

UNITED STATES COURT OF APPEALS

August 10, 2009

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

SAMUEL K. LIPARI,

Plaintiff - Appellant,

v.

Nos. 08-3287, 08-3338 & 08-3345

US BANCORP NA; US BANK, NA,

Defendants - Appellees.

ORDER

Before **O'BRIEN**, Circuit Judge, **BRORBY**, Senior Circuit Judge, and
GORSUCH, Circuit Judge.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court,



ELISABETH A. SHUMAKER, Clerk

United States Court of Appeals for the 10th Circuit

SAMUEL K. LIPARI)
Appellant)
)
v.)
US BANCORP NA; US BANK, NA) Nos. 08-3287, 08-3338 & 08-3345
Defendants) (D.C. No. 2:07-CV-02146-CM-DJW)
) (D. Kan.)

MOTION FOR EN BANC REHEARING

The plaintiff /appellant seeks review of a panel decision that appears to violate the Supreme Court’s mandate regarding pleading standards under FRCP Rule 8 and the requirement to accept supported allegations as truthful when considering Rule 12(b)(6) motions to dismiss that was served upon this circuit in *Erickson v. Pardus*, No. 06-7317 (U.S. 6/4/2007).

STATEMENT OF FACT

1. The appellate panel abused its discretion in denying the existence of a contract under Missouri State law in violation of Missouri state controlling authority: “As a federal court sitting in diversity, we do not have the power to alter Missouri law.” *Vess Beverages, Inc. v. Paddington Corp.*, 941 F.2d 651 at 655 (C.A.8 (Mo.), 1991).

2. The appellate panel abused its discretion in upholding the crime of the lower court ruling of Hon. Carlos Murguia in using plausibility to conceal

the forbidden practice of dismissing claims out of distrust of the plaintiff where this circuit was overturned in *Erickson v. Pardus*, No. 06-7317 (U.S. 6/4/2007).

MEMORANDUM OF LAW

The appellate panel has attempted to justify its crime by referencing prior orders of this court and the Kansas District court in this same Article III controversy despite the facially clear participation of the panel and previous panels of this court in the defendants' extrinsic fraud of misrepresenting the contents of the plaintiff's antitrust claims, the words in the USA PATRIOT Act corruptly used by the defendants to breach the plaintiff's contract and prevent competition with the Novation LLC hospital supply cartel which expressly provides for private rights of action¹ and in the trial court's repeated violation of US Supreme Court precedents in *Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 75 S.Ct. 865, 99 L.Ed. 1122 (1955) and

¹ Public Law 107-56 "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001" contains at least two private rights of action 2; SEC. 223. CIVIL LIABILITY FOR CERTAIN UNAUTHORIZED DISCLOSURES and malicious reporting to which there is a private right in SEC. 355. Despite this, Tenth Circuit Justices participated in causing the plaintiff's counsel to be disbarred and in upholding the corrupt dismissal of the plaintiff's antitrust claims where the trial judge used the disbarment (despite knowing it was procured by the defendants as an act of extrinsic fraud) as a basis to disbelieve the complaint and deny the presentation of evidence in direct violation of the US Supreme Court's ruling in *Erickson v. Pardus*, No. 06-7317 (U.S. 6/4/2007).

Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 338, 91 S.Ct. 795, 28 L.Ed.2d 77 (1971).

If this circuit does not reverse the present panel, the plaintiff will be injured in his ability to enter the nationwide market for hospital supplies and provide competition to the defendants Novation LLC hospital supply monopoly as the laws of Congress intended. While Supreme Court review will be sought because the panel's order now creates a conflict between the Tenth and Eight Circuits, the nation's highest court does not provide review for the purpose of correcting mistakes or intentional wrongdoing of judges participating in the misconduct of defendants as the plaintiff has repeatedly experienced in this same Article III controversy since 2002. The plaintiff will consequently seek to uphold the Tenth Circuit Justices' oaths of office through seeking a system wide reform of the Judicial Branch's judge disciplinary rules which clearly is defective and has led to the results experienced by the plaintiff. This reform will be sought both in a prospective injunctive relief equitable action in Washington D.C. against the National Judicial Conference and in the US Congress.

A denial of an *en banc* rehearing and a published order weighing whether this circuit had jurisdiction over the concurrent Missouri state action fraudulently removed during the continuing federal jurisdiction over the plaintiff's same claims in *MSC v. Neoforma, Inc. et al*, Kansas District Court

case no. 05-CV-2299-CM and this court's appellate jurisdiction in *MSC v. Neoforma, Inc. et al*, Case No. 06-3331 and how an email contract created under the same material facts as *Intern. Casings Group v. Premium Standard Farms*, 358 F.Supp.2d 863 (W.D. Mo., 2005) would be implausible when the Missouri federal court applying Missouri state law found the plaintiffs had stated a contract claim will be interpreted by the plaintiff as the Honorable Judges Chief Judge Robert H. Henry, Senior Judge William J. Holloway, Senior Judge Robert H. McWilliams, Senior Judge Monroe G. McKay, Senior Judge Stephanie K. Seymour, Senior Judge Bobby R. Baldock, Senior Judge Wade Brorby, Senior Judge David M. Ebel, Judge Deanell Reece Tacha, Judge Paul J. Kelly, Judge Mary Beck Briscoe, Judge Michael R. Murphy, Judge Harris L Hartz, Judge Terrence L. O'Brien, Judge Timothy M. Tymkovich, Judge Neil M. Gorsuch, and Judge Jerome A. Holmes endorsement that systemic reform of judicial discipline rules be undertaken.

Respectively submitted,

S/Samuel K. Lipari
Samuel K. Lipari
Pro se

CERTIFICATE OF SERVICE

I certify that in addition to the service requirements of the Federal Rules of Appellate Procedure and Tenth Circuit Rules, identical copies of the materials submitted to the Clerk in Digital Form were simultaneously provided to counsel for all other parties hereto by e-mail on July 26, 2009.

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