compliance; enjoining the Jesuits from interfering with the 2012 elections; ordering expedited discovery to determine the scope of [*2] damages, alleged to be more than $12 billion; and, ordering a jury trial for punitive treble damages.

Various defendants or groups of defendants presented to the Court eleven motions to dismiss and one motion to admit an attorney *pro hace vice.* All motions to dismiss were granted. I held, at *3, of the April 11, 2012 decision and order that "[i]t is clear that plaintiff STRUNK: lacks standing; fails to state a claim upon which relief can be granted; fails to plead fraud with particularity; and, is barred by collateral estoppel. Also, this Court lacks subject matter jurisdiction and personal jurisdiction over most, if not all, defendants."

Plaintiff STRUNK cross-moved to consolidate the instant action with a similar "birther" action filed by him, *Strunk v Paterson, et al*, Index No. 29642/08, in the Kings County Special Election Part, before Justice David Schmidt. I denied the cross-motion because *Strunk v Paterson, et al*, Index No. 29642/08, was disposed by Justice Schmidt in his order of March 14, 2011, on the grounds of collateral estoppel, failure to join necessary parties and laches.

Further, I held in my April 11, 2012 decision and order, at *3:

Plaintiff STRUNK's instant action is frivolous. As will be explained, plaintiff STRUNK alleges baseless claims about defendants which are fanciful, fantastic, delusional and irrational. It is a waste of judicial resources for the Court to spend time on the instant action. Moreover, the Court will conduct a hearing to give plaintiff STRUNK a reasonable opportunity to be heard, pursuant to 22 NYCRR § 130-1.1, as to whether or not the Court should award costs and/or impose sanctions upon plaintiff STRUNK for his frivolous conduct. At the hearing, an opportunity will be given to counsel for defendants to present detailed records of costs incurred by their clients in the instant action.

Background

My April 11, 2012 decision and order explains in lengthy detail how plaintiff STRUNK engaged in frivolous conduct. Further, I observed, at *3 - 4, of the April 11, 2012 decision and order:

Plaintiff STRUNK previously commenced similar actions in the United States District Court for the Eastern District of New York and this Court, the Supreme Court of the State of New York, Kings County. In *Strunk v New York State Board of Elections, et al.*, Index No. 08-CV4289 (US Dist Ct, EDNY, Oct. 28, 2008, Ross, J.), the Court dismissed the action because of plaintiff's lack of standing, failure to state a claim and frivolousness. In that action, plaintiff STRUNK accused the NEW YORK STATE BOARD OF ELECTIONS of "misapplication and misadministration of state law in preparation for the November 4, 2008 Presidential General Election" by, among other things, in ¶ 51 of the complaint, of "failure to obtain and ascertain that Barrack Hussein Obama is a natural citizen, otherwise contrary to United States Constitution Article 2 Second 1 Clause 5 [sic]" and demanded "Defendants are to provide proof that Barrack Hussein [*3] Obama is a natural born citizen and if not his electors are to be stricken from the ballot [sic]." Judge Ross, at page 6 of her decision, held "the court finds that portions of plaintiff's affidavit rise to the level of the irrational" and, in footnote 6, Judge Ross

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cited two prior 2008 Eastern District cases filed by plaintiff STRUNK in which "the court has determined that portions of plaintiff's complaints have contained allegations that have risen to the irrational."

My Kings County Supreme Court colleague, Justice Schmidt, in *Strunk v Paterson, et al*, Index No. 29642/08, as cited above, disposed of that matter, on March 14, 2011, by denying all of plaintiff's motions and noting that the statute of limitations expired to join necessary parties President OBAMA and Senator MCCAIN. Further, Justice Schmidt denied plaintiff an opportunity to file affidavits of service *nunc pro tunc* and to amend the complaint.

Then, plaintiff STRUNK, eight days later, on March 22, 2011, commenced the instant action by filing the instant verified complaint. Plaintiff STRUNK's complaint recites numerous baseless allegations about President OBAMA. These allegations are familiar to anyone who follows the "birther" movement: President OBAMA is not a "natural- born" citizen of the United States; the President is a radical Muslim; the President's Hawaiian Certificate of Live Birth does not prove that he was born in Hawaii; and, President OBAMA is actually a citizen of Indonesia, the United Kingdom, Kenya, or all of the above. In my April 11, 2012 decision and order, at *17, I noted that: "[a] complaint containing as it does both factual allegations and legal conclusions, is frivolous where it lacks an arguable basis" and "embraces not only the inarguable legal conclusion, but also the fanciful factual allegation." (*Neitzke v Williams*, 490 US 319, 325 [1989]). Plaintiff STRUNK, as cited above, alleges numerous fanciful, fantastic, delusional, irrational and baseless claims about defendants."

Further, at *18 - 19, I held:

> the prosecution of the instant action by plaintiff STRUNK, with its fanciful, fantastic, delusional, irrational and baseless claims about defendants is frivolous. 22 NYCRR § 130-1.1 (a) states that "the Court, in its discretion may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct as defined in this Part, which shall be payable as provided in section 130-1.3 of this Subpart." 22 NYCRR § 130-1.1 (c) states: conduct is frivolous if: (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law; [*4] (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or (3) it asserts material factual statements that are false.
>
> Conduct is frivolous and can be sanctioned, pursuant to 22 NYCRR § 130-1.1 (c), if "it is completely without merit . . . and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law." (*Gordon v Marrone,* 202 AD2d 104, 110 [2d Dept 1994] *lv denied* 84 NY2d 813 [1995]). (*See RKO Properties, Inc. v Boymelgreen*, 77 AD3d 721 [2d Dept 2010]; *Finkelman v SBRE, LLC*, 71 AD3d 1081 [2d Dept 2010]; *Glenn v Annunziata*, 53 AD3d 565, [2d Dept 2008]; *Miller v Dugan*, 27 AD3d 429 [2d Dept 2006]; *Greene v Doral Conference Center Associates,* 18 AD3d 429 [2d Dept 2005]; *Ofman v Campos*, 12 AD3d 581 [2d Dept 2004]). It is clear that plaintiff STRUNK's complaint: "is completely without merit in law;" "is undertaken

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> primarily . . . to harass" defendants; and, "asserts material factual statements that are false."

Also, I precluded plaintiff STRUNK from continued relitigation of the same baseless claims, observing, at *20:

> The Court is concerned that plaintiff STRUNK continues to use the scarce resources of the New York State Unified Court System to fruitlessly pursue the same claims. He is no stranger to litigation in Supreme Court, Kings County, Civil Term. Further, plaintiff STRUNK has had several bites of the same apple in U.S. District Court, which resulted in findings of his engagement in frivolous conduct with, as stated by Judge Ross, complaints that "have contained allegations that have risen to the irrational." The Court should not have to expend resources on the next action by Mr. STRUNK that will be a new variation on the same theme of defendants' alleged misdeeds and misconduct. The continued use of the New York State Unified Court System for the personal pursuit by plaintiff STRUNK of irrational complaints against defendants must cease.

I ordered, at *22, "that plaintiff CHRISTOPHER EARL-STRUNK is hereby

> enjoined from commencing any future actions in the New York State Unified Court System against" all defendants in the caption "without prior approval of the appropriate Administrative Justice or Judge."

Finally, at *23, I ordered:

> that it appearing that plaintiff CHRISTOPHER-EARL STRUNK engaged in "frivolous conduct,' as defined in the Rules of the Chief Administrator, 22 NYCRR § 130-1.1 (c), and that pursuant to the Rules of the Chief Administrator, 22 NYCRR § 130.1.1 (d), "[a]n award of costs or the imposition of sanctions may be made . . . upon the court's own initiative, after a reasonable opportunity to be heard," [*5] this Court will conduct a hearing affording plaintiff CHRISTOPHER EARL-STRUNK "a reasonable opportunity to be heard" and counsel for all defendants may present to the Court detailed records of costs incurred by their clients in the instant action, before me in Part 27, on Monday, May 7, 2012.

After giving plaintiff STRUNK a reasonable opportunity to be heard on May 7, 2012 and reviewing: opposition papers submitted by plaintiff STRUNK; affirmations and/or affidavits of costs submitted by those defendants who decided to avail themselves of the opportunity to do so by the Court; and, the transcript of the May 7, 2012 hearing; the Court orders plaintiff STRUNK to pay costs and sanctions for his frivolous conduct.

May 7, 2012 costs and sanctions hearing

At the May 7, 2012 hearing, Mr. STRUNK and counsel for eight defendants or sets of defendants appeared. Counsel from: McGuire, Woods LLP appeared for defendants ZBIGNIEW KAIMIERZ BRZEZINSKI, MARK BRZEZINSKI and IAN J. BRZEZINSKI; Harris Beach,

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PLLC appeared for defendants President BARACK OBAMA, Vice President JOSEPH R. BIDEN, JR., Minority Leader NANCY PELOSI, OBAMA FOR AMERICA, OBAMA VICTORY FUND and PENNY S. PRITZKER; Caplin and Drysdale appeared for defendant Senator JOHN McCAIN, MCCAIN VICTORY 2008, and MCCAIN-PALIN VICTORY 2008; Wilkie Farr and Gallager, LLP appeared for defendant GEORGE SOROS; Simpson Thacher & Bartlett, LLP appeared for defendant PETER G. PETERSEN; the New York City Corporation Counsel appeared for defendants FR. JOSEPH A. O'HARE, S.J., FR. JOSEPH P. PARKES, S.J. and FREDERICK A. O. SCHWARZ, JR. (Members of the New York City Campaign Finance Board); the New York State Attorney General appeared for defendants NEW YORK STATE BOARD OF ELECTIONS, JAMES A. WALSH/Co-Chair, DOUGLAS A. KELLNER/Co-Chair, EVELYN J. AQUILA/Commissioner, GREGORY P.

PETERSON/Commissioner, Deputy Director TODD D. VALENTINE, Deputy Director STANLY ZALEN, Governor ANDREW CUOMO, Attorney-General ERIC SCHNEIDERMAN, Comptroller THOMAS P. DINAPOLI and Secretary of State RUTH NOEMI COLON; and, Rabinowitz Boudin Standard Krinsky & Lieberman, PC apepared for defendants ROGER CALERO and THE SOCIALIST WORKERS PARTY.

Counsel for only three sets of defendants: McGuire, Woods LLP for defendants ZBIGNIEW KAIMIERZ BRZEZINSKI, MARK BRZEZINSKI and IAN J. BRZEZINSKI; Simpson Thacher & Bartlett, LLP for defendant PETER G. PETERSEN; and, the New York State Attorney General for defendants NEW YORK STATE BOARD OF ELECTIONS, JAMES A. WALSH/Co-Chair, DOUGLAS A. KELLNER/Co-Chair, EVELYN J. AQUILA/Commissioner, GREGORY P. PETERSON/Commissioner, Deputy Director TODD D. VALENTINE, Deputy Director STANLY ZALEN, Governor ANDREW CUOMO, Attorney-General ERIC SCHNEIDERMAN, Comptroller THOMAS P. DINAPOLI and Secretary of State RUTH NOEMI COLON submitted affirmations or affidavits for costs incurred in this action.

Early in the hearing, at p. 8, line 21 - p. 9, line 12, I informed plaintiff STRUNK that the hearing was to give him an opportunity to be heard on the subject of costs and [*6] sanctions, not to reargue my April 11, 2012 decision and order. I said:

> All right, I read through your papers, Mr. STRUNK. First off, before I give you the opportunity to be heard, I want you to know that this is not - - we're not holding a hearing for me to - - for you to renew or reargue my decision, because the papers were in response to whether or not I should sanction you.
>
> As I read through your papers, most it was - - well, I'll call it a reiteration of why you did, or you went through numerous reasons why you disagree with my decision to put it mildly, and argue about my original decision. You can't do that. You can file a motion to renew or reargue my decision that I issued last month, but this issue before us today is whether or not I should sanction you for engaging in frivolous conduct, but I'm going to give you an opportunity to be heard.

Plaintiff STRUNK's affidavit in opposition to the imposition of costs and sanctions, dated May 3, 2012, never addresses the imposition of coasts and sanction. It is a 27-page document that

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attempts to reargue my April 11, 2012 decision and order. It concludes in the last eight pages with a rambling attack upon the New Testament and Christianity, because, as Mr. STRUNK writes, at p. 20, "the Church, and Christianity, were all the creation of the Calpurnius Piso family, who were Roman aristocrats."

Mr. STRUNK notes, in his affidavit in opposition to the imposition of costs and sanctions, that: he "duly fired Barack Hussein Obama within 72 hours" after President Obama took the Presidential oath of office in January 2009 [p. 5]; Senator McCain has unclean hands [pp. 5 - 6]; and, President Obama has unclean hands and made admissions against interest [pp. 6 - 7]. Mr. STRUNK, at pp. 7 - 16, lectures the Court about his perceived definitions of citizenship and his interpretation of Congressional debates in 1866 with respect to the approval of the 14th Amendment. Further, Mr. STRUNK alleges that I singled him out for disparagement, by writing, at pp. 16 - 17:

> 37. Plaintiff strenuously objects to Justice Schack's use of the Jesuit's Social Justice Antonio Gramsci/Palmira Togliatti model to marginalize and debase Plaintiff as if an opponent with disparagemnt tactics glommed from Luciferian Saul Alinsky to single Plaintiff out as of part of a special class called "Birther" to be considered out of kin, and subject to special treatment for speech and thoughts that do not adhere to the socially acceptable norms of political correctness by a so-called majority [sic].
>
> 38. That the Court's ipse dixit probing and gratuitous bias shown in the transcript from August 22, 2011 [oral arguments on the motions and cross-motion] appears an attempt to obscure and obfuscate the content of the Complaint per se, such as quote, "If the complaint in this action was a movie script, it would be entitled *The Manchurian Candidate Meets The Da Vinci Code,*" along with the pure invention [*7] of a characterization of "Natural Born Citizen" that both cherry picks and skews history and actual meaning for the wilful purpose to debase and belittle Plaintiff [sic].

Then, Mr. STRUNK accuses me, at p. 17, of violating his 9th and 14th amendment rights, alleging that the Court "strays beyond the guidelines of acceptable norms" and, at p.18, he states, "As further evidence of the Court's bias, Judge Schack proceeds to debase and dehumanize Plaintiff as self-represented and that infers that Plaintiff is a kook bigoted incoherent frivolous litigant that somehow is primarily biased against Catholics and Islam as a pure invention on Justice Schack's part rather than the truth, law and justice [sic]." The opposition affidavit then describes Mr. Strunk's definition of the word "Catholic" and moves into his eight-page anti-Christian rant.

Mr. STRUNK's opposition papers fail to address the issue before the Court, whether Mr. STRUNK should be ordered to pay costs and sanctions for his frivolous conduct. The Court is searching for the truth and does not seek to "debase and dehumanize Plaintiff."

Mr. STRUNK, at the May 7, 2012 hearing, continued to attack my April 11, 2012 decision and order, never explaining why he shouldn't be sanctioned. During the hearing, at p. 20, lines 3 - line 21, the following exchange took place:

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MR. STRUNK: Look, I demand that you recuse yourself.

THE COURT: On what grounds?

MR. STRUNK: On what grounds?

THE COURT: Yes.

MR. STRUNK: You cherry picked this whole thing. You rewrote the complaint on the record in the August 22 [2011] hearing. You committed something that no sitting Judge should do in terms of you favor where favor was not to be given.

THE COURT: I didn't give favor to anybody. I'm the Judge. I was presented with your complaint and with motions to dismiss, and I have to make a decision based upon the case.

MR. STRUNK: The appearance, the impropriety is overwhelming. This - - that Mr. Graber [the Assistant Attorney General appearing for the New York State defendants] had you as a defendant in your pay raise.

I was a plaintiff, not a defendant, in one of the three judicial pay raise suits, *Maron v Silver*, 14 NY3d 230, that were adjudicated in 2010 before the Court of Appeals. The *Maron* defendants, before the case reached the Court of Appeals, were represented by the Attorney General. If anything, in the instant action I didn't rule against the New York State defendants because of *Maron*.

Finally, the following exchange took place, at p. 28, line 18 - p. 29, line 4:

MR. STRUNK Your interpretation is all wrong, and again I believe that there has not been a hearing in this matter, a fair hearing; a fair hearing; that you should be recused, and I think that the fact that you are cherry picking this whole think from beginning to end is unconscionable. [*8]

THE COURT: All right, one last observation. I did it in a hearing back last August. You make all these comments in Court and you're going to walk out of here a free man. I think America is a wonderful country. Have a pleasant day, Mr. Strunk and everybody else. This concludes the hearing.

Discussion

After a review of the papers filed with respect to the issue of whether plaintiff STRUNK should pay costs and/or sanctions and the minutes of the May 7, 2012 hearing, pursuant to 22 NYCRR § 130-1.2, this is the "written decision setting forth the conduct on which the award or imposition [of costs and sanctions] is based, the reasons why the court found the conduct to be frivolous, and the reasons why the court found the amount awarded or imposed to be appropriate."

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22 NYCRR § 130-1.1 (a) gives the Court, in its discretion, the authority to

> award costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorneys' fees and/or the imposition of financial sanctions upon a party or attorney who engages in frivolous conduct. 22 NYCRR § 130-1.1 (c) states that:conduct is frivolous if:
>
> > (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
> >
> > (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
> >
> > (3) it asserts material factual statements that are false.

Conduct is frivolous and can be sanctioned under the above court rule if "it is completely without merit . . . and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law." (*Gordon v Marrone,* 202 AD2d 104, 110 [2d Dept 1994] *lv denied* 84 NY2d 813 [1995]). (*See RKO Properties, Inc. v Boymelgreen*, 77 AD3d 721 [2d Dept 2010]; *Finkelman v SBRE, LLC*, 71 AD3d 1081 [2d Dept 2010]; *Glenn v Annunziata*, 53 AD3d 565, [2d Dept 2008]; *Miller v Dugan*, 27 AD3d 429 [2d Dept 2006]; *Greene v Doral Conference Center Associates,* 18 AD3d 429 [2d Dept 2005]; *Ofman v Campos*, 12 AD3d 581 [2d Dept 2006]).

In determining if sanctions are appropriate, the Court must look at the broad pattern of conduct by the offending attorneys or parties. (*Levy v Carol Management Corporation,* 260 AD2d 27, 33 [1d Dept 1999]). The *Levy* Court, at 33, held that, "22 NYCRR 130-1.1 allows us to exercise our discretion to impose costs and sanctions on an errant party under circumstances particularly applicable here. The relief may include, *inter alia*, sanctions against the offending party or its attorney (22 NYCRR 130-1.1 [1]) in an amount to be determined by us, which we would make payable to the Lawyers' Fund for Client Protection (22 NYCRR 130-1.3)." Further, the *Levy* Court instructed, at 34, that "[s]anctions are retributive, in that they punish past conduct. They also are goal oriented, in that they are useful in deterring future frivolous conduct not only by the particular [*9] parties, but also by the Bar at large." The Court, in *Kernisan, M.D. v Taylor* (171 AD2d 869 [2d Dept 1991]), noted that the intent of the Part 130 Rules "is to *prevent the waste of judicial resources* and to deter vexatious litigation and dilatory or malicious litigation tactics (*cf. Minister, Elders & Deacons of Refm. Prot. Church of City of New York v 198 Broadway*, 76 NY2d 411; *see Steiner v Bonhamer*, 146 Misc 2d 10) [*Emphasis added*]."

Clearly, the pattern of plaintiff STRUNK'S conduct in the instant action is subject to costs and sanctions. It is clear that plaintiff STRUNK's instant complaint: "is completely without merit in law;" "is undertaken primarily . . . to harass" defendants; and, "asserts material factual statements that are false." The Court reiterates what it stated in the April 11, 2012 decision and order, at *19:

The Court, in *Kernisan, M.D. v Taylor* (171 AD2d 869 [2d Dept 1991]), noted that the intent of the Part 130 Rules "is to *prevent the waste of judicial resources* and to deter vexatious litigation

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and dilatory or malicious litigation tactics (*cf. Minister, Elders & Deacons of Refm. Prot. Church of City of New York v 198 Broadway*, 76 NY2d 411; *see Steiner v Bonhamer*, 146 Misc 2d 10) [*Emphasis added*]." To adjudicate the instant action, with the complaint replete with fanciful, fantastic, delusional, irrational and baseless allegations about defendants, combined with plaintiff STRUNK's lack of standing, the barring of this action by collateral estoppel and the Court lacking personal jurisdiction and subject matter jurisdiction over many of the defendants, is "a waste of judicial resources." This conduct, as noted in *Levy*, must be deterred. In *Weinstock v Weinstock* (253 AD2d 873 [2d Dept 1998]) the Court ordered the maximum sanction of $10,000.00 for an attorney who pursued an appeal "completely without merit," and holding, at 874, that "[w]e therefore award the maximum authorized amount as a sanction for this conduct (*see,* 22 NYCRR 130-1.1) calling to mind that *frivolous litigation causes a substantial waste of judicial resources* to the detriment of those litigants who come to the Court with real grievances [*Emphasis added*]."

Plaintiff STRUNK's frivolous litigation, with "its substantial waste of judicial resources to the detriment of those litigants who come to the Court with real grievances" and the continuous assertion of false material factual statements, requires the Court to impose upon Mr. STRUNK the maximum sanction of $10,000.00 to deter his frivolous conduct.

Counsel for three sets of defendants, as noted above, presented to the Court affidavits or affirmations explaining in detail their fees for actual expenses incurred by their clients. Pursuant to 22 NYCRR § 130-1.1 (a), "The court, in its discretion, may award to any party of attorney in any civil action or proceeding before the court . . . costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct as defined in this Part." In analyzing these billing records and affidavits or affirmations, the Court finds that these fees are reasonable in light of the: time and labor required; novelty and difficulty of the questions involved; skill requisite to perform the legal services properly; performance of these services precluding employment of attorneys on other matters; fees customarily charged for [*10]similar legal services; nature of the instant action; results obtained; nature and length of the professional relationships with clients; and, experience, reputation and ability of attorneys and support staff performing services. Moreover, plaintiff STRUNK did not object to the proposed costs presented to the Court.

McGuire, Woods LLP, counsel for defendants ZBIGNIEW KAIMIERZ BRZEZINSKI, MARK BRZEZINSKI and IAN J. BRZEZINSKI billed defendants ZBIGNIEW KAIMIERZ BRZEZINSKI, MARK BRZEZINSKI and IAN J. BRZEZINSKI $75,600.00 for attorney's fees and $2,446.74 for disbursements, for a total of $78,156.74. Therefore, the Court awards to defendants ZBIGNIEW KAIMIERZ BRZEZINSKI; MARK BRZEZINSKI and IAN J. BRZEZINSKI $78,156.74 for "costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct" of plaintiff CHRISTOPHER-EARL STRUNK.

Simpson Thacher & Bartlett, LLP, counsel for defendant PETER G. PETERSEN billed defendant PETER G. PETERSEN: $72,696.25 for attorney's fees; $4,610.00 for the time of support staff; and, $6,657.39 for disbursements; for a total of $82,943.64. Therefore, the Court awards to defendant PETER G. PETERSEN $82,943.54 for "costs in the form of reimbursement

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for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct" of plaintiff CHRISTOPHER-EARL STRUNK.

The New York State Attorney General for defendants NEW YORK STATE BOARD OF ELECTIONS, JAMES A. WALSH/Co-Chair, DOUGLAS A. KELLNER/ Co-Chair, EVELYN J. AQUILA/Commissioner, GREGORY P. PETERSON/ Commissioner, Deputy Director TODD D. VALENTINE, Deputy Director STANLY ZALEN, Governor ANDREW CUOMO, Attorney-General ERIC SCHNEIDERMAN, Comptroller THOMAS P. DINAPOLI and Secretary of State RUTH NOEMI COLON submitted an affirmation by Assistant Attorney-General Joel Graber, in which he states he expended 17.62 hours in connection with the instant action, that the Office of the Attorney-General's "reasonable hourly rate for my time, solely for the purposes of the present submission, is $375 per hour" and the Office of the Attorney-General seeks $6,607.50 for Mr. Graber's time as "part of the direct cost to the State as a result of this lawsuit." This request is more than reasonable. If Mr. Graber was in private practice, his experience and standing as an election and voting rights lawyer would command fees far in excess of $375.00 per hour. Therefore, the Court awards to the STATE OF NEW YORK $6,607.50 for "costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct" of plaintiff CHRISTOPHER-EARL STRUNK.

The total amount awarded to defendants requesting costs is $167,707.88.

Conclusion

Accordingly, it is

ORDERED that, after conducting a hearing on May 7, 2012, to determine if plaintiff CHRISTOPHER-EARL STRUNK engaged in "frivolous conduct," as defined in the Rules of the Chief Administrator, 22 NYCRR § 130-1.1 (c), and that plaintiff CHRISTOPHER-EARL STRUNK was granted "a reasonable opportunity to be heard," pursuant to the Rules of the Chief Administrator, 22 NYCRR § 130-1.1 (d), the Court finds that plaintiff CHRISTOPHER-EARL STRUNK engaged in "frivolous conduct," as defined in 22 NYCRR § 130-1.1, in the instant [*11]matter, and it is further

ORDERED that plaintiff CHRISTOPHER-EARL STRUNK, pursuant to the Rules of the Chief Administrator, 22 NYCRR § 130-1.2, shall pay costs of $78,156.74 to defendants ZBIGNIEW KAIMIERZ BRZEZINSKI, MARK BRZEZINSKI and IAN J. BRZEZINSKI, c/o Marshall Beil, Esq., McGuire, Woods, LLP, 1345 Avenue of the Americas, 7th Floor, New York, New York 10105-0106, for "costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct" of plaintiff CHRISTOPHER-EARL STRUNK, within thirty (30) days after service of the notice of entry of this decision and order, and it is further

ORDERED that plaintiff CHRISTOPHER-EARL STRUNK, pursuant to the Rules of the Chief Administrator, 22 NYCRR § 130-1.2, shall pay costs of $82,943.64 to defendant PETER G. PETERSEN, c/o Paul C. Gluckow, Esq., Simpson Thacher & Bartlett, LLP, 425 Lexington Avenue, New York, New York 10017-3954, for "costs in the form of reimbursement for actual

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expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct" of plaintiff CHRISTOPHER-EARL STRUNK, within thirty (30) days after service of the notice of entry of this decision and order, and it is further

ORDERED that plaintiff CHRISTOPHER-EARL STRUNK, pursuant to the Rules of the Chief Administrator, 22 NYCRR § 130-1.2, shall pay costs of $6,607.50 to the STATE OF NEW YORK, c/o Joel Graber, Esq., Assistant Attorney General, Office of the Attorney General of the State of New York, 120 Broadway, 24th Floor, New York, New York 10017-3954, for "costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct" of plaintiff CHRISTOPHER-EARL STRUNK, within thirty (30) days after service of the notice of entry of this decision and order, and it is further

ORDERED that plaintiff CHRISTOPHER-EARL STRUNK, pursuant to the Rules of the Chief Administrator, 22 NYCRR § 130-1.3, shall pay a sanction of $10,000.00 for his frivolous conduct to the Lawyer's Fund for Client Protection, 119 Washington Avenue, Albany, New York 12210, within thirty (30) days after service of the notice of entry of this decision and order.

This constitutes the Decision and Order of the Court.

ENTER

____

HON. ARTHUR M. SCHACKJ. S. C.

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