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COURT OF APPEALS

STATE OF ARIZONA, DIVISION ONE

Shirley D. Stone and John W. Stone

Appellants/Plaintiffs,

vs.

Kent and Christina Harding, Law Offices of
Scott M. Clark, Scott M. Clark and Paul A.
Henderson

Appellees/Defendants

Court of Appeals Division One –
Case No. 1 CA-CV 07-0770

Maricopa County Superior Court
Case No. CV2006-050748

**APPELLANTS' MOTION FOR
SANCTIONS AS PER THIS COURT'S
INHERENT POWER**

Expedited Consideration Requested.

Comes Now the Appellants with their motion for sanctions pursuant to this Court's inherent power and in the interest of justice and to prevent the furtherance of a miscarriage of justice and pursuant to 11 U.S.C.A. § 362(a), that bankruptcy automatic stay violations are contemptuous and those violations are continuing, and the U.S. Supreme Court case of *Chambers v. Nasco Inc.*, 501 U.S. 32 (1991).

Phrase “due administration of justice,” as used in federal obstruction-of-justice statute, is designed to provide protective cloak over all judicial proceedings from improper influence or obstruction, irrespective of what stage in judicial process the improper conduct occurs. 18 U.S.C.A. § 1503, U.S. v. Brenson, 104 F.3d 1267.

The appellees' are committing a most odious fraud on the court, abusive litigation practices, grossly violating rules of professional conduct, with the full intentions of making this Court an accomplice to their crimes.

As a matter of facts and laws as pleaded herein, the appellees' own brief to this Court declares that they knew that the (FED) judgment of restitution issued by Judge Anderson on

1 August 10, 2005, was void for lack of jurisdiction, because the bankruptcy automatic stay was in
2 effect, and they were enjoined by 11 U.S.C.A. § 362 from proceeding against the appellants,
3 and their bankruptcy estate.

4 The appellees further declare, and or the evidence reveals, that they knowingly used the
5 void (FED) judgment of restitution of August 10, 2005, to procure the September 7, 2005 writ of
6 restitution to unlawfully evict and take control of the appellants' personal and bankruptcy estate
7 property.

8 The appellees knowingly pleaded to this Court that the federal courts validated their
9 illegal actions committed by using the void (FED) judgment of restitution of August 10, 2005,
10 when they knew that no judge can validate a void judgment or proceeding.
11

12 **Obstruction of justice may take the form of concealing from an authorized tribunal**
13 **information germane to its functions. U.S. v. Bonanno, S.D.N.Y. 1959, 177 F.Supp 106.**

14 The appellees' acts are premeditated and unlawful and although this Court lacks
15 jurisdiction of the core question in this appeal, it does not lack the authority to sanction conduct
16 that undermines the court and is in furtherance of a fraudulent scheme.

17 Fraud on the Court is a scheme to interfere with judicial machinery performing task of
18 impartial adjudication, as by preventing opposing party from fairly presenting his case or
19 defense. Finding of fraud on the court is justified only by most egregious misconduct directed
20 to the court itself such as bribery of a judge or jury to fabrication of evidence by counsel. It
21 consists of conduct so egregious that it undermines the integrity of the judicial process. *Black's*
22 *Law Dictionary*

23
24 The conduct complained of was committed by the appellees while this case was pending
25 and prior to this Court reviewing the core issue of the appeal, the (FED) judgment of restitution

1 issued on August 10, 2005, by former Peoria Justice of the Peace Lex Anderson without
2 jurisdiction because the bankruptcy automatic stay was in effect.

3 On June 6, 2008, the appellants' filed a motion to vacate the (FED) judgment of
4 restitution issued on August 10, 2005, by Justice Anderson without jurisdiction because the
5 bankruptcy automatic stay was in effect. **See Exhibit F**

6 The appellee Harding and his attorney appellee Paul A. Henderson did not respond to that
7 motion, but filed a totally unrelated motion to strike a motion that the appellants had not even
8 filed. **See Exhibit J**

9 On June 20, 2008, Manistee Justice Pro Tem Richard Haworth granted the appellants'
10 motion to vacate (FED) judgment of restitution issued by Anderson on August 10, 2005 without
11 jurisdiction, because the bankruptcy automatic stay was in effect and filed with the justice court
12 since, August 3, 2005. **See Exhibits E and G**

13 On July 3, 2008, appellees Harding and Henderson filed with the justice court a motion
14 for reconsideration of the post-judgment order of June 20, 2008, vacating the (FED), because
15 they claimed that Justice Haworth had no authority to issue the order. **See Exhibit O**

16 On July 9, 2008, without any jurisdiction to reconsider Judge Haworth granted the
17 motion and set up an emergency hearing for July 14, 2008, which Harding nor Henderson
18 showed up for, so without any authority to do so, Justice Haworth continued the hearing for
19 August 13, 2008.

20 On August 13, 2008, Manistee Justice Pro Tem David Fletcher, without any authority of
21 law and as a favor to Harding and Henderson went into the court record and destroyed,
22 "spoilation", the valid order of June 20, 2008, and replaced it with 5 void, counterfeit, orders, to
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1 give the appearance that the (FED) judgment of restitution issued by Anderson on August 10,
2 2005 without jurisdiction because the bankruptcy automatic stay was in effect was valid. See

3 **Exhibit N**

4 Appellees Harding and Henderson knew that Fletcher's acts were committed while this
5 Court and the Federal District Court were reviewing or in the process of reviewing pending
6 litigation between the same parties regarding the same core issue, the invalidity of the (FED)
7 judgment of restitution.

8 **Acts that distort evidence to be presented or otherwise impede administration of
9 justice are violations of statute prohibiting obstruction of justice, and act of altering or
10 fabricating documents used or to be used in judicial proceeding would fall within statute.
11 18 U.S.C.A. § 1503, U.S. v. Craft, 105 F.3d 1123.**

12 **To violate obstruction of justice statute, defendant must have notice or knowledge of
13 pendency of some judicial proceeding constituting the "administration of justice." 18
14 U.S.C.A. § 1503, U.S. v. Davis, 183 F.3d 231.**

15 The fact is that as a matter of law a pending judicial proceeding can refer to any
16 proceeding in any court and that the "protective cloak" is in place regardless of what stage the
17 proceedings are in.

18 **Charge that attorney "corruptly persuaded" someone to destroy evidence with
19 intent to impair its availability for use in official proceeding was sufficient to identify
20 proceeding in which destroyed preapproved blank bails bond would have been used;
21 indictment realleged paragraphs of its introduction which described federal investigation
22 and grand jury proceeding before which attorney and judge had been called to testify.
23 U.S. v. Shotts, 145 F.3d 1289.**

24 Appellees Harding and Henderson filed false and frivolous pleadings, "corruptly
25 persuaded," to procure Justice Fletcher's August 13, 2008 void orders and the spoilation of the
June 20, 2008 valid order vacating the (FED) judgment of restitution for lack of jurisdiction
because the bankruptcy automatic stay was in effect.

1 **Official is guilty of extortion if he knows that bribe, gift or other favor is motivated**
2 **by hope that it will influence him in exercise of his office and if, knowing this, he accepts**
3 **the bribe; bribe need not be solicited; declining to follow. *United States v O’Grady*, 742**
4 **F.2d 682 (2nd Cir.). 18 U.S.C.A. § 1951(b)(2).**

5 In fact Harding and Henderson admit that they knew that the (FED) judgment of
6 restitution of August 10, 2005, was void because the court lacked jurisdiction pursuant to the
7 bankruptcy automatic stay under 11 U.S.C.A. § 362. **See Exhibit K August 12, 2005, motion**
8 **to lift stay.**

9 The appellees state in their brief to this Court on page 7, paragraph 2, and continuing on
10 page 8, “On August 11, 2005 Appellants’ notified Judge Anderson, the Peoria Justice of the
11 Peace, that they had filed a new bankruptcy petition, a Chapter 11, prior to the hearing held on
12 August 4, 2005 (IR 62, Para.3. N) Justice of the Peace Anderson then issued an order as follows
13 “Upon review of the file, it is ordered the writ of restitution issued on 8-10-05 be vacated.
14 Notice of bankruptcy was filed on August 3, 2005.”

15 The appellees commit a most odious and obvious fraud on the court when they state on
16 page 8 of the brief, “The August 11, 2005 order did not vacate or set aside the August 4, 2005
17 judgment as Appellants’ allege.”

18 Yet, the appellees prove that they knew and believed that although Anderson had not
19 vacated the (FED) judgment of restitution issued on August 10, 2005, it was nevertheless just as
20 void as the writ of restitution issued by Anderson on the same day, August 10, 2005, for the very
21 same reason, the court lacked jurisdiction because the automatic stay was in effect.

22 Exhibit K herein, appellees motion to lift the stay, was filed on August 12, 2005, the next
23 day after Judge Anderson vacated the writ. The appellees requested that the bankruptcy court
24 grant their emergency motion to lift the stay, “Wherefore, Movant requests the Court enter its
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1 judgment and order granting the following relief: (a.) Terminating or modifying the automatic
2 stay under Bankruptcy Code § 362(b) against the institution of a forcible entry and detainer
3 action and for rent due”.

4 Obviously, the appellees did not have a valid (FED) judgment of restitution because there
5 would be no need to “institute” proceedings to secure one.

7 CONCLUSION

8 With all due respect to this Court, if the Black Pro pers’ were to commit the wrongs that
9 the appellees and their attorneys have and still are committing they would be severely
10 sanctioned, the law calls for equal justice regardless of the position or race.

12 The fact is that the appellees did tamper with the Court records as pleaded herein and
13 they did and still are violating the bankruptcy automatic stay and the appellants’ civil rights.
14 The infliction of emotional distress levied against the appellants causing unbearable duress
15 continues to interfere with their business and personal well-being.

16 The appellants and the record clearly prove that the appellees are attempting to make this
17 Court their accomplice and further degrade the Court and injure the appellants.

19 **“Active concealment” category of fraudulent concealment refers to acts intended to
20 conceal original fraud that are distinct from that original fraud. Wolin v. Smith Barney
Inc., 83 F.3d 847.**

21 AZ-ER 3.1 essentially provides that a lawyer shall not bring or defend a proceeding, or
22 assert or controvert an issue in that proceeding, unless there is a good faith basis for doing so.

23 Wherefore, the appellants request that this Court severely sanction the appellees and refer
24 them over to the proper authorities as set forth under the Canons of Law and other federal and
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1 state statutes, laws, rules and procedures. That this Court afford the appellants the relief that it
2 deems equitable, just and appropriate given the level of the appellees' wrongful conduct.

3 Respectfully submitted this 23rd day of September 2008.

4
5 By: John W. Stone

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8 **CERTIFICATE OF SERVICE**

9 The original and 4 copies of the foregoing filed this 23rd day of September 2008 with:

10 Clerk of the Court of Appeals and a copy mailed to:

11 Joseph M. Boyle
12 7243 N. 16th Street
13 Phoenix, AZ 85020
14 Attorney for defendants Harding, Clark, and Henderson
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