

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
KANSAS CITY, KANSAS**

MEDICAL SUPPLY CHAIN, INC.,)	
(Party in interest Samuel K. Lipari))	
Plaintiff,)	
v.)	Case No. 05-2299
NEOFORMA, INC. et al)	Formerly W.D. MO.
Defendants)	Case No. 05-0210

**MOTION TO REWIND ACTION AND RETURN
PROCEEDING TO THE WESTERN DISTRICT OF MISSOURI
IN THE INTEREST OF JUSTICE UNDER 28 U.S.C. 1631**

Comes now the plaintiff Samuel K. Lipari appearing pro se and respectfully requests the court rewind the present action and return it to the Western District of Missouri because of the repeated fraud on the court by John K. Power in privity with the defendants. The plaintiff makes the request for the following reasons:

STATEMENT OF FACTS

1. The defendants Novation LLC, Neoforma Inc., Robert J. Zollars, VHA Inc., Curt Nonomaque, UHC and Robert J. Baker (collectively the "Novation defendants") are represented by Counsel John K. Power.

A. Privity of US Bancorp, Novation and GE Defendants

2. The Novation defendants selected John K. Power because of his representation of the other coconspirators Jeffrey R. Immelt, General Electric Company, General Electric Capital Business Asset Funding Corporation, GE

Transportation Systems Global Signaling, L.L.C.

(collectively the "GE defendants") in *Medical Supply Chain, Inc. v. General Electric et al*,. Kansas District Court Case No. 03-2324-CM.

3. John K. Power exchanged common defense information with US Bancorp defense counsel Mark Olthoff in representing the GE defendants in full privity with the US Bancorp defendants:

"404. The defendants US Bancorp, US Bank, Jerry A. Grundhoffer, Andrew Cesere, Piper Jaffray Companies and Andrew S. Duff **coordinated their defense of Medical Supply's action for injunctive and declaratory relief with the coconspirators Jeffrey R. Immelt, GE, GHX, GE Healthcare, GE Capital and GE Transportation** who inconceivably attached the Medical Supply complaint and order to their 12(b)6 motion to dismiss in Medical Supply's separate action against Jeffrey R. Immelt, GE, GHX, GE Capital and GE Transportation. The former eighteen year Shughart Thomson & Kilroy shareholder acting as magistrate on the GE case denied Medical Supply discovery and the court did not even permit discovery when the dismissal attachments necessitated conversion of the GE motion to one for summary judgment."

Plaintiff's Complaint pg. 80 ¶ 404 (emphasis added).

4. The privity between the US Bancorp defendants and the GE defendants represented by John K. Power included Tenth Circuit appeals in both Medical Supply cases:

"405. On January 29, 2004, March 4, 2004, April 2, 2004 **US Bancorp's counsel, Nicholas A. J. Vlietstra and Piper Jaffray's counsel Reed coordinated their appeal (10th C.C.A. 03-3342) with the GE defense.** The GE defendants included the action against the US Bancorp defendants and Unknown Healthcare Provider as a related

appellate case in (10th C.C.A. 04-3075) and used the US Bancorp order as a basis for a cross appeal (10th C.C.A. 04-3102) challenging the failure of the trial court to grant sanctions against Medical Supply."

Plaintiff's Complaint pg. 80-81 ¶ 405 (emphasis added).

5. The Novation defendants established full privity with the Medical Supply prior defendants before and after obtaining representation in this matter by their agent and attorney, John K. Power.

"406. The coconspirators **UHC, Robert J. Baker, VHA, Inc., Curt Nonomaque, Novation LLC, Neoforma, Inc. and Robert J. Zollars** did however renew their conscious commitment to a common scheme designed to achieve an unlawful objective of keeping Medical Supply out of the market for hospital supplies by reviewing the case against US Bancorp and consulting with representatives for US Bancorp, US Bank, Jerry A. Grundhoffer, Andrew Cesere, Piper Jaffray Companies and Andrew S. Duff. The cartel decided to rely on the continuing efforts to illegally influence the Kansas District Court and Tenth Circuit Court of Appeals to uphold the trial court's erroneous ruling. The cartel also renewed their efforts to have Medical Supply's sole counsel disbarred, knowing that an extensive search for counsel by Medical Supply had resulted in 100% of the contacted firms being conflicted out of opposing US Bancorp and actually effected a frenzy of disbarment attempts against Medical Supply's counsel in the period from December 14, 2004 to February 3rd, 2005, all originating from the cartel's agents Shughart Thomson and Kilroy's past and current share holders." (emphasis added)

Plaintiff's Complaint pg. 81 ¶ 406

B. Defendants' Fraud on The Western District of Missouri

6. On July 17, 2006 the Novation defendants' attorney John K. Power fraudulently removed the real estate contract

state claim described in the present action from Missouri State court to the Western District of Missouri by fraudulently signing a Notice of removal asserting that the removal was timely under 28 USC Section 1446 by falsely stating the removal was within the required thirty days. See Exb. 1 (Notice of Removal at ¶12 on pg.3).

7. The defendants' attorney John K. Power committed fraud by omission and held back pages of the appearance docket clearly showing the absence of any order, motion or paper reopening a window for removal. See Exb. 2 a-b (John K. Power's Partial Appearance Docket).

8. The Western District of Missouri Court docketed the removal and exerted jurisdiction over the plaintiff Samuel Lipari by ordering mediation and that the defendant counsel John K. Power prepare a case management plan on the *ex parte* misrepresentations of John K. Power that the Western District of Missouri court had jurisdiction from a timely removal. See Exb 3. Western District of Missouri Court appearance docket as of. July 22, 2006.

9. Samuel K. Lipari filed a timely motion under Section 1447(c) for remand of his action back to state court. See Exb 4 (Motion to Remand). The motion was supported by a suggestion containing controlling case law and demonstrating the requirement that the Western District of

Missouri court remand the action for the procedural failure of meeting the thirty day requirement under Section 1446(b). See Exb. 5 (Suggestion to Remand).

10. The suggestion supporting the remand served on the GE defendants, the state court and the Western District of Missouri court's security officers Thursday Morning July 20, 2006 contained as an attachment the complete appearance docket from the state court action revealing the absence of any order, motion or other paper reopening the window for federal jurisdiction exposing John K. Power's fraudulent removal to obstruct justice. See Exb 6 (Complete State Case Appearance Docket).

11. On May 31, the remaining Missouri domiciled defendants were dismissed from the case. Two other defendants were unable to be served by Jackson County Sheriff's deputies and the summonses expired on April 28, 2006 under Missouri State Rule 54.21 thereby establishing in fact and law that no event triggered federal jurisdiction within the thirty days preceding John K. Power's fraudulent removal. See Exb 6. At pg. 2 (All Summons issued 3-28-06, no renewal).

C. Defendants' Issues against Lipari as Plaintiff Now

Collaterally Estopped

12. The fraudulent removal was precipitated by the failure of John K. Power to have the plaintiff Samuel K. Lipari's

contract claims against the GE defendants (these claims are described in the present action's complaint in ¶¶ 337-369 and Lipari's state complaint itself is exhibit 2 of plaintiff's Motion for Leave to Amend in the present action) dismissed.

13. In the Jackson County Circuit Court of the State of Missouri, John K. Power while representing the GE Defendants in Missouri and the Novation defendants in the present action raised as a basis for dismissal the lack of standing Samuel Lipari has as a *pro se* individual who is the named plaintiff in an action on the dissolved Missouri corporation Medical Supply Chain, Inc.'s claims against the hospital supply cartel that includes the GE, Novation and US Bancorp defendants. See Exb. 7 (John K. Power's Motion for Dismissal of claims against GE).

14. John K. Power's dismissal motion was overruled by the Missouri state judge resolving the issue of whether Samuel Lipari acting *pro se* is the proper party under Missouri Statutes to represent claims that were the dissolved Missouri Corporation Medical Supply Chain, Inc.'s before Lipari transferred all of the corporation's claims to himself at dissolution. See Exb 6. at pg. 2 (Order overruling GE defendants' dismissal and ordering mediation and trial date).

**D. John K. Power's Fraud Leading to Dismissal of the
Present Action**

15. John K. Power obtained a complete dismissal of the plaintiff's federal claims in the present action by 1) fraudulently asserting the plaintiff was forum shopping claims that had already been ruled on in the two earlier Medical Supply Chain Cases, 2) fraudulently misrepresenting the plaintiff's complaint to the court as failing to contained the required elements for its causes of action, 3) fraudulently disparaging the plaintiff so the plaintiff would be sanctioned and the plaintiff's complaint would be held in a false light. See Exb. 8 (John Power Motion To Set Oral Hearing On Motion to Dismiss).

16. Some of the numerous misrepresentations of John K. Power's fraudulent Motion for Oral Argument are detailed with excerpts quoted from the complaint clearly and specifically contradicting John K. Power's fraudulent misrepresentations and accompanied by exhibits in the plaintiff's memorandum opposing oral argument. See Exb. 9 (Plaintiff Response to Defendants Motion For Hearing).

17. The clearly erroneous dismissal incorporated conclusions from John K. Power's fraudulent pleadings and some of the ruling's errors were detailed in the

plaintiff's motion for reconsideration Exb. 10 (Motion For Reconsideration).

E. Privity in the Common Defense Effort to Prevent Lipari from Appearing *Pro Se*

18. John K. Power had joined previously with Mark Olthoff in privity between the US Bancorp defendants and the Novation defendants to erroneously assert Samuel Lipari could not represent his own interests after the dissolving of Medical Supply Chain, Inc. See Exb. 11 (Defendants Opposition to Substitute Plaintiff).

19. The plaintiff's motion to add the GE defendants (Doc. #49 dated 9/15/2005) to the present case is among the motions being reconsidered as a result of the plaintiff's motion for reconsideration/new trial. See Exb. 12 (Motion For Leave To Add Additional Defendants).

MEMORANDUM IN SUPPORT

Samuel Lipari is properly the plaintiff in this action and may represent himself *pro se*. This issue was raised by John K. Power in his attempt to dismiss the Missouri state contract claims against the GE defendants who were coordinating their defenses to Medical Supply's claims (now Samuel Lipari's claims) and was properly overruled by the Missouri state judge reflecting the current status of

Missouri law regarding corporate dissolution. See Exb. 13 (Samuel Lipari Suggestion Opposing Dismissal).

Having been raised and resolved in a court of competent jurisdiction, this issue is now collateral estoppel in the present action against other members of the hospital supply cartel who in privity are sharing and coordinating their defenses. "The doctrine of collateral estoppel prevents a second litigation of the same issues between the same parties *or those in privity* with the parties." *Reed v. McKune*, 298 F.3d 945, 950 (10th Cir. 2002) (emphasis added).

The action was transferred to this court fraudulently. Misrepresentations of controlling law and over the contents of the complaint were made with the defendants' expectation that they could succeed in fraud upon this court and obtain a dismissal and sanctions against the plaintiff that contradicted US law.

This court waited without allowing discovery and the development of the facts related to the complaint before it because they described fraud in the earlier two Medical Supply cases and *Bolden v. The City of Topeka*. The fraud was used to manufacture a basis for the disbarment of Medical Supply's counsel. Judge Kathryn H. Vratil then held an *ex parte* discussion with justices of the Kansas

Supreme Court and removed herself from this case on October 20, 2005 minutes before the Kansas Supreme Court justices heard Medical Supply's counsel's oral argument. A transcript of the hearing which was resultantly delayed gives light to these unusual events. This case was then transferred to Judge Carlos Murguia where he took no action for the many months until immediately after Medical Supply's counsel was reciprocally disbarred and then the presiding Judge began in earnest making rulings with the visible purpose of dismissing the action for the lack of counsel.

Knowing the plan to protect the interest of the Kansas District Court the plaintiff had pre-arranged both to first lawfully represent his interests *pro se* and then to have an attorney step in when the foreseeable, this court would disobey the federal rules of civil procedure and US case law to prevent the plaintiff from representing his interests assigned from the dissolved corporation.

This court through Judge Murguia's law clerk off the record challenged that attorney's representation and when they could not scare him away, the court in desperation resorted to John K. Power's Motion for Oral Argument (a thinly disguised third or fourth dismissal motion) for a way to throw out the plaintiff's claims without researching

the controlling law used by the plaintiff to support opposition to the many dismissal attempts.

The dismissal this court authored, complete with orders sanctioning the plaintiff and to scare off any attorney is consistent with the Tenth Circuit clerk pool orders rubber stamping this court's decisions in the two previous Medical Supply cases, both of which also contradict controlling case law. The Clerk of the Tenth Circuit, Patrick Fisher assigned both appeals under the influence of *ex parte* information disparaging Medical Supply Chain, Inc., its claims and counsel that originated in the Kansas District Court. See Exb. 14 (Letter to Clerk Fisher).

The present complaint and the documents supporting the plaintiff's motion for summary judgment detail how this happened. This court could have probably counted on similar "cover" in the Tenth Circuit had it not been for the nationwide notoriety of the two unpublished appellate clerk pool decisions and the degree to which they contradict Tenth Circuit and Supreme Court case law, not to mention the express language of the USA PATRIOT Act.

The straw that broke the camel's back however appears to be the effort of the Kansas City Kansas supervisor of the Kansas District Court Clerk's office to hold up a

decision on James Bolden's transcript testimony to prevent it from being included in his appeal and to set up Medical Supply's counsel for another manufactured ethics violation ensuring Medical Supply would be deprived of counsel. The Tenth Circuit, advised before and during the attempt delayed again the preparation of James Bolden's appeal and gave quite a bit of attention to Judge Vratil's ruling, overturning it.

These incidents confirm the strong interest the District of Kansas has in depriving the plaintiff of a fair trial. While highly valued by the defendants, this interest of the court is contrary and in conflict to the public policy inherent in the laws enacted by Congress. This court could therefore not have in the interest of justice heard this action which the defendants fraudulently transferred to it due to bias of the forum. "[j]urisdictional defects that arise when a suit is filed in the wrong federal district may be cured by transfer under the federal transfer statute, 28 U.S.C. § 1631, which requires a court to transfer such an action if the transfer is in the interest of justice." *Haugh v. Booker*, 210 F.3d 1147 at 1150 (10th Cir. 2000) (internal quotation marks omitted).

Whereas for the above reasons the plaintiff respectfully requests that the rulings made in this court

be set aside and that this action be rewound to a point before it was fraudulently transferred to this district from the Western District of Missouri.

Respectfully Submitted,

Samuel K. Lipari Pro se
297 NE Bayview
Lee's Summit, MO 64064
816-365-1306
saml@medicalsupplychain.com

Certificate of Service

I certify that on July 24, 2006 I filed a copy of this motion with the district court clerk for entry into ef/ecm system distributing copies electronically to the following:

Mark A. Olthoff , Jonathan H. Gregor, Logan W. Overman,
Shughart Thomson & Kilroy, P.C. 1700 Twelve Wyandotte
Plaza 120 W 12th Street Kansas City, Missouri 64105-1929

Andrew M. Demarea, Corporate Woods Suite 1100, Building #32
9225 Indian Creek Parkway Overland Park, Kansas 66210
(913) 451-3355 (913) 451-3361 (FAX)

John K. Power, Esq. Husch & Eppenberger, LLC 1700 One
Kansas City Place 1200 Main Street Kansas City, MO
64105-2122 (Also attorney for the General Electric
defendants and Jeffrey Immelt.)

Stephen N. Roberts, Esq. Natausha Wilson, Esq. Nossaman,
Guthner, Knox & Elliott 34th Floor 50 California Street San
Francisco, CA 94111

Bruce Blefeld, Esq. Kathleen Bone Spangler, Esq. Vinson &
Elkins L.L.P. 2300 First City Tower 1001 Fannin Houston,
TX 77002

Samuel K. Lipari *Pro se*

Verification

I, Samuel K. Lipari being of lawful age and being first
duly sworn upon my oath, state that I have read the above
and foregoing and find the statements herein to be true and
correct to the best of my information, knowledge and
belief.

Samuel K. Lipari

Subscribed and sworn to before me this _____ day of
_____, 2006