

No. 21-DCV-280847

DIOGU KALU DIOGU II, LL.M.	§	IN THE DISTRICT COURT OF
Plaintiff	§	
	§	
v.	§	
	§	
DAVID MELANSON;	§	FORT BEND COUNTY, TEXAS
DENISE ROBBINS;	§	
EDDIE M. KRENEK; and	§	
TRICIA KRENEK,	§	
Defendants	§	434th JUDICIAL DISTRICT

**ORDER GRANTING DEFENDANT DAVID MELANSON'S
MOTION TO DECLARE PLAINTIFF A VEXATIOUS LITIGANT**

Plaintiff Diogu Kalu Diogu, II, filed this *pro se* lawsuit on February 11, 2021.

Defendant David Melanson filed his answer on April 5, 2021.

On April 21, 2021, Melanson filed a Motion to Declare Plaintiff Diogu Kalu Diogu II a Vexatious Litigant (“the Motion”).

This Court referred the Motion to Associate Judge Argie Brame pursuant to Section 54A.106, TEX. GOV'T CODE.

On May 24 and 25, 2021, Judge Brame held an evidentiary hearing on the Motion. At the conclusion of the hearing, Judge Brame announced that she was granting the Motion.

On May 27, 2021, Judge Brame signed an Order Granting Defendant Melanson's Motion to Declare Plaintiff a Vexatious Litigant. The undersigned initialed the Order to acknowledge its receipt by the District Court, and the Order was filed on June 1, 2021.

On May 27, 2021, Diogu requested a de novo hearing of Judge Brame's ruling.

On June 16, 2021, this Court conducted a de novo hearing on the Motion. At the hearing, Melanson appeared by counsel, Diogu appeared *pro se*, and both presented evidence and argument to the Court.

After considering the evidence and argument presented by counsel and *pro se* litigant Diogu at the June 16, 2021, hearing; the evidence and argument presented at the May 24-25, 2021, hearing conducted by Judge Brame; and the pleadings on file and cited authorities, the Court finds that:

- A. There is not a reasonable probability that the Plaintiff, Diogu K. Diogu II, a/k/a Diogu D. Kalu, a/k/a Mark Diogu (“Diogu”), will prevail in this litigation; and
- B. In the seven-year period immediately preceding April 22, 2021:
 1. Diogu commenced, prosecuted, or maintained at least five litigations as a *pro se* litigant other than in small claims court that were:
 - a) Finally determined adversely to Diogu;
 - b) Permitted to remain pending at least two years without having been brought to trial or hearing; and/or
 - c) Determined by a trial or appellate court to be frivolous or groundless under state or federal law or rules of procedure.
 - and
 2. After litigation is finally determined against Diogu, Diogu repeatedly relitigates or attempts to relitigate, *pro se*, either:
 - a) The validity of the determination against the same defendant as to whom the litigation was finally determined; or
 - b) The cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same defendant as to whom the litigation was finally determined.

Accordingly, the Court determines that all criteria for finding Plaintiff Diogu Kalu Diogu II a/k/a Diogu D. Kalu a/k/a Mark Diogu a vexatious litigant as set forth in TEX. CIV. PRAC. & REM. CODE § 11.054 have been met.

It is therefore **ORDERED** that Defendant David Melanson's Motion to Declare Plaintiff Diogu Kalu Diogu II a Vexatious Litigant is hereby **GRANTED**. It is further **ORDERED** that the Plaintiff must furnish security in this case, as set forth in TEX. CIV. PRAC. & REM. CODE § 11.055 (to assure payment to Defendant of Defendant's reasonable expenses incurred in or in connection with this litigation, including costs and attorney's fees), in the amount of **THIRTY THOUSAND DOLLARS (\$30,000.00)** on or before 8/13, 2021, by filing with the District Clerk of Fort Bend County, Texas, or a bond or deposit in lieu of bond in conformance with Section 52.001, TEX. CIV. PRAC. & REM. CODE, and Tex. R. App. P. 24.1.

It is further **ORDERED** that if the Plaintiff fails to furnish the required security on or before the date set forth in the preceding paragraph, this case and all claims and causes of action shall be **DISMISSED WITH PREJUDICE**.

It is further **ORDERED** that, pursuant to TEX. CIV. PRAC. & REM. CODE § 11.101(a), Diogu K. Diogu II, a/k/a Diogu D. Kalu, a/k/a Mark Diogu is prohibited from filing, *pro se* or on behalf of any legal entity of which he is a full or partial owner that he has used for the purpose of perpetuating, and/or did perpetuate, a fraud primarily for his direct benefit, any new litigation in every court in this State without first seeking and obtaining permission from the local administrative judge to file such litigation, as set forth in TEX. CIV. PRAC. & REM. CODE § 11.102. Should Diogu file a request seeking permission to file a litigation subject to this Order as required by TEX. CIV. PRAC. & REM. CODE § 11.102, he shall provide a copy of that request to all defendants named in the proposed litigation at the time of filing. Should Diogu disobey this Order, he will be in Contempt of this Court and subject to any and all sanctions and penalties within the power of this Court to impose that the Court finds necessary or appropriate.

The District Clerk is **ORDERED** to provide the Office of Court Administration of the Texas Judicial System a copy of this Order not later than the 30th day after this Order is signed.

SIGNED on this the 15 day of July, 2021.



Honorable J. Christian Becerra
Judge of the 434th Judicial District
Fort Bend County, Texas

No. 21-DCV-280847

DIOGU KALU DIOGU II, LL.M.
Plaintiff

v.

DAVID MELANSON;
DENISE ROBBINS;
EDDIE M. KRENEK; and
TRICIA KRENEK,
Defendants

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IN THE DISTRICT COURT OF

FORT BEND COUNTY, TEXAS

434th JUDICIAL DISTRICT

**ORDER DEMONSTRATING GOOD CAUSE TO GRANT
DEFENDANT DAVID MELANSON'S EMERGENCY MOTION
DECLARING ORDER DATED 12/20/2022 VOID *AB INITIO* AND
CONFIRMING VALIDITY OF COURT'S 7/15/2021 ORDER DECLARING
DIOGU KALU DIOGU A VEXATIOUS LITIGANT**

Pending before this Court on December 28, 2022, is Defendant David Melanson's *Emergency Motion to Declare Void a Purported Order Dated December 20, 2022, and to Confirm the Validity of this Court's 7/15/2021 Order Declaring Diogu Kalu Diogu a Vexatious Litigant* ("Emergency Motion"). The Emergency Motion was set for hearing on December 28, 2022 (the "Hearing"). In the late hours during the night before the Hearing, Diogu Kalu Diogu II ("Diogu"), purported through counsel, filed a *Motion to Recuse* both the undersigned Judge (Hon. Christian Becerra) and Judge Argie Brame ("Recusal Motion").

Pursuant to Tex. R. Civ. P. 18a(f)(2)(A), as further authorized by *In re Marshall*, 515 S.W.3d 420 (Tex. App.—Houston[14th Dist.] 2017, orig. proceeding) and *In re Stearman*, 252 S.W.3d 113 (Tex. App.—Waco 2008, orig. proceeding), the Court finds good cause exists to take immediate, emergency action to bring back the status quo pending a resolution of the Recusal

Motion; to make the following findings to support such good cause; and to declare the December 20, 2022 Order delisting Diogu from the vexatious litigant list void *ab initio*:

1. This Court found Diogu to be a vexatious litigant pursuant to that certain Order entered on July 15, 2021 (“VL Order”), while this case was pending and prior to the filing or entry of any dismissal.
2. No party filed a motion for new trial or a notice of appeal, and no appeal was taken of this Court’s VL Order dated 7/15/2021. Diogu remained on the vexatious litigant list from the date of the Order through the following approximately 17 months.
3. By *ex parte* letter dated December 12, 2022, addressed to Judge O’Neil Williams of the 268th Judicial District Court, as Fort Bend County Administrative Judge, but not filed with this Court or served on Defendant Melanson or on any other party or the undersigned Judge, Diogu asked outgoing Judge O’Neil Williams (of the 268th District Court of Fort Bend County, Texas) to enter an order (drafted by Diogu) to remove him from the vexatious litigant list.
4. No notice of this filing was provided to Defendant Melanson, as required by Tex. R. Civ. P. 21(a) [referred to herein as “TRCP 21(a)], and no formal filings for this requested relief was made as required by TRCP 21(a).
5. Without authority or permission granted by/from Hon. Judge Becerra (as the duly-elected and duly-authorized judge of the 434th Court), and without any known Order or other authority ordered by the Presiding Judge of the Eleventh Administrative Judicial Region of Texas, or by any other higher authority, transferring this case to any other duly-elected or duly-authorized judge, outgoing Judge O’Neil Williams of the 268th Court entered an order (drafted by Diogu) dated December 20, 2022 to remove Diogu from the vexatious litigant list (referred to as the “12/20/2022 Order”).
6. Judge Williams, as local administrative judge, had no authority to review, modify, or reverse a ruling of the 434th Court, as a coordinate court. *In re U.S. Silica Co.*, 157 S.W.3d 434, 437 (Tex. 2005) (orig. proceeding), nor was any such authority granted or known to exist as of the date of the 12/20/2022 Order or through the present date of this Order.
7. Judge Williams did not have the power to vacate or revise an order entered more than seventeen months after the case was dismissed based on an unfiled, unserved letter from a party, as a district court loses plenary jurisdiction over a final judgment thirty days after it is entered, in the absence of a motion for new trial or appeal. Tex. R. Civ. P. 329b(d) (“The trial court ... has plenary power to grant a new trial or to vacate, modify, correct, or reform the judgment *within thirty days after the judgment is signed.*”). A motion to modify, correct, or reform a prior order must be filed within the time for filing a motion for new trial, that is, within thirty days.

Tex. R. Civ. P. 329b(g). After that time, an order “cannot be set aside by the trial court except by bill of review for sufficient cause, filed within the time allowed by law.” Tex. R. Civ. P. 329b(f). Diogu’s letter did not even attempt to meet the requirements of a bill of review. *See, e.g., PNS Stores, Inc. v. Rivera*, 379 S.W.3d 267, 277 n. 16 (Tex. 2012). Nor did Diogu seek to merely correct a clerical error, which can be done at any time under Rule 329b(g), but rather he sought to vacate the effect of the 7/15/2021 order declaring him a vexatious litigant. Nor was there any other proper relief sought and obtained by/through the undersigned Judge Becerra as the duly-authorized and duly-acting Judge of the 434th Court. Therefore, no statute or rule gave Judge Williams the power to enter the order Diogu requested.

8. The Court further finds that the stated reasons set forth in the 12/20/2022 Order—that a nonsuit filed *after* he was found to be a vexatious litigant – somehow automatically vacated this Court’s prior-entered order—is baseless in both law and fact; that Diogu was well aware that such position was baseless in light of two appellate court decisions declaring such to be the case [*see Diogu Law Firm PLLC v. Melanson*, No. 14-18-01053-CV, 2020 WL 6142902, at *6 (Tex. App. – Houston Oct. 20, 2020, pet. denied) (“A party’s decision to nonsuit does not affect a nonmoving party’s independent claims for affirmative relief,” rejecting Diogu’s argument that nonsuit precluded dismissal with prejudice under TCPA and award of fees and sanctions); *see In re Diogu Law Firm PLLC*, No. 14-18-00878-CV, 2018 WL 4997322, at *1 (Tex. App. – Houston Oct. 16, 2018, orig. proceeding) (“A non-suit shall not prejudice the right of an adverse party to be heard on a pending claim for affirmative relief,” rejecting Diogu’s argument that nonsuit precluded award of fees and sanctions against him)]; and that such actions further support the finding of good cause to grant the emergency relief set forth herein.
9. Diogu’s behavior and actions reaffirm that he is, indeed, a vexatious litigant; that this Court’s July 15, 2021, Order was absolutely necessary and proper; and that Diogu’s current behavior proves, yet again, that there is little hope that Diogu will conform his behavior to the law or the rules of this Court without Chapter 11’s protections in place to protect innocent parties from Diogu’s vexatious actions, including Defendant Melanson and the public generally.
10. The Court finds that the 12/20/2022 Order was entered without authority and in violation of Texas Law, was perpetrated through significant improprieties and violations of law, and appears to be a fraud on the Court.
11. The effect of the 12/20/2022 Order was to undermine this Court’s authority, powers, and issuing orders, resulting in the high likelihood and probability for harm to Defendant Melanson, to the public, and to this Court’s authorities and powers absent immediate action to correct the results caused by the improvidently and fraudulently-issued 12/20/2022.
12. The Court further finds that i) good cause exists to declare, on an emergency basis and without further delay, the 12/20/2022 Order void *ab initio*; ii) good cause exists

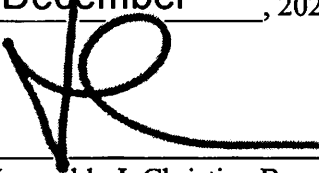
to reinstate the status quo that existed prior to the entry of the 12/20/2022 Order pending further action taken in this matter, including prior to a ruling on the Recusal Motion; and iii) no harm to Diogu results from declaring the 12/20/2022 Order void *ab initio* as such 12/20/2022 Order was improvidently and fraudulently obtained and granted, was without authority or power, and will continue to undermine this Court's authority, powers, and issuing orders absent such action being taken. Accordingly, the Court finds that the 12/20/2022 Order should be declared void *ab initio*.

It is therefore **ORDERED, ADJUDGED and DECREED** that the 12/20/2022 Order signed/entered by Judge O'Neil Williams removing/delisting Diogu Kalu Diogu, II from the Vexatious Litigants List is hereby void *ab initio*.

It is further **ORDERED, ADJUDGED and DECREED** that the Court hereby confirms Diogu Kalu Diogu, II as a Vexatious Litigant, and that the Order of 7/15/2021 declaring him to be vexatious is declared and confirmed to remain in full force and effect, and remained continuously in full force and effect from the date it was signed.

The District Clerk of Fort Bend County is **ORDERED** to provide the Office of Court Administration of the Texas Judicial System a copy of this Order not later than the 7th day after this Order is signed, and also notify the Office of Court Administration of the Texas Judicial System that the Order of 12/20/2022 Order is found and declared to be void *ab initio*, with Diogu remaining on the Vexatious Litigant list continuously since the date of this Court's 7/15/2021 Order.

SIGNED on this the 28 day of December, 2022.



Honorable J. Christian Becerra
Judge of the 434th Judicial District
Fort Bend County, Texas