UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA, Plaintiff, v. MARK ELLIOT ZUCKERBERG and FACEBOOK, INC., Defendants.	:	Civil Action No. 1:10-cv-00569-RJA

DEFENDANTS' OPPOSITION TO CEGLIA'S MOTION TO VACATE DOC. NO. 348 AND SCHEDULE RULE 16(B) CONFERENCE

Thomas H. Dupree, Jr.
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, NW
Washington, DC 20036
(202) 955-8500

Orin Snyder
Alexander H. Southwell
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue, 47th Floor
New York, NY 10166-0193
(212) 351-4000

Terrance P. Flynn
HARRIS BEACH PLLC
726 Exchange Street
Suite 1000
Buffalo, NY 14210
(716) 200-5120

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PRELIMINARY STATEMENT

With the regularity of the cycles of the moon, every few weeks Paul Ceglia asks this Court to vacate its expedited discovery orders and authorize plenary discovery based on a preposterous legal theory. Ceglia's latest effort, Doc. No. 427, is a new low.

Ceglia argues that this Court is powerless to address his egregious fraud on the court. According to Ceglia, because the fraud he is perpetrating is "intrinsic," and New York state law purportedly prohibits dismissals based on intrinsic fraud, this Court must stand by idly and take no action so that Ceglia can present his fraudulent claims to a jury. On this basis, Ceglia asks this Court to reject Defendants' pending motion to dismiss, vacate its expedited discovery orders, and set a scheduling conference.

Ceglia's motion should be denied. His argument is contradicted by decisions of the United States Supreme Court, the Second Circuit, and common sense. His suggestion that a litigant prosecuting a fraudulent lawsuit based on forged documents is immune from sanction is nothing more than wishful thinking. In *Chambers v. NASCO, Inc*., 501 U.S. 32, 51-53 (1991), the Supreme Court held that a federal court sitting in diversity has the inherent power to dismiss lawsuits for fraud, regardless of any state-law limitations on the power to sanction. Ceglia's 17-page brief does not mention *Chambers*. Instead, Ceglia offers a lengthy, erroneous, and utterly irrelevant analysis of the circumstances under which New York state courts permit collateral attacks on *final judgments*. These cases have no bearing whatsoever on a federal court's long-established inherent power to dismiss an ongoing lawsuit for fraud.

Ceglia's apparent purpose in filing a motion that is frivolous on its face is to burden Defendants' counsel at a time they are preparing for the expert depositions ordered by this Court. The Court should deny Ceglia's motion. But it should also consider ordering Ceglia to show

cause why he should not be sanctioned for filing a brief that disregards the controlling Supreme Court case and that rests on a legal argument that any reasonable lawyer would know to be false.

ARGUMENT

A federal court has the inherent power to dismiss a lawsuit for fraud on the court. This power was reaffirmed in *Chambers*, 501 U.S. at 45, where the Court expressly stated that "outright dismissal of a lawsuit" is "within the court's discretion" when a litigant is perpetrating a fraud or otherwise abusing the judicial process. The Second Circuit has similarly held that "[a] court has inherent authority . . . to conduct an investigation to determine if it is the victim of a fraud, and may impose sanctions, including dismissal, upon determining that such a fraud has taken place." *Corto v. Nat'l Scenery Studios*, No. 95-5080, 1997 WL 225124, *3 (2d Cir. May 5, 1997).

Many federal courts have invoked their inherent power to dismiss a lawsuit based on forged documents or fabricated evidence—what Ceglia calls "intrinsic" fraud. *See*, *e.g.*, *Shangold v. Walt Disney Co.*, 275 F. App'x 72, 73-74 (2d Cir. 2008) (affirming dismissal based on plaintiffs' fabrication of evidence); *DAG Jewish Directories, Inc. v. Y & R Media, LLC*, No. 09-cv-7802 (RJH), 2010 WL 3219292, *4-5 (S.D.N.Y. Aug. 12, 2010) (invoking the court's "inherent power to deter abuse of the judicial process" and dismissing action based on plaintiff's forgery); *Cerruti 1881 S.A. v. Cerruti, Inc.*, 169 F.R.D. 573, 583-84 (S.D.N.Y. 1996) (imposing sanction of default judgment where defendants fabricated evidence); Defs.' Mtn. to Dismiss (Doc. No. 319) at 20-26 (citing cases). As the First Circuit stated in its seminal *Aoude* decision, it is "elementary that a federal district court possesses the inherent power to deny the court's processes to one who defiles the judicial system by committing a fraud on the court." *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118-19 (1st Cir. 1989) (dismissing action where party fabricated the purchase agreement that formed the basis of the contract claim at issue).

Ceglia ignores all of these authorities. Instead, he argues that under *Erie*, this Court must apply New York substantive law, and claims that New York law prohibits courts from dismissing lawsuits based on the type of fraud—intrinsic fraud—he is perpetrating in this case. Ceglia is mistaken for many reasons. First, the Supreme Court rejected this exact argument in *Chambers*. There, the wrongdoer argued that the federal district court lacked the authority to sanction him through an award of attorneys' fees because it was sitting in diversity and the applicable state law did not allow fee-shifting. *Chambers*, 501 U.S. at 51. The Supreme Court held that a federal court's inherent power to sanction was not limited in this respect. *Id.* at 52-53. The Court explained that because the court's sanctioning authority was derived from its inherent power to control the judicial process, rather than from substantive state law, there was no *Erie* concern:

> *Erie* guarantees a litigant that if he takes his state law cause of action to federal court, and abides by the rules of that court, the result in his case will be the same as if he had brought it in state court. It does not allow him to waste the court's time and resources with cantankerous conduct, even in the unlikely event a state court would allow him to do so.

Id. at 53 (quotation marks omitted). *See also Schwarz v. FedEx Kinko's Office*, No. 08-cv-6486 (THK), 2009 WL 3459217, *6 n.4 (S.D.N.Y. Oct. 27, 2009) (in diversity cases, "[a] federal court's authority to impose sanctions (for spoliated evidence and other misconduct) derives not from substantive law, but rather from its inherent power to control the judicial process.").

The Second Circuit has reached the same conclusion, explaining that it would be "quite anomalous to suggest that a federal court must look to the New York state legislature to vindicate an abuse of the federal judicial power." *People v. Terry*, 45 F.3d 17, 23 (2d Cir. 1995). In short,

"*Erie* does not compel a federal court to tolerate abuses in diversity cases that the court would not tolerate in other cases; nor does it limit the range of measures at the court's disposal to vindicate its authority." *NASCO, Inc. v. Calcasieu Television & Radio, Inc.*, 894 F.2d 696, 705-06 (5th Cir. 1990). This Court's inherent power to protect the integrity of its own processes is in no way limited by state law.

Ceglia is wrong for another fundamental reason: New York courts are obviously not powerless to dismiss lawsuits as a sanction for "intrinsic" fraud, and none of Ceglia's cases remotely suggest this. The cases that he relies on concern a completely different issue: the circumstances under which a *final judgment* may be attacked collaterally and set aside on the basis of fraud. *See* Motion to Vacate at 6-8.

The standards governing these two situations—dismissal based on an ongoing fraud versus reopening a final judgment—are quite different, for obvious reasons: the law commands great respect for the finality of judgments and permits their re-opening only under very limited circumstances. *See, e.g.*, *Freedom, N.Y., Inc., v. United States*, 438 F. Supp. 2d 457, 462 (S.D.N.Y. 2006) ("A motion for relief from judgment is generally not favored and is properly granted only upon a showing of exceptional circumstances.") (quotation marks omitted); *Barrett v. United States*, No. 06-cv-1324, 2006 WL 3248396, *7 (N.D.N.Y. Nov. 7, 2006) (explaining that "a petitioner must satisfy a very demanding standard in order to justify upsetting the finality of the challenged judgment") (quotation marks omitted). The cases cited in Ceglia's brief simply have no bearing on a court's power to dismiss an ongoing case as a sanction for fraud or other litigation misconduct.

Finally, Ceglia errs in arguing that Defendants' claims concerning his litigation misconduct and spoliation, as well as Defendants' motion for judgment on the pleadings, are not

supported by "substantial grounds." Motion to Vacate at 13-17. Defendants' motion to dismiss and motion for judgment on the pleadings are well founded in law and fact and provide additional bases for the stay of plenary discovery. Ceglia's motion should be denied for this reason as well.

CONCLUSION

For the foregoing reasons, the Court should deny Ceglia's motion and order all other relief it deems just and proper, including directing Ceglia to show cause why he should not be sanctioned for filing a frivolous motion.

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Respectfully submitted,

/s/ Orin Snyder

Orin Snyder
Alexander H. Southwell
Matthew J. Benjamin
Amanda M. Aycock
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue, 47th Floor
New York, NY 10166-0193
(212) 351-4000

Thomas H. Dupree, Jr.
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, NW
Washington, DC 20036
(202) 955-8500

Terrance P. Flynn
HARRIS BEACH PLLC
726 Exchange Street
Suite 1000
Buffalo, NY 14210
(716) 200-5120

Attorneys for Defendants Mark Zuckerberg and Facebook, Inc.