

<b>Firestone v McKeown</b>
2007 NY Slip Op 30408(U)
March 23, 2007
Supreme Court, New York County
Docket Number: 0602533
Judge: Richard B. Lowe
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts ( <a href="http://www.nycourts.gov/ecourts">http://www.nycourts.gov/ecourts</a> ) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

HON. RICHARD B. LOVE, III

PRESENT: \_\_\_\_\_  
*Justice*

PART 54

Index Number : 602533/2006

**FIRESTONE, PAUL**

VS.

**MCKEOWN, KEVIN**

SEQUENCE NUMBER : 002

OTHER \_\_\_\_\_

INDEX NO. \_\_\_\_\_

MOTION DATE 1/5/07

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

MOTION IS GRANTED WITH COSTS TO  
MOTIONING PARTY. 1/5/07

HON. RICHARD B. LOVE, III

Dated: 3/23/07 \_\_\_\_\_  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
DR. PAUL A. FIRESTONE,

Plaintiff,

Index No. 602533/06

-against-

KEVIN MCKEOWN.

Defendant.  
-----X

**Honorable Richard B. Lowe, III:**

Plaintiff moves pursuant to 22 NYCRR Part 130 for an order awarding sanctions against the defendant, Kevin McKeown (McKeown).

**Background**

On or about September 6, 2006, McKeown filed a formal complaint with the New Jersey Office of Ethics (NJOE), naming plaintiff's counsel, Sean F. Kane, Esq. (Kane) for purported misconduct. The issues raised in the complaint had previously been decided in a matter before the United States District Court for the Southern District of New York entitled *Dr. Paul A. Firestone v Kevin McKeown*, 05 CV 76645 (KMW). The motion before the Southern District was denied. The Plaintiff alleges the complaint was thereafter filed with the NJOE solely to harass plaintiff's counsel and to increase the time and money expended by plaintiff and his counsel in litigation.

McKeown also attempted to raise the same allegations which were addressed by the Southern District magistrate and the NJOE before this court on his motion to vacate the note of issue. At all times throughout the proceedings he has represented himself pro-se.

In a decision dated November 1, 2006, this court denied the motion. The decision is currently on appeal before the First Department. McKcown also attempted to raise the purported ethical issues in a letter directed to this court's Administrative Justice.

Plaintiff now asks this court to award sanctions against the defendant for filing a baseless and harassing complaint with the NJOE and for filing a baseless appeal of this court's November 1, 2006 decision.

### Discussion

22 NYCRR 130-1.1 reads:

(a) The court, in its discretion, may award to any party or 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 addition to or in lieu of awarding costs, 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.

\* \* \*

(c) For purposes of this Part, 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 . . .  
(Emphasis Added)

Plaintiff first attempts to seek sanctions based upon the Defendant's filing of a baseless complaint before the NJOE. While this court, having reviewed the allegations, finds the complaint baseless, as did the NJOE and the Southern District magistrate, it does not have the

authority to grant sanctions for conduct in a proceeding which was not before it. Therefore, this Court cannot award sanctions based upon the Defendant's conduct before the NJOE.

Similarly, this Court cannot award sanctions against McKcown for the filing of a frivolous appeal. The appeal is a proceeding presently before the Appellate Division and they are the proper tribunal from whom relief must be sought.

However, this court may award sanctions for that conduct which occurred in this proceeding. Indeed, both this Court, plaintiff, and Kane were forced to endure McKeown's rehashing of the baseless allegations against Kane, all of which were found to be without merit by two other tribunals.

Despite the prior dismissals, McKeown made a third attempt to raise allegations of unethical conduct by Kane in his motion to vacate the note of issue. The motion was denied. Despite the denial of the motion, McKeown made several repeated attempts during trial to raise the very same issues.

Through his conduct, the only thing which McKeown did convince this court of was his lack of understanding of the integrity of the court process and a lack of respect for both the rulings of this court, the other tribunals, as well as opposing counsel. Having tried the matter on his own behalf, McKcown demonstrated a high level of intelligence which makes it difficult for this court to believe that he did not understand the binding nature of the prior court rulings and the inappropriateness of again attempting to raise the same issues.

Sanctions are appropriate where a litigant engages in a lengthy barrage of litigation to re-litigate already decided matters (*Jemzura v Mugglin*, 207 AD2d 645 [3rd Dept 1994]). A court may not impose sanctions for conduct not presently before it, however the frivolous nature of the

conduct may be understood in the context of the underlying protracted litigation (*Levy v Carol Management*, 260 AD2d27 [1st Dept 1999]). The goal of sanctions is to prevent the waste of judicial resources, and deterring vexatious litigation and dilatory or malicious litigation tactics (*Kernisan v Taylor*, 171 AD2d 869 [2nd Dept 1991]).

In this matter, this court finds that in light of the prior denials by both the NJOE and the Southern District magistrate, the attempts by McKeown to raise the very same issues before this court were frivolous and unmerited. Furthermore, this court, after having presided over motion practice and a bench trial in this proceeding has been able to observe McKeown's litigation tactics and believes that if left undeterred, they will lead to additional protracted litigation and will continue to be a source of grief to plaintiff and his counsel.

However, in determining this motion, this court does consider McKeown is representing himself pro-se. While it is this court's belief McKeown does at times exhibit an intention to harass and embarrass his opponents, his inexperience may lead him to believe such conduct is appropriate when one is defending him/herself at any cost.

Taking the entire situation into consideration, sanctions will not be awarded at this time, however, McKeown is put on notice that should he make another attempt at disqualifying Kane from any litigation, seek to file a complaint against Kane with any ethical panel, or attempt to seek recourse of any kind against Kane or Firestone based on the very same issues raised in this action, he shall be sanctioned by this court.

### **Conclusion**

Therefore, it is hereby directed that this court retains jurisdiction over any filing by McKeown against Kane with respect to the above referenced issues or against Mr. Firestone

with respect to the issues in this action. Such filing or attempt to raise the issues again shall result in a sanction being imposed upon McKeown in the amount of \$5,000.00 payable to the Lawyer's Fund for Client Protection Fund.

Further, it is directed that any such filings shall be referred to this court for disposition.

This shall constitute the order and decision of the court.

Dated: March 23, 2007

ENTER:



J.S.C.

MON. RICHARD B. LOWE, JR.

**FILED**  
MAR 29 2007  
COUNTY CLERK'S OFFICE  
NEW YORK