UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

FRANK MARENBACH and DEBRA MCKIBBIN, Plaintiffs, v. CITY OF MARGATE, Defendant.	CIVIL NO. 11-3832(NLH)(AMD) **MEMORANDUM OPINION & ORDER**

Appearances:

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On behalf of plaintiffs

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On behalf of defendant

HILLMAN, District Judge

Presently before the Court is the motion of defendant, Margate City, New Jersey ("Margate"), for an award of attorneys' fees and costs pursuant to New Jersey's Frivolous Litigation Act, N.J.S.A. 2A:15-59.1 (the "NJFLA"); and

Previously, the Court having granted summary judgment in Margate's favor on the claims of plaintiffs, Frank Marenbach and Debra McKibbin, for injuries they sustained when Marenbach

tripped and fell in the street on Ventnor Avenue in Margate; and

The Court having found, *inter alia*, that plaintiffs could not demonstrate that Margate "controlled" Ventnor Avenue, which is owned by Atlantic County, or that it had actual or constructive notice of the alleged dangerous condition, such that it could be held liable for plaintiffs' injuries (Docket No. 17 at 9-15); but

The Court having denied without prejudice Margate's request for sanctions for its claim that plaintiffs' complaint was frivolous, explaining that Margate was required to seek such relief separate from its summary judgment motion (id. at 15-18); and

Margate having now filed a motion for sanctions pursuant to the NJFLA,, arguing, as noted in the Court's prior Opinion, that Margate twice warned plaintiffs' counsel - once to plaintiffs' former counsel in January 2010 and again to plaintiffs' current counsel in November 2011 - that pursuing claims against Margate was frivolous because Margate does not own or control Ventnor Avenue, and because plaintiffs never certified that they met the mandatory $3,600 treatment minimum under the New Jersey Tort Claims Act ("NJTCA"); and that in addition to warning plaintiffs about their frivolous pursuit of claims against Margate, plaintiffs demonstrated their awareness that Margate was the wrong party to pursue when they spent more than a year attempting

to litigate their claims against Atlantic County (Docket No. 17 at 16); and

Plaintiffs objecting to Margate's motion on a substantive and procedural basis; and

With regard to their substantive objection, plaintiffs strenuously contesting that their pursuit of claims against Margate has not been frivolous, that there was a good faith basis to pursue their position that Margate effectively controlled Ventnor Avenue rendering it liable for plaintiffs' injuries, and that their attempts to navigate the complicated NJTCA have not been motivated by harassment or bad faith; and

With regard to their procedural objection, plaintiffs asking that Margate's motion be denied because they object to Margate's use of the NJFLA in federal court, arguing that Margate should be seeking relief under Fed. R. Civ. P. 11, but that Margate has failed to comply with the requirements of Rule 11; and

The Court having noted in its prior Opinion that (1) plaintiffs filed their complaint in this Court pursuant to the Court's diversity jurisdiction, 28 U.S.C. § 1332; (2) plaintiffs' claims arise solely under New Jersey state law; and (3) even though the federal rules provide for sanctions similar to those requested by Margate, Margate has sought sanctions under a New Jersey statute; but (4) proceeding under either Rule 11 or N.J.S.A. 2A:15-59.1 may be proper, citing U.S. Express Lines Ltd.

v. Higgins, 281 F.3d 383, 393 (3d Cir. 2002) (explaining that "under the Rules Enabling Act, 28 U.S.C. § 2072(b), procedural rules may not supplant substantive rights but the line between procedure and substance is notoriously difficult to draw . . . . Our review of extant case law persuades us that the Federal Rules of Civil Procedure do not preempt claims for abuse of process and similar torts providing relief for misconduct in federal litigation. Therefore, victims of such misconduct may, in appropriate circumstances, bring suit to recover damages under state causes of action") (Docket No. 17 at 18 n. 6.); and

The Court noting that Rule 11, N.J.S.A. 2A:15-59.1, and the Court's inherent power to sanction frivolous litigation all apply the same essential analysis, see Computer Power, Inc. v. Myers/NuArt Electrical Products Inc., 2002 WL 84057, 2 (D.N.J. 2002) (citing Chambers v. Nasco, Inc., 501 U.S. 32, 43 (1991) (federal courts possess the inherent power to sanction misconduct); McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 555-56 (1993) (discussing the New Jersey Frivolous Litigation Act)); Thorner v. Sony Computer Entertainment America Inc., 2010 WL 904797, 2 (D.N.J. 2010) (citing Sjogren, Inc. v. Caterina Ins. Agency, 582 A.2d 841 (N.J. Ch. Div. 1990)) (the NJFLA is "patterned after Rule 11 of the Federal Rules of Civil Procedure"); Nanavanti v. Cape Regional Medical Center, 2013 WL 4787221, 4 (D.N.J. Sept. 6, 2013) (citing In re Cendant Corp.

Deriv. Action Litig., 96 F. Supp. 2d 403, 405 (D.N.J. 2000) (quoting Ford Motor Co. v. Summit Motor Prods. Inc., 930 F.2d 277, 289 (3d Cir. 1991)) (explaining that in evaluating an attorney's conduct, "a court must apply an objective standard of reasonableness under the circumstances," and thus, the court "must determine whether a competent attorney who conducted a reasonable investigation into the facts and law pertinent to the case would have determined that the allegations presented against defendants were well grounded in law and fact" (internal quotations omitted)); and

The Court recognizing that in order to impose sanctions on s plaintiff or his attorney for pursuing a claim that ultimately proves to be unavailing, the prevailing party must demonstrate bad faith and improper motives by plaintiff or his attorney, or that there was no good faith basis for plaintiff or his attorney to believe that his claim had a reasonable basis in law or equity, see id.; and

The Court finding that even though it was clear to plaintiffs prior to filing suit in this Court that Margate did not own Ventnor Avenue, it was only through the discovery process and the Court's legal analysis that it was determined concretely that Margate did not maintain constructive control over Ventnor Avenue such that it could be held liable for plaintiffs' injuries; and

The Court further finding that even though plaintiffs' or their counsel's communication with Margate, as well as their compliance with New Jersey's Tort Claim Act requirements, were imperfect, it cannot be found that their claims were motivated by bad faith or were asserted without a reasonable basis in the law; and

The Court therefore concluding that sanctions will not be imposed on plaintiffs or their attorney, particularly because such sanctions should be imposed sparingly and reserved for the most exceptional circumstances, see Graziano v. Grant, 741 A.2d 156, 166-67 (N.J. Super. Ct. App. Div. 1999) (citation and quotations omitted) ("In considering an application for fees and costs under the Act, we must be mindful of the fact that the right of access to the court should not be unduly infringed upon, honest and creative advocacy should not be discouraged, and the salutary policy of litigant's bearing, in the main, their own litigation costs, should not be abandoned."); Doering v. Union County Bd. of Chosen Freeholders, 857 F.2d 191, 194 (3d Cir. 1988) (explaining that Rule 11 sanctions should only be imposed in the exceptional circumstances where a claim or motion is patently without or merit or frivolous); Chambers, 501 U.S. at 44 ("Because of their very potency, inherent powers must be exercised with restraint and discretion.");

Accordingly,

IT IS on this 16th day of October, 2013

ORDERED that the Clerk shall reopen the case and shall make a new and separate docket entry reading "CIVIL CASE REOPENED"; and it is further

ORDERED that defendant's motion for sanctions [19] is DENIED; and it is finally

ORDERED that the Clerk shall re-close the file and make a new and separate docket entry reading "CIVIL CASE TERMINATED."

s/ Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.

At Camden, New Jersey