

United States Court of Appeals for the 10th Circuit

Medical Supply Chain, Inc.)
Samuel K. Lipari)
Appellant)
v.) Case No. 08-3187
)
Neoforma, Inc., et al)
Defendants)

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).

The plaintiff appellant asks 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 Michael W. McConnell, Judge Timothy M. Tymkovich, Judge Neil M. Gorsuch, and Judge Jerome A. Holmes to review whether they join with Senior Judge Stephen H. Anderson, Judge Carlos F. Lucero, and Senior Judge John C. Porfilio in upholding the trial judge Hon. Carlos Murguia’s decision on July 8,

2008 striking the plaintiff/appellant's Rule 59(e) motion and imposing filing restrictions because of Lipari's past unlawfully sanctioned conduct of having brought a well researched complaint for damages that stated the required elements of Sherman Act and Racketeering crimes involving Novation LLC hospital supply cartel members and Kansas District Court officials under the controlling case law for this jurisdiction and Lipari's later reliance on Hon. Judge Carlos Murguia's November 16, 2007 ruling in the same Article III controversy (now styled *Lipari v. US Bancorp NA*, 524 F. Supp. 2d 1327, 1330 (D. Kan. 2007))¹ that Lipari had standing as an assignee of rights under FRCP Rule 17 and Missouri Corporation law to properly seek relief from the judgment of Rule 12(b)(6) dismissal after the reversal of this court in *Erickson v. Pardus*, No. 06-7317 (U.S. 6/4/2007).

The panel misunderstands the law in that ministerially renumbering an Article III controversy to avoid review² does not provide an exception or cover for Hon. Judge Carlos Murguia on July 8, 2008 to make an order prospectively restraining the appellant's right to seek redress from continuing violations of the Sherman Act to restrain the national market for hospital supplies by the Novation LLC cartel and thereby continue Hon. Judge Carlos Murguia's open and notorious

¹ *Little Rock School Dist. v. Armstrong*, 359 F.3d 957 at 960-961 (8th Cir., 2004)

² The controlling law of all circuits is that the district court retains discretion to assert jurisdiction over pendant state claims expressly dismissed without prejudice. See *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726, 86 S.Ct. 1130, 1138, 16 L.Ed.2d 218 (1966) and *Nwosun v. General Mills Restaurants, Inc.*, 124 F.3d 1255 at 1258 (C.A.10 (Okla.), 1997)

violation of the pleading standard in Federal Rule of Civil Procedure Rule 8 condemned in *Bell Atlantic Corp. v. Twombly*, 550 U. S. 544 (2007) (slip op., at 7-8) (quoting *Conley v. Gibson*, 355 U. S. 41, 47 (1957)). Senior Judge Stephen H. Anderson, Judge Carlos F. Lucero, and Senior Judge John C. Porfilio cannot now lawfully uphold an order made by Hon. Judge Carlos Murguia on July 8, 2008 after the June 4, 2007 mandate that cites as a basis to the trial judge's earlier dismissal and sanction where Hon. Judge Carlos Murguia expressly stated his disbelief of Samuel K. Lipari's claims³ as a reason for dismissal and sanction before any discovery and presentation of evidence was presented.

The Judicial Council for the Tenth Circuit has already determined that judicial review is the only means to correct judicial misconduct in this circuit.⁴ Senior Judge Stephen H. Anderson, Judge Carlos F. Lucero, and Senior Judge John C. Porfilio's review has the effect of continuing the judicial misconduct in violation of the Supreme Court's mandate to this court in *Erickson v. Pardus*, No.

³ Hon. Judge Carlos Murguia stated in his March 7, 2006 order his disbelief of the plaintiff's "litany of conspiracy theories involving defendants" and further manifests disbelief in the plaintiff's theory that the USA PATRIOT Act provides private rights of action even though Congress expressly granted private rights of action in the USA PATRIOT Act Public Law No: 107-56.

⁴ *Samuel K. Lipari v. District Judge Carlos Murguia*, Judicial Misconduct Complaint No. 08-10-372-08

06-7317 (U.S. 6/4/2007) and would necessitate a petition for certiorari and a reform of the judicial disciplinary rules⁵ if not reversed.

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 May 5, 2009.

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⁵ The plaintiff/appellant would be limited to seeking prospective injunctive relief in Washington D.C. US District Court against the United States Judicial Council to restrain the application of rules and procedures that prevent effective policing of judicial misconduct and thereby continue violations of the Constitution and restrain the plaintiff/appellant as a sole proprietor competitor in the national market for hospital supplies from enforcing contracts or the nation's antitrust laws as Congress provided. See generally *People of Colorado v. District Court*, 207 F.2d 50 (10th Cir., 1953).

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