

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 12-11117-MLW

FRIEDRICH LU,
Plaintiff,

v.

GEORGE HULME, in his individual
capacity and in his official capacity,
TRUSTEES OF THE BOSTON PUBLIC
LIBRARY,
Defendants.

**DEFENDANTS GEORGE HULME AND THE TRUSTEES OF THE BOSTON
PUBLIC LIBRARY'S OPPOSITION TO PLAINTIFF'S CROSS-MOTIONS FOR
SANCTION AND FOR FACTUAL AND LEGAL PROOF OF ATTORNEY-
CLIENT RELATIONSHIP**

The Defendants Trustees of the Boston Public Library ("Trustees") and George Hulme ("Hulme") in his individual and official capacities, (collectively, the "Defendants"), submit this Opposition to Plaintiff's Cross-Motions for Sanction and For Factual and Legal Proof of Attorney-Client Relationship ("Motions"). Plaintiff, Friedrich Lu ("Plaintiff") Motions fail to set forth any factual or legal basis for seeking sanctions.

ARUGMENT

To succeed on a motion for sanctions, the Plaintiff must demonstrate that Defendants' counsel "has signed a pleading with an improper purpose or without having made reasonable inquiry as to whether it is well grounded in fact and warranted by existing law or a nonfrivolous argument for the extension, modification or reversal of existing law." *See Spencer v. Cohen*, 886 F. Supp. 235, 237 (N.D.N.Y. 1995); *see also Cardillo v. Cardillo*, 360 F. Supp. 2d 402, 413 (D.R.I. 2005) (noting that the "standard

under Rule 11 is an objective one, *i.e.*, ‘reasonableness under the circumstances.’”) (citations omitted). While Rule 11 enables a court to impose sanctions for unfounded claims, the rule does not carry a strict liability standard and “a showing of at least culpable carelessness” must be found before issuing sanctions. *See CQ Int’l Co., Inc. v. Rochem Int’l, Inc., USA*, 659 F.3d 53, 60 (1st Cir. 2011).

Here, the Defendants filed their Motion for Sanctions after learning that this Court had ordered Plaintiff to file a copy of a prior Order and certify compliance with it whenever filing a new case in the District of Massachusetts. Defendants’ Motion is based on their extensive review of numerous cases filed by Plaintiff in this District and is based on a reasonable interpretation of Court’s Order.

Additionally, “a motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b).” Fed. R. Civ. P. 11(c)(2). Here, the Plaintiff has filed his Cross-Motion for Sanctions with an Opposition to Motion for Attorneys Fees as well as a Motion for Factual and Legal Proof of Attorney-Client Relationship. On its face, Plaintiff’s filings do not seem to allege any specific conduct that warrants sanctions other than alleging that Defendants’ pending Motion for Fees, Costs and Sanctions “is so egregious that Rule 11 sanction is called for.” *See* Plaintiff’s Motions at Section I, ¶ 6. There are other allegations set forth in Plaintiff’s filing, but it is unclear whether they are in response to an Opposition to Motion for Attorneys Fees or whether they form the basis of the Cross-Motion for Sanctions.

As for the Plaintiff’s Cross-Motion for Factual and Legal Proof of Attorney-Client Relationship, the Defendants rest on their arguments as set forth in their pending

Opposition to Plaintiff's Motion to Disqualify So Called Counsel. *See* Civil Docket 1:12-cv-11117-MLW, Entry No. 10, filed July 13, 2012.

CONCLUSION

For the reasons stated above, Defendants, the Trustees of the Boston Public Library and George Hulme, respectfully request that this Court deny Plaintiff's Cross-Motions for Sanction and For Factual and Legal Proof of Attorney-Client Relationship.

Respectfully submitted,

DEFENDANTS GEORGE HULME, in his individual capacity and in his official capacity and TRUSTEES OF THE BOSTON PUBLIC LIBRARY

William F. Sinnott
Corporation Counsel

By their attorneys:

/s/Caroline O. Driscoll _____
Caroline O. Driscoll, BBO# 647916
Assistant Corporation Counsel
City of Boston Law Department
City Hall, Room 615
Boston, MA 02201
(617) 635-4925

Date: January 25, 2013

LOCAL RULE 7.1 CERTIFICATION

I hereby certify that on January 25, 2013, I filed this document through the Court's CM/ECF system and that an electronic copy will be sent via email to those identified as non-registered participants per agreement with Plaintiff.

/s/Caroline O. Driscoll
Caroline O. Driscoll