RECEIVED
01-16-2015
CLERK OF COURT OF APPEALS
OF WISCONSIN

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT 1

RALPH SASSON,

Plaintiff-Appellant,

v. Appeal No. 2014AP001707

RYAN BRAUN, ONESIMO BALELO, and
CREATIVE ARTISTS AGENCY, LLC.

Defendants-Respondents,

and

DOES 1-50 INCLUSIVE,

Defendant.

Appeal From Final Order Entered June 11, 2014 In Milwaukee County Circuit Court, Case No. 2013CV7014, Honorable Paul Van Grunsven Presiding

---

DEFENDANTS-RESPONDENTS ONESIMO BALELO AND CREATIVE ARTISTS AGENCY, LLC'S RESPONSE BRIEF

Stephen E. Kravit - State Bar No. 1016306
Aaron H. Aizenberg - State Bar No. 1066340
Kravit, Hovel & Krawczyk, s.c.
825 North Jefferson Street-Suite 500
Milwaukee, Wisconsin 53202
(414) 271-7100

Attorneys for Defendants-Respondents
Onesimo Balelo and
Creative Artists Agency, LLC

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

RESPONSE TO SASSON'S STATEMENT OF ISSUES/QUESTIONS PRESENTED, STATEMENT OF THE CASE, AND STATEMENT OF FACTS

I. THERE IS ONLY ONE QUESTION THE COURT OF APPEALS SHOULD CONSIDER.

The *pro se* Plaintiff-Appellant presents ***seven*** different questions he believes the Court of Appeals should consider. (Sasson App. Brf., viii-x). In reality, the ***only*** question the Court needs to address on this appeal is whether the Circuit Court abused its discretion when it imposed sanctions against the *pro se* plaintiff in the form of dismissing his claims for "repeated failures to comply with court orders, discovery rules, and the applicable rules of civil procedure . . . ." (R.170 at 15; R-App.15).[1] The answer, unequivocally, is no.

II. NATURE OF THE CASE.

The Plaintiff-Appellant, Ralph Sasson, a fledgling online law student, is a repeat *pro se* filer. This appeal stems from the dismissal of a case Sasson brought against high-profile defendants Ryan Braun, Braun's agent, Onesimo "Nez" Balelo, and the agency Balelo works for, Creative

[1] Defendants-Respondents understand that the Circuit Court clerk transmitted sealed documents as part of the record to the Court of Appeals, and that those documents remain under seal. Defendants-Respondents believe that is sufficient to maintain the sealed record, and, accordingly, do not include any sealed filings in their appendix.

Artists Agency, LLC ("CAA"). (R.6). In the ten months this case was active, Sasson repeatedly violated rules and court orders, blaming his misconduct on "inexperience." The Circuit Court gave Sasson multiple opportunities to correct his behavior, warning him numerous times that if he failed to do so, he would face sanctions.

On the cusp of facing dispositive motions which would have resulted in the summary dismissal of Sasson's remaining claims, he intentionally violated Court orders to which he had ***consented***, refused to produce discovery he had been ordered to produce, and asserted false allegations about the defendants to a third party. (R.170; R-App.1-16). Defendants moved for sanctions. (R.149-R.151). After reviewing briefs and holding a hearing, the Circuit Court issued a 16-page written decision and order on June 11, 2014, dismissing Sasson's claims with prejudice. (R.170; R-App.1-16).

III. SASSON'S UNDERLYING CLAIMS.

Sasson and Braun were childhood friends. (R.6 at ¶ 11). In November, 2011 Balelo engaged Sasson to perform research for Braun who had tested positive for performance-enhancing drugs. (R.6 at ¶ 17). Sasson was to be paid $2,000 up front and an additional $5,000 if Braun was exonerated.

(R.6 at ¶¶ 18-19). Sasson performed some research and was paid an initial $2,050. (R.6 at ¶ 27).

Braun later retained outside counsel to represent him in his arbitration hearing where he successfully defended the charges related to the failed drug test. (R.6 at ¶¶ 28, 33). Upon learning of Braun's arbitration victory, Sasson demanded he be paid the additional $5,000. (R.6 at ¶ 42). After not getting the response he wanted from Braun, Sasson approached Balelo, threatening to sue him and Braun personally, as well as CAA, if he was not paid what he was demanding. (R.6 at ¶¶ 43, 51-52).

Balelo arranged for Sasson to be paid and Sasson drafted a release agreement intended to be a "full release of all claims" against Braun, Balelo and CAA (the "Release"). (R.6 at ¶¶ 53, 61-64 and Ex. A). Sasson and Balelo signed the Release and, on June 22, 2012, CAA paid Sasson the full amount of money he was demanding ($5,166.75) by wire transfer to Sasson's girlfriend. (R.6 at ¶ 65).

In July, 2013 (about a year after the Release was signed and at a time when Braun was facing heavy public and media scrutiny) Sasson alleges he discovered Braun had breached the Release by "defaming" him. (R.6 at ¶¶ 98, 161,

172). After reaching out to Balelo and others at CAA about Braun's alleged "defamation," Sasson says he began to question whether Balelo had authority to sign the Release on behalf of CAA. (R.6 at ¶¶ 99, 184, 196).

About a month later, Sasson filed suit against Braun, Balelo, and CAA seeking millions in damages. He asserted defamation claims against Braun, even though he could not produce a shred of evidence that Braun defamed him. (R.6 at ¶¶ 130-140). Sasson claimed that Balelo "fraudulently induced" him to sign the Release by "misrepresenting" he had authority to sign on behalf of CAA, even though Balelo did have that authority. (R.6 at ¶¶ 182-209). Sasson asserted claims against Balelo and CAA even though he did not allege that CAA breached or repudiated the Release in any way, and admitted receiving every penny he demanded. (R.6).

IV. BACKGROUND OF SASSON'S LITIGATION MISCONDUCT.

A. Sasson's Inappropriate, Harassing, And Embarrassing Discovery And Filings.

From the beginning, it was clear Sasson filed this lawsuit to publicly embarrass and shame well-known defendants. Before serving his amended complaint, Sasson publicly filed irrelevant and harassing discovery requests

regarding, among other things: (i) Braun's "amorous relationships;" (ii) Braun's academic and athletic careers in high school and college; (iii) Braun's contract with the Milwaukee Brewers; (iv) Braun's business dealings with Aaron Rodgers; and (v) Braun's interactions with Milwaukee Brewers' owner Mark Attanasio. (R.2-4).

Judge Van Grunsven warned Sasson this would not be tolerated and that his *pro se* status did not obviate his duty to comply with applicable rules and orders:

> Let me second address a warning about discovery. Discovery will be conducted in a professional and civil manner in accordance with our Rules of Civil Procedure . . . .
>
> * * *
>
> Mr. Sasson's decision to proceed *pro se* does not in any way affect this Court's insistence that he and all parties comply with all Rules of Civil Procedure, ethical and local rules, and other rules of law that may apply to the conduct of this case.

(R.239 at 7, 14; R-App.18-19).

Eight days later, on January 23, 2014, in response to the Circuit Court's decision to dismiss 7 of his 12 claims, Sasson filed a letter and affidavit, in which he asserted the Circuit Court had committed "grave error." (R.53). In his filing, Sasson discussed numerous alleged facts not included

in his amended complaint, including alleged conversations with Braun and Balelo; things he allegedly did at Braun's request; his alleged conclusions regarding Braun's drug tests; and conversations he allegedly had with the media. (R.53). Sasson also disclosed private, confidential information about the defendants. (R.53).

B. Defendants' Request For A Protective Order.

In response to Sasson's submissions, the defendants moved for an emergency protective order to seal Sasson's January 23 filing and require Sasson's future filings to be kept under seal unless ruled otherwise by the Circuit Court. (R.58-R.60). At a hearing on January 29, 2014, counsel for Balelo and CAA explained the basis for the motion:

> What [Sasson] does do is lay out a whole mess of irrelevant, prejudicial, privileged information apparently for the same purpose that he originally filed the discovery demands publicly, to embarrass the defendants, and to create press for himself.

(R.240 at 5; R-App.22).

The Court granted the motion and warned Sasson that failure to comply with the order would be grounds for imposing sanctions:

I think that given the record now before this Court, there needs to be some safeguards put in place as to what Mr. Sasson files.

* * *

Mr. Kravit correctly identified in his moving papers that this Court has ***repeatedly, repeatedly warned Mr. Sasson*** about filings of documents, that he should not be filing discovery documents with this Court, yet what he did is turn around and on January 23 filed something that does contain information that is extremely, extremely confidential, and, as I said, I don't know if it's ingenuity or incompetence, unfamiliarity with the rules, but the fact of the matter is, is was this – I asked myself was this stuff filed simply to get around the rules that this type of information should be maintained confidential and not disclosed. Was it simply filed so that some curious member of the media would then come and review the court file and become privy to the information that should not have been filed in this case?

* * *

[T]he conclusion is that all future filings by the plaintiff Sasson be made under seal directly with my clerk, ***shall not be made public in any respect*** until or unless agreed by all counsel for the defendants or further order of this court. . . . We just cannot, cannot continue to be coming back here with these screw-ups, this failure to follow the Rules of Civil Procedure and the law of the state.

* * *

And I will indicate for the record noncompliance with this Court's order is sanctionable conduct.

(R.240 at 10-11, 18-19, 30-32; R-App.23-26, 29-31) (emphasis added).

Sasson insisted that he "never intended to harass, annoy . . . or do anything of that nature to the defendant[s]," that he had no "intention of putting information out there that shouldn't be out there," that this "is not about trying this case in a court of public opinion" or "making a media circus out of this," and that he "would like to contain everything to this courtroom." (R.240 at 24-25; R-App.27-28). Sasson concluded "I have ***no problem*** with the ruling you just made, it's fine." (R.240 at 35; R-App.33) (emphasis added).

Judge Van Grunsven signed the written order, which stated:

> 1. This Court FINDS that pro se plaintiff Sasson has on multiple occasions used public and attempted public filings in this case to annoy, harass, embarrass and/or oppress defendants; . . .
>
> * * *
>
> 4. This Court hereby ORDERS that all future filings by plaintiff Sasson shall be made under seal, directly with my clerk, and shall not be made public in any respect until or unless agreed by all counsel for defendants or further order of this Court. . . .

(R.62 at ¶¶ 1, 4; R-App.35-37).

C. Sasson Affirms The Seal Order.

Sasson was deposed on February 4 and 6, 2014, less than a week after the initial seal order was entered. At the conclusion of the first day of his deposition, Sasson affirmed and agreed, under oath, that his testimony was subject to the same seal order Judge Van Grunsven entered with respect to Sasson's filings:

> MR. KRAVIT: So the other thing I would say from this morning is that all the lawyers believe that the testimony being taken in this case is subject to the same seal order as the judge entered with respect to filings. Do you agree with that?
>
> MR. SASSON: ***Right***.
>
> MR. KRAVIT: So the transcript can't be used for anything until or unless the parties agree or the judge approves. Okay? Do you agree?
>
> MR. SASSON: ***Okay***.

(R.193 at ¶ 2) (emphasis added). On the second day of Sasson's deposition, he again affirmed under oath that his testimony was subject to the seal order:

> MR. KRAVIT: Remember that it's by agreement and order of the Court that all of this is considered under seal and confidential.
>
> MR. SASSON: ***Of course***.

(R.193 at ¶ 3) (emphasis added).

D. Judge Van Grunsven's Repeated Warnings.

In February, Sasson submitted another filing in violation of the seal order and on February 19, 2014, Judge Van Grunsven warned him again:

> THE COURT: On January 29 . . . I signed a proposed order to exclude plaintiff's improper submissions and a protective order, and I stated on the record . . . "that all future filings by the plaintiff Sasson be made under seal directly with my clerk, shall not be made public in any respect until or unless agreed by all Counsel or the defendants or further order of this Court."
>
> ***
>
> THE COURT: Anything you file you file under seal, understood?
>
> MR. SASSON: ***Yes.***
>
> THE COURT: ***There will be no further violations of Court orders.***

(R.241 at 2-4; R-App.39-41) (emphasis added).

At the same hearing, the Circuit Court denied Sasson's request to issue subpoena commissions to high profile third parties, including Tony Bosch and Bill Crafton. Defendants' counsel argued this was more harassment by Sasson:

> MR. AIZENBERG: Bill Crafton doesn't work for CAA. Bill Crafton doesn't know what Nez Balelo's authority is for CAA . . . . Bill Crafton doesn't have any knowledge or evidence related to that whatsoever, and the plaintiff doesn't even argue that he does. So now what [Sasson]

> is trying to do is use this proceeding to do exactly what he just said, he has all this dirt that he wants to expose . . . so his hope is that he will paint these defendants in a bad enough light that it will distract from what his actual claim in the case is, and he is trying to use this as a fishing expedition to go depose these very publicly known figures . . . .
>
> ***
>
> [I]f you go back to . . . what he says he wants from Mr. Bosch and Mr. Albir, he wants all documents relating to Ryan Braun's arbitration with Major League Baseball. He wants all documents relating to Ryan Braun which were transmitted by Mr. Bosch to Major League Baseball. This is not about privilege, Judge, this is about deposing the guy who went on 60 Minutes for an hour and talked about his dealings with Alex Rodriguez and got all this media attention and was tied to Ryan Braun, and another way for [Sasson] to . . . try to make these defendants look dirty and distract from the actual claims which have no merit.

(R.241 at 21, 29; R-App.42, 45).

The Circuit Court warned Sasson that it would not tolerate his unsubstantiated allegations about the litigants, noting a recent case where a *pro se* plaintiff's claims were dismissed as sanctions for such conduct:

> THE COURT: I would encourage everyone to review [*Bernegger v. David Cooper and Scott Johnson*]…it involves a trial court's dismissal of Bernegger's claims because of repeated violations of Court orders and sanctionable conduct by the *pro se* plaintiff . . . . [W]hat I found curious in this case was my colleague,

> Judge Conen, in a footnote, footnote 6, [stated] at the August 2012 hearing Bernegger made allegations against the characters of Johnson and Cooper without substantiating the allegations. The trial court subsequently admonished Bernegger for making allegations against Johnson and Cooper that were not substantiated. ***Now the reason I bring that up, Mr. Sasson, is I think Judge Conen, like any good Judge is going to warn any lawyer, litigant, and anyone representing themselves pro se that unsubstantiated allegations made by individuals must not be made, okay?***
>
> MR. SASSON: ***Absolutely.***
>
> THE COURT: So I'm doing this in part to ***warn you that we will not tolerate unsubstantiated allegations.***

(R.241 at 25-26; R-App.43-44) (emphasis added).

Two weeks later, at a hearing on March 3, 2014, Judge Van Grunsven denied a motion for sanctions Sasson filed, stating "I am sick and tired of getting these motions filed that really have no legal or factual basis." (R.242 at 10; R-App.51). Judge Van Grunsven explained:

> [Y]ou seem, Mr. Sasson, hell bent on re-litigating over and over again the Court's grant of a variety of motions to dismiss. . . . You talk about a conversation you had with Mr. Weitzman, I believe it is. You talk, in a Footnote 2, about how you've reviewed every case that Mr. Kravit has ever represented a client. You talk about the fact – some obtuse argument about some person you know that represents some Latin recording artist that your brother is an attorney and this fellow named

> Sousa who may be advising you behind the scenes. I really . . . don't quite understand what this motion is.
>
> ***
>
> You continue to represent yourself *pro se* and I've made myself clear many times that even though you proceed *pro se* you're bound by our Rules of Civil Procedure as well as all statutory and case law as well as our Rules of Ethics . . . .
>
> ***
>
> I have admonished and made Mr. Sasson aware that discovery will move forward, but discovery will be directed at relevant evidence . . . . I won't tolerate personal assaults.
>
> ***
>
> Let me make it clear, professionalism, civility, adherence to our Rules of Civil Procedure is what's expected here.

(R.242 at 6-7, 18, 22, 24; R-App.49-50, 52-54).

E. Balelo's Deposition.

In March, Sasson sought to depose Balelo. Fearing that Sasson would not limit his examination in accordance with the discovery rules, and that he would try to use information (and the video he requested) from Balelo's deposition for ulterior purposes outside the litigation, the defendants moved for a protective order. (R.105). On March 11, 2014, in response to that motion, the Court held as follows:

> I'm going to exercise my discretionary authority, which is quite broad, to maintain some control over the discovery in this case, and I'm going to order that the deposition of Mr. Balelo not be done at the Bar Association but here in my chambers. It will not be videotaped. . . . I can assure you that, as I've said before, and I will say again***, this is not a fishing expedition. This is not an opportunity for anyone to try to sully the character of any other party in this case.***

(R.243 at 4-5; R-App.57-58) (emphasis added).

At Balelo's deposition, the parties agreed, and the Circuit Court ordered, that the deposition was to be sealed consistent with the standing orders:

> MR. KRAVIT: Your honor, is it clear that this is a sealed proceeding?
>
> THE COURT: Are you asking it to be?
>
> MR. KRAVIT: Well, yes sir. In light of your seal orders, we understood that this deposition would also be taken under seal.
>
> MR. SASSON: Your Honor, you know, I was going to say before we started that pending review of the transcript, ***I think we're going to designate, at least for the time being, everything confidential material pursuant to the Court's request that we keep everything under seal.***
>
> THE COURT: ***The Court will order the deposition transcript sealed.***
>
> MR. SASSON: ***All right. Perfect.***

(R.150 at 7; R.151 at ¶ 3 and Ex. B) (emphasis added).

F. Sasson's Discovery Deficiencies.

In March, 2014 counsel for Braun filed a motion to compel discovery responses and documents from Sasson. (R.107; R.109). At a hearing on April 4, 2014, the Circuit Court addressed Sasson's deficiencies:

> [A]nd I say, what on earth is [Sasson's] reason or rationale for providing meaningless responses as I see here?
>
> ***
>
> [Sasson] laments in an e-mail to Barton that I can't provide discovery responses because I've got limited resources, and then wants Braun to produce every electronic device that he has so he can conduct a forensic data analysis on these devices to discover if Braun deleted . . . any data subsequent to the notice of this litigation. It's incoherent. It makes absolutely no sense.
>
> ***
>
> [I]t's the right of Braun, it's the right of the other defendants, Balelo and CAA, to conduct discovery to see what it is that you have that supports these claims, these allegations contained in your complaint. In other words, it's time to put up or shut up. Because either you have evidence to support these claims or you don't, and if you don't have the evidence to support the claims then they must be dismissed.
>
> ***
>
> So let me be clear, if your responses don't pass the smell test, if they don't rise to the level of meaningful responses, we'll revisit this issue of sanctions.

(R.244 at 14, 20-23, 28-29; R-App.61-67).

On May 6, 2014 the Circuit Court held a hearing to evaluate whether Sasson had complied with its discovery orders. Sasson conceded that he did not have any documents supporting his claims, but insisted he was on the verge of obtaining additional affidavits. (R.245 at 18, 23-25; R-App.70-73). The Circuit Court ***again*** gave Sasson leeway, allowing him 10 additional days to produce documents, and staying all other discovery in the case:

> Too much time, money and effort and expense has been going into litigating this case, and what's first and foremost in order for this Court is [Braun's] pending motion to compel . . . . I'm staying all discovery.
>
> ***
>
> [Y]ou guys are doing no work, no more work, I don't want to see anything other than the affidavits and the promised information we discussed here today from Sasson . . . .

(R.245 at 62, 65; R-App.80, 83).

Ultimately Sasson could never produce documents supporting his claims. At a June 5, 2014 hearing where the Circuit Court considered the defendants' motion for sanctions, Judge Van Grunsven explained:

> [Y]ou've not in any way of your supplemental pleadings, supplemental responses, provided this Court or opposing counsel ***with anything, any statement made by Braun that's allegedly defamatory***.

(R.246 at 43; R-App.89) (emphasis added).

G. Sasson's Disclosure Of Balelo's Sealed Deposition Testimony.

Just prior to the May 6 hearing, Sasson filed a request to issue a commission to subpoena the general counsel for the Major League Baseball Players' Association ("MLBPA"), David Prouty. (R.140). Defendants informed the Circuit Court at the May 6 hearing that they objected to the commission being issued because Prouty had no relevant testimony to give, and Sasson was seeking to depose him for ulterior purposes. (R.245 at 59; R-App.79). The Circuit Court held that Sasson's request was subject to the stay and would be dealt with after his own discovery issues were resolved. (R.245 at 65-66; R-App.83-84).

The next day, May 7, 2014, Sasson sent an e-mail to Prouty which stated, in pertinent part, as follows:

> Dear Mr. Prouty,
>
> My name is Ralph Sasson. I have contacted your office on a number of occasions in an attempt to speak with you. As I am sure you are aware, I am currently involved in a lawsuit with

Nez Balelo, and CAA. In late-2011 to early 2012, I assisted Mr. Ryan Braun in preparing for his arbitration with MLB for a violation of the JDA.

As a threshold issue, I am not contacting you as an adversary. It has come to my attention that your organization is conducting an investigation of Mr. Balelo and other agents' potential misconduct. ***I would like to make it clear that I would be more than happy to provide your organization with any and all information I have***. . . .

Here is the back story: ***At a deposition of Nez Balelo in March 2014, I asked Mr. Balelo if anyone at the Players Association was aware of my involvement in preparing for Mr. Braun's arbitration. Mr. Balelo stated that Michael Weiner was aware of my involvement. Mr. Balelo also stated that Mr. Weiner and the Players Association were given a 23 page memo I authored which outlined what defenses Braun should assert in his appeal for violation of the JDA. I further asked Mr. Balelo who provided him the permission to transmit Braun's confidential lab report, Raphael Palmeiro's arbitration opinion, and Ryan Franklin's arbitration opinion to me in November 2011. Mr. Balelo responded that Mr. Weiner assented to the transmission of the foregoing documents despite the fact that the transmission of these documents were violative of the CBA and federal labor law.***

Now, I never had the honor or privilege to meet Mr. Weiner. But by all accounts (and there are many), Mr. Weiner was a brilliant attorney who discharged his duties of professional ethics without exception. . . . ***What I have found highly disconcerting is that Mr. Balelo, in his testimony, has imputed his own professional misconduct onto a man who is no longer with***

> ***us and who, by all accounts, had an unblemished record of ethical conduct. I reach out to you today because if what Mr. Balelo has testified to is a lie, he must be held accountable.***

(R.150 at 9-10; R.151 at ¶ 2 and Ex. A; R.170 at 3-4; R-App.3-4) (emphasis added).

In his e-mail to Prouty, a high ranking official at the MLBPA, which has authority over Balelo and CAA, Sasson called Balelo a liar, said Balelo tried to impute his supposed "misconduct" to the former head of the MLBPA, Michael Weiner, disclosed numerous questions and answers from Balelo's deposition, which was ***ordered sealed***, and offered to disclose "any and all information" he had about Balelo, implying he knew of some scurrilous information that would get Balelo in trouble with the MLBPA. Sasson also ***falsely mischaracterized*** Balelo's sealed testimony, describing "answers" to questions that the Circuit Court ruled at the deposition Balelo did not have to answer, and completely fabricating answers Balelo never gave.

After learning of this communication, the defendants filed a motion asking the Circuit Court to dismiss Sasson's claims as sanctions for his repeated egregious and bad faith litigation misconduct. (R.149-151).

V. THE CIRCUIT COURT'S DISMISSAL ORDER.

At the June 5, 2014 hearing on the motion for sanctions, counsel for defendants argued that Sasson sent the Prouty e-mail for ulterior purposes:

> MR. KRAVIT: [F]rom the beginning this has been about the enrichment and advertisement of Ralph Sasson . . . . [H]e has used information from this case to first develop more information that he sees in a somewhat twisted way and then use it on some kind of crusade against Braun and Nez Balelo and CAA.
>
> ***
>
> This is a crusade by Mr. Sasson to get advantage any way he can, to make enough of a nuisance of himself that somebody will write him a check . . . .
>
> ***
>
> [T]his is the culmination of substantial violations by Mr. Sasson of statutes, rules, and procedures and specific Court orders . . . .

(R.246 at 19, 21, 98; R-App.87-88, 98).

Judge Van Grunsven questioned Sasson regarding his violations:

> THE COURT: Did you not stipulate at…Balelo's deposition that it was to be sealed and [any] information or anything discovered during the course of that deposition would remain sealed and confidential? Did you not state that on the record at the conclusion of the deposition? Did you?

> MR. SASSON: Um –
>
> THE COURT: Does not the transcript indicate your assent, your agreement that everything you learned at that deposition would be kept sealed and confidential?
>
> MR. SASSON: ***Pursuant to the Court's standing seal order, yes.***

(R.246 at 86-87; R-App.93-94) (emphasis added).

Despite his admitted violations, Sasson was indignant, arguing that the original seal order was "facially invalid" and "too broad to pass constitutional muster." (R.246 at 78-79, 93; R-App.90-91, 97). Judge Van Grunsven responded:

> You will recall, Mr. Sasson, part of the reason and rationale, the stated reason and rationale for my order was to prevent anyone from going out and sullying the reputation of anyone else . . . . This is a very, very noteworthy case that has garnered the attention from the media . . . .
>
> ***
>
> [Y]ou knew what the order said. You understood the terms of the order. . . . The order was submitted. No objection was received . . . .

(R.246 at 89-90, 102; R-App.95-96, 100).

On June 11, 2014, the Circuit Court issued a written Decision and Order, rejecting Sasson's arguments:

> The seal order would be virtually useless if it did not prevent the parties from verbally disclosing the confidential information contained in the sealed record. . . . Sasson's e-

> mail to Prouty demonstrates his disregard for the existing seal order and for this Court's insistence that confidentiality be preserved . . . .
>
> ***
>
> Despite Sasson's express acknowledgment that Balelo's testimony was confidential pursuant to the Court's seal order, Sasson subsequently disclosed portions of Balelo's deposition testimony in his e-mail to Prouty. . . . Sasson's disclosure of Balelo's sealed deposition testimony was done intentionally and with conscious disregard for the seal order issued by this Court. . . .

(R.170 at 6; R-App.6). The order also addressed Sasson's discovery misconduct:

> Sasson has continued to seek irrelevant and embarrassing information about the defendants through discovery.
>
> ***
>
> Instead of responding in good faith to the defendants' discovery requests as ordered by the Court, Sasson has continued to assert baseless objections without providing any meaningful responses.
>
> ***
>
> Despite the Court's admonitions, Sasson's conduct with respect to the other attorneys in this case has been unprofessional, inappropriate and uncooperative.
>
> ***

> Sasson was expressly ordered . . . to produce the evidence underlying his allegation that Braun "purposely sought to publish his false statements to other parties in written form . . . ." Once Sasson realized that discovery would not produce necessary evidence of publication, he had an obligation to withdraw the allegation and the libel claim based on that allegation. Instead, Sasson continues to advocate for the validity of his libel claim despite having absolutely no evidence that Braun ever published a defamatory statement about him.

(R.170 at 8-14; R-App.8-14). The order concluded:

> The Court finds that Sasson's repeated failures to comply with court orders, discovery rules, and the applicable rules of civil procedure are extreme, substantial, and persistent. Given the number of times Sasson was warned that this Court would not tolerate these violations, Sasson's continued noncompliance was egregious and done in bad faith. Sasson's unjustifiable behavior threatens the integrity of the judicial process, and therefore warrants the most severe sanction available – dismissal of this case with prejudice. Imposing any lesser sanction would be prejudicial to the defendants, as they have already spent an unreasonable amount of time and money litigating over Sasson's improper conduct.[2]

(R.170 at 15; R-App.15).

[2] Sasson's misconduct did not end when his case was dismissed. Since then, he attempted to make additional filings not under seal and posted the video from his deposition on YouTube. (R.248 at 6-8). Sasson admitted he violated the Circuit Court's orders on purpose because he believed they were unconstitutional and he could therefore violate them with impunity. (R.192). These violations were the subject of a post-dismissal motion for contempt which Sasson then used as the basis to file a second frivolous lawsuit against all of the attorneys in the underlying action and CAA. *See*, Milwaukee County Case No. 14-CV-8100.

ARGUMENT

I. STANDARD OF REVIEW.

The Court of Appeals "review[s] a circuit court's decision to impose sanctions, as well as the particular sanction it chooses, for an erroneous exercise of discretion." *Schultz v. Sykes*, 2001 WI App 255, ¶ 8, 248 Wis. 2d 746, 638 N.W.2d 604; *Kinship Inspect. Serv. v. Newcomer,* 231 Wis. 2d 559, 573, 605 N.W.2d 579 (Ct. App. 1999); *Garfoot v. Fireman's Fund Ins. Co.*, 228 Wis. 2d 707, 717, 599 N.W.2d 411 (Ct. App. 1999).

The Circuit Court's decision will be affirmed "if it examined the relevant facts, applied a proper standard of law, and reached a reasonable conclusion." *Schultz*, 2001 WI App 255 at ¶ 8; *Garfoot*, 228 Wis. 2d at 717; *Schneller v. St. Mary's Hosp. Med. Ctr.*, 162 Wis. 2d 296, 306, 470 N.W.2d 873 (1991); *Loy v. Bunderson*, 107 Wis. 2d 400, 414-15, 320 N.W.2d 175 (1982). "The record need only reflect the court's 'reasoned application of the appropriate legal standard to the relevant facts in the case.'" *Tralmer Sales & Serv. v. Erickson*, 186 Wis. 2d 549, 572-73, 521 N.W.2d 182 (Ct. App. 1994) (quoting *Hedtcke v. Sentry Ins. Co.*, 109 Wis. 2d 461, 471, 326 N.W.2d 727 (1982)).

The Court of Appeals should "search the record for reasons to sustain the court's discretionary decision." *Erickson*, 186 Wis. 2d at 572-73 (citing *Loomans v. Milwaukee Mut. Ins. Co.*, 38 Wis. 2d 656, 662, 158 N.W.2d 318 (1968)). "The issue is not whether, [the Court of Appeals], as an original matter, would have imposed the same sanction as the circuit court; it is whether the circuit court exceeded its discretion in imposing the sanction it did." *Schultz*, 2001 WI App 255 at ¶ 8; *Kinship*, 231 Wis. 2d at 573; *Hefty v. Strickhouser*, 2008 WI 96, ¶ 71, 312 Wis. 2d 530, 752 N.W.2d 820.

The appropriate standard of law here comes from Wisconsin courts' "inherent and statutory power to sanction parties who fail to obey court orders." *In re Isaiah H.*, 2013 WI 28, ¶ 99, 346 Wis. 2d 396, 828 N.W.2d 198 (citing *Evelyn C.R. v. Tykila S.*, 2001 WI 110, ¶ 18, 246 Wis. 2d 1, 629 N.W.2d 768.) "[C]ase law is clear that a court's power to sanction does not derive from the statutes alone. Rather, circuit courts may also sanction parties for misconduct under their inherent authority." *Schultz*, 2001 WI App 255 at ¶ 10; *Schaefer v. Northern Assurance Co.*, 182 Wis. 2d 148, 162, 513 N.W.2d 16 (Ct. App. 1994).

The Wisconsin Supreme Court explained that inherent powers are those "which must necessarily be used to enable the judiciary to accomplish its constitutionally or legislatively mandated functions." *City of Sun Prairie v. Davis,* 226 Wis. 2d 738, 747, 595 N.W.2d 635 (1999). "Therefore, they include those powers that courts need to 'maintain their dignity, transact their business, [ ] or accomplish the purposes of their existence.'" *Schultz,* 2001 WI App 255 at ¶ 11 quoting *Davis,* 226 Wis. 2d at 748.

"Wisconsin appellate courts have affirmed the power of circuit courts to impose dismissal as a sanction for litigation misconduct." *Schultz,* 2001 WI App 255 at ¶ 9; *Hudson Diesel, Inc. v. Kenall,* 194 Wis. 2d 531, 543, 535 N.W.2d 65 (Ct. App. 1995). "[T]he decision of which sanctions to impose, ***including dismissing an action with prejudice***, [is] within a circuit court's discretion." *Indus. Roofing Servs., v. Marquardt,* 2007 WI 19, ¶ 41, 299 Wis. 2d 81, 726 N.W.2d 898 (emphasis added); *Tykila S.,* 2001 WI 110, at ¶ 18 (the decision to enter judgment as a sanction is discretionary).

"In order for a sanction dismissing a civil case to be 'just,' the non-complying party must act 'egregiously or in

bad faith.'" *In re Isaiah H.,* 2013 WI 28, at ¶ 69 (citing *Marquardt,* 2007 WI 19, at ¶ 43); *Schneller,* 162 Wis. 2d at 311-12; *State v. Shirley E.,* 2006 WI 129, ¶ 13, n.3, 298 Wis. 2d 1, 724 N.W.2d 623; *Schultz,* 2001 WI App 255, at ¶ 14.

Egregious conduct is defined as "extreme, substantial and persistent." *In re Isaiah H.,* 2013 WI 28, at ¶ 70 (citing *Hudson Diesel,* 194 Wis. 2d at 543). Conduct can be found "egregious" whether it was intentional or not. *Hudson Diesel,* 194 Wis. 2d at 543. For example, "[f]ailure to comply with a circuit court scheduling order without a clear and justifiable excuse is egregious conduct." *In re Isaiah H.,* 2013 WI 28, at ¶ 100 (citing *Marquardt,* 2007 WI 19, at ¶ 43).

Bad faith has been described as a "flagrant, knowing disregard of the judicial process." *Schultz,* 2001 WI App 255, at ¶ 14; *Garfoot*, 228 Wis. 2d at 719 (quoting *Milwaukee Constructors II v. Milwaukee Metro. Sewerage Dist.,* 177 Wis. 2d 523, 533, 502 N.W.2d 881 (Ct. App. 1993)). "[B]ad faith may be found, not only in the actions that led to the lawsuit, but also in the conduct of the litigation." *Schultz,* 2001 WI App 255, at ¶ 14 (internal citation omitted). A circuit court can find a party acted in bad faith if he or she "'intentionally or deliberately' delayed, obstructed, or refused

to comply'" with court orders. *In re Isaiah H.*, 2013 WI 28, at ¶ 70 (citing *Hudson Diesel*, 194 Wis. 2d at 543). Bad faith has also been described as "'deceit; duplicity; insincerity.'" *Gray v. Eggert*, 2001 WI App 246, ¶ 17, 248 Wis. 2d 99, 635 N.W.2d 667 (quoting *Anderson v. Cont'l Ins. Co.*, 85 Wis. 2d 675, 691-92, 271 N.W.2d 368 (1978)).

Here, the Circuit Court examined the relevant facts, applied a proper standard of law, and reached a reasonable conclusion, finding that Sasson acted both egregiously and in bad faith, which justified dismissal of Sasson's remaining claims as sanctions. The Circuit Court's discretionary decision should be upheld.

II. THE CIRCUIT COURT DID NOT ERR IN EXERCISING ITS DISCRETION TO SANCTION SASSON BY DISMISSING HIS CLAIMS.

The Circuit Court examined the relevant facts, finding that Sasson intentionally and repeatedly refused to comply with court orders and engaged in other litigation misconduct. (R.170 at 15; R-App.15). The Circuit Court then applied the proper standard of law under its inherent authority, finding that Sasson's behavior was "extreme, substantial, and persistent" and that given "the number of times Sasson was warned" his "continued noncompliance was egregious and

done in bad faith." (R.170 at 15; R-App.15). Based on its examination of the facts and application of the law, the Circuit Court reached the reasonable conclusion that the appropriate sanction to impose was dismissing Sasson's remaining claims. (R.170 at 15; R-App.15). The record fully supports the Circuit Court's discretionary decision.

A. Sasson Consented To Balelo's Deposition Being Ordered Sealed.

The Circuit Court found that Sasson intentionally violated the seal order entered at Balelo's deposition. (R.170 at 6; R-App.6). Incredibly, Sasson argues that the Circuit Court "never promulgated an order [sic] sealing the Balelo deposition" and "no stipulation sealing the Balelo deposition was made on the record . . . ." (Sasson App. Brf., 17-18). Sasson's assertions are false.

Based on Sasson's prior discovery misconduct, Judge Van Grunsven ordered Balelo's deposition take place in his chambers, where he presided over the proceeding in real time. (R.243 at 4-5; R-App.57-58). On the record at Balelo's deposition, Sasson, Attorney Kravit and Judge Van Grunsven had the following exchange:

> MR. KRAVIT: In light of [the Circuit Court's] seal orders, we understood that this deposition would also be taken under seal.
>
> MR. SASSON: Your Honor, you know, I was going to say before we started that pending review of the transcript, ***I think we're going to designate, at least for the time being, everything confidential material pursuant to the Court's request that we keep everything under seal.***
>
> THE COURT: ***The Court will order the deposition transcript sealed.***
>
> MR. SASSON: ***All right. Perfect.***

(R.150 at 7; R.151 at ¶ 3 and Ex. B) (emphasis added).

Not only did Judge Van Grunsven ***order*** the Balelo deposition sealed, ***Sasson expressly requested and consented to it.*** For him to now argue to this Court that no such order existed, when, ***literally,*** Judge Van Grunsven's words were to "order the deposition transcript sealed," not only strains credulity, it is a flat out lie.

If Sasson would have objected to the deposition being sealed, the parties would have argued their respective points on the record, and Judge Van Grunsven would have ruled on the request. Instead, Sasson ***joined*** Attorney Kravit's request to seal the deposition and the Circuit Court ordered it accordingly. The defendants and the Circuit Court reasonably

relied on Sasson's assent and he cannot turn around now and try to use the same order he jointly requested as a basis for overturning a subsequent adverse ruling.[3]

B. Sasson's E-Mail Communication To David Prouty Violated Court Orders.

One of the ways the Circuit Court found Sasson violated its orders was through his e-mail communication to MLBPA general counsel David Prouty. (R.170 at 5-6; R-App.5-6). Sasson argues that his "inquiry" to Prouty was appropriate because it was "eminently relevant to his claims," and argues for three pages (with no factual or legal support) how the questions he asked Prouty in his e-mail were relevant to whether or not Balelo had authority to sign a Release on behalf of CAA. (Sasson App. Brf., 37-40).

Sasson misses the point entirely. The Circuit Court did not sanction him because he made an "inquiry" to Prouty. In

[3] The Circuit Court ordered Balelo's deposition sealed so Sasson's argument that any "stipulation" to the sealing of deposition materials would be unenforceable because it was not "in writing" is moot. But that argument is also wholly unsupported by the law. Section 807.05, Wis. Stats., does not apply to procedural stipulations. *See State v. Aldazabal*, 146 Wis. 2d 267, 269, 430 N.W.2d 614 (Ct. App. 1988) ("The requirements of sec. 807.05, however, have nothing to do with . . . procedural stipulations . . . .") So even in Sasson's fantasy world where Judge Van Grunsven somehow did not make the order clearly reflected in the record, the requirements of Section 807.05 are inapplicable because the stipulation was procedural in nature, and thus the stipulation would be enforceable.

fact, in his decision and order, Judge Van Grunsven specifically stated that "Sasson's attempt to obtain information from Prouty amounted to informal communication beyond the scope of the discovery process" and therefore did ***not*** violate any orders in and of itself. (R.170 at 5; R-App.5).

Rather, it was the ***substance*** of Sasson's communication which was problematic. The Circuit Court found (and Sasson does not dispute) that Sasson discussed "the contents of Balelo's sealed deposition testimony in his e-mail to Prouty." (R.170 at 5; R-App.5). Sasson also mischaracterized Balelo's testimony, called Balelo a liar, and accused Balelo of imputing his own "misconduct" to the former head of the MLBPA, Michael Weiner. (R.150-151).

Sasson argued he was free to discuss the sealed testimony because the order prohibited him only from distributing the actual physical transcript, and not from otherwise disclosing its contents. (R.170 at 5; R-App.5). Judge Van Grunsven properly rejected that argument:

> Sasson's narrow characterization of the scope of the seal order is inconsistent with the fundamental purpose of a seal order. "Documents are presented under seal precisely so that their secrecy might be preserved and

> disclosure to the public might be prevented." *State v. Gilmore*, 201 Wis. 2d 820, 833, 549 N.W.2d 401 (1996). . . . ***The seal order would be virtually useless if it did not prevent the parties from verbally disclosing the confidential information contained in the sealed record.*** The risk of prejudice arises whether the confidential information is disclosed in paraphrased terms or through disclosure of the actual sealed documents. In fact, ***Sasson's misleading characterization of Balelo's testimony demonstrates that paraphrased discussion of sealed information may be even more prejudicial than actual disclosure of sealed documents.*** (Footnote omitted). It is also concerning, given the standing seal order, that Sasson unequivocally offered to provide Prouty with "any and all information" he has about Balelo. ***In sum, Sasson's e-mail to Prouty demonstrates his disregard for the existing seal order and for this Court's insistence that confidentiality be preserved to avoid potential prejudice.***

(R.170 at 5-6; R-App.5-6) (emphasis added).

The Circuit Court found Sasson's improper disclosures were "not the result of Sasson misunderstanding the scope of the seal order;" that Sasson's actions were "done intentionally and with conscious disregard" for the Circuit Court's order; and that Sasson "used the confidential information from Balelo's deposition to make disparaging allegations about Balelo to a third party." (R.170 at 6-7; R-App.6-7). The Circuit Court did not err in ruling that, those findings,

especially when considered with Sasson's other misconduct, justified the sanction of dismissal.[4]

C. Sasson Failed To Comply With Discovery Rules And Orders.

Sasson argues that the Circuit Court erred in four ways by finding he failed to comply with discovery rules and orders. Sasson contends: (i) he was never ordered to produce evidence supporting his libel claim against Braun; (ii) his discovery responses were meaningful and complied with applicable rules; (iii) it was not he, but rather, Judge Van Grunsven, who "obstructed discovery" in the case; and (iv) all of his privilege objections were appropriate. (Sasson App. Brf., 29-37). Sasson's arguments are completely contradicted by the record.

(1) Sasson was ordered to produce documents supporting his libel claim.

Sasson concedes he was ordered to provide "meaningful responses" and produce supporting documents in response to the defendants' discovery requests. (Sasson App.

[4] Ironically, in arguing that his communication to Prouty was not for any ulterior purpose, and was only in furtherance of his effort to prove the extent of Balelo's authority at CAA, Sasson takes time to explain his belief that the things he told Prouty could have cost Balelo "$2,000,000 in annual salary" and/or resulted in "termination of his employment." (Sasson App. Brf., 39).

Brf., 29). Apparently, Sasson believes that documents supposedly supporting his libel allegations do not fall into the category of "meaningful," arguing that he was never ordered to produce those. (Sasson App. Brf., 29-31).

Judge Van Grunsven explained that the defendants had the right to conduct discovery and "see what it is that you have that supports these claims, these allegations contained in your complaint." (R.244 at 20-23; R-App.62-65). Judge Van Grunsven told Sasson that if he did not have evidence supporting his claims he would "revisit this issue of sanctions." (R.244 at 23, 29; R-App.65-67).

Judge Van Grunsven was unequivocal in his orders. Sasson promised to respond appropriately, and instead, he produced nothing, later admitting he did not possess any such documents. His argument now, that he was never ordered to do so, is totally disingenuous and should be rejected.

(2) The Circuit Court did not err in finding that Sasson failed to comply with its order to produce meaningful discovery responses.

The Circuit Court found as follows regarding Sasson's discovery responses: (i) Sasson asserted baseless, incoherent objections which lack legal foundation; (ii) Sasson's written

responses "are consistently incomplete, evasive, or non-responsive;" and (iii) after being afforded several opportunities to provide meaningful responses, "Sasson persists in responding to discovery requests with nonsensical or inapplicable objections." (R.170 at 9-11; R-App.9-11).

Sasson provides this Court with absolutely no basis on which it could overturn the Circuit Court's discretionary finding that Sasson failed to comply with his discovery obligations. All he says is that he did not produce certain documents because, as the defendants suspected all along, ***he never had them***. (Sasson App. Brf., 32). That was the point of the motion to compel to begin with, and Sasson's tacit admission that he asserted a completely baseless libel claim cannot save him from his discovery misconduct.

(3) Sasson's claim that Judge Van Grunsven obstructed discovery is absurd and offensive.

Sasson argues it was not he, but ***Judge Van Grunsven***, who obstructed discovery by issuing a stay pending Sasson complying with his discovery obligations and the Circuit Court's orders. (Sasson App. Brf., 32-35). This is not the first time Sasson has asserted unfounded *ad hominem* accusations against Judge Van Grunsven. On July 31, 2014, Sasson filed a

motion for recusal in which he accused Judge Van Grunsven of "lying," having "sinister motives," and being biased against Sasson. (R.210). In that filing, Sasson argued:

> In an unbridled effort to advance ***a clearly biased agenda against Sasson***, Van Grunsven's actions demonstrate, beyond any reasonable doubt, that he lacks the ability to adjudicate this matter impartially. To ***lie*** about the record for the sole purpose of holding the Plaintiff in contempt, when the order underlying the supposed contempt is invalid, destroys any notion that Sasson has been treated fairly. The ***sinister motives*** and actions of the Court can no longer go unaddressed and Plaintiff requests that Judge Van Grunsven immediately recuse himself from presiding over this case.

(R.210 at 8) (emphasis added). In an accompanying motion to publicly file his motion for recusal, Sasson accused Judge Van Grunsven of being corrupt:

> If this Court seals this motion, such actions will ***clearly and convincingly demonstrate the epitome of judicial corruption***: using the powers afforded to the judiciary as a means of hiding from public view a Court's misconduct/bias.

(R.213 at 2) (emphasis added).

Sasson at all stages of this case, including on this appeal, refuses to take responsibility for his actions. It is well-established under Wisconsin law that courts have discretion to control their own dockets and to enter appropriate

discovery orders, including staying discovery as to one or more parties, where appropriate. Wis. Stat. § 804.01(3)(a) (trial courts "may make ***any order*** which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense") (emphasis added); *State v. Beloit Concrete Stone Co.*, 103 Wis. 2d 506, 511, 309 N.W.2d 28 (Ct. App. 1981) (issuing a protective order is within the trial court's sound discretion).

On May 6, 2014, after two previous hearings on the motion to compel, Judge Van Grunsven gave Sasson 10 additional days to produce documents he had promised and stayed all other discovery in the case pending Sasson's compliance with the order, explaining "[t]oo much time, money and effort and expense has been going into litigating this case." (R.245 at 62-65; R-App.80-84).

No matter how much time he was given, and the Circuit Court bent over backwards to give him months to respond to discovery appropriately and produce documents in support of his allegations, Sasson could not do it because the documents did not exist. After a ***third*** hearing at which Sasson was ordered to comply, Judge Van Grunsven, at the same time, ordered all other discovery stayed until Sasson

complied. That was absolutely within Judge Van Grunsven's discretion to do and in no way constituted "obstruction."

(4) The Circuit Court did not err in finding Sasson's privilege objections were inappropriate.

Sasson does not cite a ***single case*** supporting the notion that a *pro se* litigant can appropriately assert an attorney-client privilege objection on behalf of themselves. Instead, he tries to manipulate the fact that Judge Van Grunsven previously did not require him to disclose his deposition questions in advance (referring to his questions as "work product") and summarily concludes he therefore had the right to assert privilege objections to discovery requests he did not want to answer. (Sasson App. Brf., 35-37).

The attorney-client privilege shields communications, not the facts themselves. *Dyson v. Hempe*, 140 Wis. 2d 792, 814-15, 413 N.W.2d 379 (Ct. App. 1987) citing *Jax v. Jax*, 73 Wis. 2d 572, 579, 243 N.W.2d 831 (1976). Sasson as a non-lawyer, and *pro se* litigant, had no legitimate basis to assert the attorney-client privilege. (R.170 at 9; R-App.9). Even if there was a theoretical situation where it would be appropriate, Sasson did not explain to the Circuit Court, or this Court, how invocation of the privilege, in the context of

any of the discovery requests he was required to respond to, was valid. The Circuit Court did not err in finding that Sasson's privilege objections were inappropriate.

D. Sasson's Bad Faith Included Asserting Unsubstantiated Allegations And Engaging In Other Inappropriate Behavior.

Sasson states that the Circuit Court's finding that he acted in bad faith "is predicated on confabulated, irrational reasoning or pure confusion." (Sasson App. Brf., 43). Sasson claims he "never violated a court warning or valid order," "never intended to sully Balelo's reputation," and "has substantiated every representation he has made to the court." (Sasson App. Brf., 43). The record is replete with examples to the contrary.

Sasson's intentional violations of the seal and discovery orders described at length herein, on their own, constitute bad faith under Wisconsin law. *See In re Isaiah H.*, 2013 WI 28, at ¶ 70 (citing *Hudson Diesel*, 194 Wis. 2d at 543) (A party acts in bad faith if he or she "'intentionally or deliberately' delayed, obstructed, or refused'" to comply with court orders). But that was not all of Sasson's conduct that the Circuit Court found to be in bad faith. The Circuit Court found that Sasson asserted numerous unsubstantiated

allegations against the other litigants after being repeatedly ordered not to do so. (R.170 at 12; R-App.12). For example, Sasson accused the defendants of spoliating evidence and then later admitted he had absolutely no proof of that. (R.170 at 12; R.245 at 53-56; R-App.12, 75-78).

The Circuit Court also found that Sasson consistently conducted himself inappropriately despite the Circuit Court's many admonishments to him about litigating in a professional and civil manner. Some examples the Circuit Court noted in its order include Sasson referring to Attorney Barton as "cupcake" and telling him he had not "answered jack dick." (R.170 at 12; R-App.12). In communicating with defense attorneys regarding discovery, Sasson warned "I'm a reasonable cat, but don't come at me with unreasonable shit. 'Cause when you start acting unreasonable, I'm going to act unreasonable, too. And just like I told Jeremiah, when I get unreasonable I start to discriminate indiscriminately." (R.170 at 12; R-App.12).

The Circuit Court was not "confused" or "irrational" in finding that Sasson acted in bad faith. If anything, the record demonstrates that Judge Van Grunsven was overly patient with Sasson, giving him every opportunity to correct his

behavior before issuing sanctions. Sasson's continued refusal to abide by applicable rules and orders of the Court is the definition of bad faith.

III. SASSON'S CONSTITUTIONAL ARGUMENTS MUST BE REJECTED.

Sasson asserts a plethora of straw man constitutional arguments, including that his free speech was unlawfully restrained, that no good cause existed for entering the seal order, and that his due process rights were violated. (Sasson App. Brf., 18-28). All of these arguments are logically flawed and legally unsupported, and should be rejected.

A. Sasson Should Be Estopped From Asserting Constitutional Objections Because He Consented To The Challenged Orders.

"It is contrary to fundamental principles of justice and orderly procedure to permit a party to assume a certain position in the course of litigation which may be advantageous, and then after the court maintains that position, argue on appeal that the action was error." *In re Ambac Assur. Corp*., 2012 WI 22, ¶ 23, 339 Wis. 2d 48, 67, 810 N.W.2d 450 (quoting *State v. Gove*, 148 Wis. 2d 936, 944, 437 N.W.2d 218 (1989)). Skepticism "is especially warranted where a party has been complicit in the error cited as grounds

for reversal." *In re Ambac Assur. Corp.,* 2012 WI 22, at ¶ 23; *Cascade Mountain, Inc. v. Capitol Indem. Corp.*, 212 Wis. 2d 265, 269, 569 N.W.2d 45 (Ct. App. 1997) ("A party cannot complain about an act to which he or she deliberately consents.").

The Court of Appeals will not review an error which a party invited. *General Star Indem. Co. v. Bankruptcy Estate of Lake Geneva Sugar Shack, Inc. by Waldschmidt*, 215 Wis. 2d 104, 131, 572 N.W.2d 881 (Ct. App. 1997); *Shawn B.N. v. State*, 173 Wis. 2d 343, 372, 497 N.W.2d 141 (Ct. App. 1992); *Linden v. Cascade Stone Co.*, 2004 WI App 184, ¶ 29, 276 Wis. 2d 267, 687 N.W.2d 823 (citing *Richards v. Land Star Group, Inc.*, 224 Wis. 2d 829, 842-43, 593 N.W.2d 103 (1999)) ("If a party makes an express concession, [the Court of Appeals] ha[s] no obligation to review such 'invited error.'"); *Soo Line r. Co. v. Office of Comm'r of Transp.*, 170 Wis. 2d 543, 557, 489 N.W.2d 672 (Ct. App. 1992).

Prohibiting a party from inviting an error that they later seek to use as grounds for overturning a ruling or order on appeal is consistent with the doctrine of judicial estoppel, which "protect[s] against a litigant playing 'fast and loose with the courts' by asserting inconsistent positions . . . ." *State*

v. Ryan, 2012 WI 16, ¶ 32, 338 Wis. 2d 695, 809 N.W.2d 37 (internal citation omitted).

Sasson told the Circuit Court he had no problem with the seal order when it was entered. (R.240 at 24-25; R-App.27-28). He confirmed at both days of his deposition his agreement that his testimony was sealed consistent with the standing order. (R.193 at ¶¶ 2-3). He agreed at Balelo's deposition that Balelo's testimony was also sealed. (R.150 at 7; R.151 at ¶ 3 and Ex. B). Sasson's assent to sealing Balelo's deposition (which is the primary order Sasson violated through his e-mail to Prouty) is especially relevant because the Circuit Court, in entering that order, specifically relied on Sasson's joint ***request***, along with the defendants, to do so.

Sasson's argument that the Circuit Court's orders are unenforceable because they are somehow "unconstitutional" is precisely what the above cited equitable doctrines are intended to prohibit. Sasson plays fast and loose with his positions, depending on what he thinks most benefits him at the time. Based on the positions he took in the Circuit Court, in particular his express consent to the sealing of Balelo's deposition, Sasson should be estopped from arguing on appeal that any error was made by entering the orders.

B. Sasson's Free Speech Rights Were Not Violated.

"A litigant has ***no First Amendment right*** of access to information made available only for purposes of trying his suit." *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 32, 104 S. Ct. 2199, 2208 (1984) (emphasis added) (citing *Zemel v. Rusk*, 381 U.S. 1, 16-17, 85 S. Ct. 1271, 1280-81 (1965)). "Thus, continued court control over the discovered information does not raise the same specter of government censorship that such control might suggest in other situations." *Seattle Times*, 467 U.S. at 32 (citing *In re Halkin*, 194 U.S. App. D.C. 257, 287, 598 F.2d 176 (1979)).

"Moreover, ***pretrial depositions and interrogatories are not public components*** of a civil trial." *Seattle Times*, 467 U.S. at 33 (emphasis added). "Such proceedings were not open to the public at common law . . . and, in general, they are conducted in private as a matter of modern practice." *Seattle Times*, 467 U.S. at 33 (citing *Gannett Co. v. DePasquale*, 443 U.S. 368, 389, 396, 99 S. Ct. 2898, 2910 (1979)); *Bond v. Utreras*, 585 F.3d 1061, 1074-75 (7th Cir. 2009). "Much of the information that surfaces during pretrial discovery may be unrelated, or only tangentially related, to

the underlying cause of action. ***Therefore, restraints placed on discovered, but not yet admitted, information are not a restriction on a traditionally public source of information***." *Seattle Times*, 467 U.S. at 34 (emphasis added).

"[I]t is significant to note that an order prohibiting dissemination of discovered information before trial ***is not the kind of classic prior restraint that requires exacting First Amendment scrutiny***." *Seattle Times*, 467 U.S. at 33-34 (citing *Gannett Co.*, 443 U.S. at 399) (emphasis added). The trial court has "substantial latitude" to enter such orders because "the trial court is in the best position to weigh fairly the competing needs and interests of parties affected by discovery." *Seattle Times*, 467 U.S. at 36.

The Circuit Court examined the relevant facts, applied the proper standard of law, and reached a reasonable conclusion that, based on Sasson's repeated discovery misconduct and propensity for trying to use this case to seek publicity, a protective order sealing certain discovery materials was appropriate. Of particular relevance on this appeal, sealing Balelo's deposition was absolutely a valid exercise of the Circuit Court's discretion to prohibit "dissemination of discovered information" in the case. *Seattle*

Times, 467 U.S. at 33. There is nothing unconstitutional about any of the Circuit Court's orders.

C. There Was No "Gag" Order.

Sasson was not subject to a "gag" order. Much like where a party has a trade secret to protect, or confidential business or financial information, a protective order requiring that certain discovery materials remain sealed in a case is not a constitutional violation. *Seattle Times*, 467 U.S. at 32-34; *Gilmore*, 201 Wis. 2d at 833 ("Documents are presented under seal precisely so that their secrecy might be preserved and disclosure to the public might be prevented.").

Judge Van Grunsven specifically ruled Sasson was ***not*** prohibited from discussing the case and obtaining information through informal communication. (R.170 at 5; R-App.5). As explained in the dismissal order, Sasson was prohibited from disclosing the contents of Court-ordered sealed material:

> The seal order would be virtually useless if it did not prevent the parties from verbally disclosing the confidential information contained in the sealed record. . . . Sasson's e-mail to Prouty demonstrates his disregard for the existing seal order and for this Court's insistence that confidentiality be preserved . . . .

(R.170 at 5-6; R-App.5-6).

There was no "gag" order. The Circuit Court exercised its discretion and entered a reasonable protective order based on the facts and circumstances of the case.

D. Sasson Was Not Denied Due Process.

Sasson claims he was denied "due process" because: (i) he says he never received notice that the motion for protective order would be heard on January 29, 2014; and (ii) he claims he did not receive a meaningful opportunity to be heard. (Sasson App. Brf., 25-29).

Sasson's first argument can be immediately disregarded because he admits that he received the notice of motion filed by the defendants, noticing the hearing for January 29, 2014. (Sasson App. Brf., 27). Sasson knew of, attended, and argued at, the hearing on January 29, 2014. There is no question he received notice.

Sasson's argument that he did not receive a meaningful opportunity to be heard fares no better. As Sasson acknowledges, the Circuit Court had discretion to shorten the prescribed period for hearing a non-dispositive motion. (Sasson App. Brf., 26). Sasson attended the hearing. He did not tell the Circuit Court that he was not prepared to argue or that he needed to be given an opportunity to submit a reply

brief. In fact, Sasson stated "I appreciate the Court calling this hearing, and I am going to make this argument . . . ." (R.240 at 10-11; R-App.23-24). He argued his position vigorously, and when the Circuit Court ruled on the motion, Sasson said "I have ***no problem*** with the ruling you just made, it's fine." (R.240 at 35; R-App.33) (emphasis added).

Sasson received actual notice; had a meaningful opportunity to be heard; and he was heard. There was no due process violation.

IV. THE CIRCUIT COURT DID NOT ERR IN DENYING SASSON'S MOTION TO VACATE OR RECONSIDER ITS DISMISSAL ORDER.

Sasson's final argument is that the Circuit Court erred by not granting his motion to vacate or reconsider its dismissal order. (Sasson App. Brf., 44-49). The Court of Appeals need not address this argument. "If a decision on another point disposes of the appeal, the appellate court will not decide other issues raised." *Skrupky v. Elbert*, 189 Wis. 2d 31, 47, 526 N.W.2d 264, 270 (Ct. App. 1994). Sasson admits that in his motion to vacate/reconsider he "posit[s] nearly the same arguments set forth" on appeal. (Sasson App. Brf., 46). If this Court rejects Sasson's other arguments and affirms the dismissal order, there would be no point in further

considering remanding the case for the Circuit Court to reevaluate a decision this Court already affirmed.

In addition, because Sasson's motion did nothing more than raise issues that were previously disposed of, the Circuit Court's denial of it is not appealable. "[I]t has frequently been held that an order entered on a motion to modify or vacate a judgment or order is not appealable where, as here, the only issues raised by the motion were disposed of by the original judgment or order." *Ver Hagen v. Gibbons*, 55 Wis. 2d 21, 25, 197 N.W.2d 752, 754 (1972). The issues raised in Sasson's motion were disposed of by the Circuit Court. (R.170; R-App.1-16). As Judge Van Grunsven stated in denying Sasson's motion, "Sasson merely repeats arguments he has already asserted . . . ." (R.249 at 13).

Finally, Sasson is wrong when he claims that the Circuit Court applied an improper standard to his motion. Sasson specifically stated in his brief that "to the extent necessary, if any, Plaintiff respectfully requests that the Court ***consider this motion a request for reconsideration pursuant to Wis. Stat. § 805.17(3)***." (R.175 at 23) (emphasis added). Sasson asked the Circuit Court, alternatively, to treat his motion as one for reconsideration (which is what it actually

was) and the Circuit Court found that Sasson failed to demonstrate manifest error or present newly discovered evidence, thus failing the applicable legal standard. (R.249 at 12-13); *see Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd.*, 2004 WI App 129, ¶ 44, 275 Wis. 2d 397, 685 N.W.2d 853.

Denying Sasson's motion to vacate or reconsider was not error. But once this Court rules on the merits of Sasson's appeal, his argument that it was becomes moot anyway.

CONCLUSION

For the reasons stated herein, Defendants-Respondents Balelo and CAA respectfully request that the Court of Appeals affirm the Circuit Court's rulings.

Dated this 16th day of January, 2015.

Respectfully submitted,

Stephen E. Kravit
State Bar No. 1016306
Aaron H. Aizenberg
State Bar No. 1066340
Kravit, Hovel & Krawczyk, s.c.
Kravit, Hovel & Krawczyk, s.c.
825 North Jefferson St., 5th Flr.
Milwaukee, Wisconsin 53202
(414) 271-7100
kravit@kravitlaw.com

Attorneys for Defendants-
Respondents Creative Artists
Agency, LLC and Onesimo
Balelo

CERTIFICATION AS TO FORM/LENGTH

I certify that this brief meets with the form and length requirements of Rule 809.19(8)(b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 10,943 words.

Dated this 16th day of January, 2015.

Stephen E. Kravit
State Bar No. 1016306
Aaron H. Aizenberg
State Bar No. 1066340

Kravit, Hovel & Krawczyk, s.c.
825 North Jefferson St., 5th Flr.
Milwaukee, Wisconsin 53202
(414) 271-7100
kravit@kravitlaw.com

Attorneys for Defendants-Respondents Creative Artists Agency, LLC and Onesimo Balelo

CERTIFICATION OF SERVICE

I hereby certify that on January 16, 2015, I filed with the Court by messenger and served copies of Brief and Appendix of Defendants-Respondents Onesimo Balelo and Creative Artists Agency, LLC upon counsel for the parties and the *pro se* plaintiff by electronic and first class mail:

Ralph Sasson
11014 Blenheim Drive
Oakton, VA 22124
ralphiesasson@gmail.com

Howard Weitzman
Jeremiah T. Reynolds
Kinsella Weitzman Iser Kump & Aldisert LLP
808 Wilshire Blvd - Third Floor
Santa Monica, CA 90401
hweitzman@kwikalaw.com
jreynolds@kwikalaw.com

James B. Barton
Timothy Hansen
Hansen, Reynolds, Dickinson, Crueger
316 N. Milwaukee Street - Suite 200
Milwaukee, WI 53202
jbarton@hrdclaw.com
thansen@hrdclaw.com

Dated this 16th day of January, 2015.

Stephen E. Kravit
State Bar No. 1016306
Aaron H. Aizenberg
State Bar No. 1066340

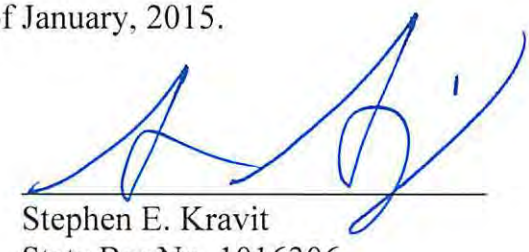
Kravit, Hovel & Krawczyk, s.c.
825 North Jefferson St., 5th Flr.
Milwaukee, Wisconsin 53202
(414) 271-7100
kravit@kravitlaw.com

Attorneys for Defendants-Respondents Creative Artists Agency, LLC and Onesimo Balelo

CERTIFICATION OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that I have submitted an electronic copy of this Brief of Defendants-Respondents Onesimo Balelo and Creative Artists Agency, LLC, excluding the appendix, which complies with the requirements of § 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date. A copy of this certificate has been served with the paper copies of the brief filed with the Court and served on all opposing parties.

Dated this 16th day of January, 2015.



Stephen E. Kravit
State Bar No. 1016306
Aaron H. Aizenbeg
State Bar No. 1066340

Kravit, Hovel & Krawczyk, s.c.
825 North Jefferson St. 5th Flr.
Milwaukee, Wisconsin 53202
(414) 271-7100
kravit@kravitlaw.com

Attorneys for Defendants-Respondents Creative Artists Agency, LLC and Onesimo Balelo