

VEXAO
P7

CAUSE NO. 2023-41519

HENRY KECULAH

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IN THE DISTRICT COURT OF

v.

HARRIS COUNTY, TEXAS

D.P.S. CONTRACTING, INC.,
CLAYTON KOPECKY, KAREN
SMITH, DAVID SMITH, and CARIN L.
MARCUSSEN

269th JUDICIAL DISTRICT

**ORDER GRANTING DEFENDANTS' MOTION TO HAVE PLAINTIFF, HENRY
KECULAH, DECLARED A VEXATIOUS LITIGANT**

On this day, the Court heard Defendants' Motion to Have Plaintiff, Henry Keculah, Declared a Vexatious Litigant. After hearing and consideration of the arguments of the parties, the Court hereby enters the following order:

Based on (1) numerous, frivolous litigations commenced by Plaintiff in Harris County against a wide range of reputable entities and institutions, and (2) Plaintiff's repeated efforts to relitigate issues and claims dismissed with prejudice, Plaintiff should be declared a vexatious litigant. *See* Tex. Civ. Prac. & Rem. Code §§ 11.054(1)-(2).

A defendant may seek a court's determination that a pro se plaintiff is a vexatious litigant and require security—in the amount of reasonable expenses, including costs and attorney's fees—should the action proceed. TEX. CIV. PRAC. & REM. COD. ANN §§ 11.051, .055; *In re Casey*, 589 S.W.3d 850, 852 (Tex. 2019); *McCann v Spencer Plantation Invs., Ltd.* No. 14-19-00242-CV, 2021 Tex. App. LEXIS 985, at *3-5 (Tex. App.—Houston [14th Dist.] Feb. 9, 2021, no pet.) (mem. Op.).

A court may declare a pro se plaintiff a vexatious litigant if the defendant shows that there is not a reasonable probability the plaintiff will prevail against them and:

FILED
Marion Burgess
District Clerk

FEB 19 2024

Time: 8:40
Harris County, Texas
By: [Signature]
Deputy

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging.

- (1) the plaintiff, in the seven-year period immediately preceding the date the defendant makes the motion under Section 11.051, has commenced, prosecuted, or maintained at least five litigations as a pro se litigant other than in small claims court that have been:
 - a. finally determined adversely to the plaintiff;
 - b. permitted to remain pending at least two years without having been brought to trial or hearing; or
 - c. determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of civil procedure; or
- (2) After a litigation has been finally determined against the plaintiff, the plaintiff 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; or
- (3) The plaintiff has previously been declared to be a vexatious litigant by a state or federal court in an action or proceeding based on the same or substantially similar facts, transition, or occurrence.

TEX. CIV. PRAC. & REM. COD. ANN § 11.054 (emphasis added).

A. Plaintiff does not have a reasonable probability of prevailing in this litigation

The claims asserted against Marcussen in Plaintiff's 5th Amended Petition are based entirely upon the same set of facts alleged in Plaintiff's 3rd and 4th Amended Petition. This Court has already determined that these facts do not give rise to a cause of action and dismissed Plaintiff's claims against Marcussen on December 8, 2023. As such, Plaintiff does not have a reasonable probability of prevailing with this litigation.

Furthermore, Plaintiff, through his 5th Amended Petition commenced litigation against Lugenbuhl, Todd Crawford, and Deborah Crain. Lugenbuhl is the firm that Marcussen works at. Crawford and Crain are shareholders of Lugenbuhl. Plaintiff claims that these 3 parties are

“vicariously liable” for the actions of Marcussen. However, as this Court has already determined that Marcussen cannot be held liable for the conduct alleged by Plaintiff, it is impossible for Crawford, Crain, or Lugenbuhl to be vicariously liable for the same conduct. As such, Plaintiff does not have a reasonable probability of prevailing with these litigations.

B. Five or more litigations have been determined adversely against Plaintiff in the past 7 years.

In the past 7 years Keculah, as a pro se Plaintiff, has commenced, prosecuted, or maintained the following litigations that have were either determined adversely or determined to be frivolous or groundless:

Cause No	Court	Defendant	Style	Date of Dismissal
4 23-cv-03499	United States District Court for the Southern District of Texas	ASI Lloyds	Henry Keculah v ASI Lloyds	2/5/2024
2023-41519	269th Judicial District Court of Harris County	Carin Marcussen	Henry Keculah v DPS Contracting Inc et al	12/8/2023
2023-41519	269th Judicial District Court of Harris County	David Smith	Henry Keculah v DPS Contracting Inc et al	1/18/2024
2023-41519	269th Judicial District Court of Harris County	Karen Smith	Henry Keculah v DPS Contracting Inc et al	1/18/2024
2023-41519	269th Judicial District Court of Harris County	Clayton Kopecky	Henry Keculah v DPS Contracting Inc et al	1/18/2024
1095632	Harris County Court at Law No 2	American Roadrunner Wrecker	Henry Kopia Keculah, Jr v American Roadrunner Wrecker	8/22/2017
2023-37863	311th Judicial District Court of Harris County	Cathenne Sweetie Hayes	Henry Kopia Keculah v Cathenne Sweetie Hayes	1/23/2024
14-23-00881-CV	14th Court of Appeals	Cathenne Sweetie Hayes	Henry Keculah v Catherine Hayes	1/26/2024
2023-38708	333rd Judicial District Court of Harris County	Cathenne Sweetie Hayes	Henry Keculah v Cathenne Hayes	2/13/2024
2023-41519	269th Judicial District Court of Harris County	Deborah Crain	Henry Keculah v DPS Contracting Inc et al	2/13/2024
2023-41519	269th Judicial District Court of Harris County	Todd Crawford	Henry Keculah v DPS Contracting Inc et al	2/13/2024
2023-41519	269th Judicial District Court of Harris County	Marcum PC	Henry Keculah v DPS Contracting Inc et al	2/13/2024
2023-41519	269th Judicial District Court of Harris County	Greg Marcum	Henry Keculah v DPS Contracting Inc et al	2/13/2024
2023-41519	269th Judicial District Court of Harris County	Louis Irving	Henry Keculah v DPS Contracting Inc et al	2/13/2024
2023-41519	269th Judicial District Court of Harris County	John Ford	Henry Keculah v DPS Contracting Inc et al	2/13/2024
2023-41519	269th Judicial District Court of Harris County	Gloria Thomas	Henry Keculah v DPS Contracting Inc et al	2/13/2024
2023-41519	269th Judicial District Court of Harris County	Jordan Geron	Henry Keculah v DPS Contracting Inc et al	2/13/2024
2023-41519	269th Judicial District Court of Harris County	ASI Lloyds, Inc	Henry Keculah v DPS Contracting Inc et al	2/13/2024

C. After litigation has been finally determined against Plaintiff, he has continually relitigated or attempted to relitigate the validity of the determination against the same defendant as to whom the litigation was finally determined and engaged in misconduct.

Plaintiff has repeatedly used Texas courts to attempt to relitigate issues after adverse decisions. Plaintiff noticed three TRO hearings in January. He sought the same relief at each

hearing. With regard to Marcussen, he repeatedly argued to the ancillary judges that 1) she had not been dismissed from the case, and 2) that she should be enjoined from representing ASI Lloyds. He even told the Judge Palmer that he intended to keep filing the applications for TRO until he got the relief he was requesting.

Other examples within this cause include Plaintiff's request for a rehearing on the Court's determination of Marcussen's TCPA motion. The request for rehearing was filed after the order became final and facially frivolous.

With regard to the facts giving rise to the instant suit, Plaintiff has filed claims in at least four different courts:

Cause No.	Court	Style	Description
235200220673	Harris County Justice of the Peace Court, Precinct 5, Place 2	Henry Keculah v Catherine Sweetie Hayes	Keculah filed suit against Hayes, the mother of his child and a former resident of the insured property, on June 13, 2023, alleging she caused damage to his personal property and the insured property
2023-38708	333rd Judicial District Court of Harris County	Henry Keculah v Catherine Sweetie Hayes	Keculah filed suit against Hayes, the mother of his child and a former resident of the insured property, on June 23, 2023, alleging she made defamatory statements about him and caused damaged to the insured property
2023-41519	269th Judicial District Court of Harris County	Henry Keculah v DPS Contracting Inc et al	Keculah filed suit against DPS, who performed water mitigation work at the insured property after the water loss, on July 6, 2023, alleging they did not perform the work properly.
4.23-cv-03499	United States District Court for the Southern District of Texas	Henry Keculah v ASI Lloyds	Keculah filed suit against ASI Lloyds for a denial of claim for insurance benefits for a water loss that allegedly occurred at the insured property

Furthermore, the instant cause is replete with misconduct on the part of Plaintiff. There are numerous instances of improper discovery requests, deposition notices, subpoenas, harassing service, documents filed merely to harass or embarrass counsel, mislabeling of filings in order to harass parties or counsel, and simply harassment by volume - there are at least 1,100 items that have been filed with the Court in the past six months. To date, three sanctions orders have been entered against Plaintiff in this case to little effect.

In fact, Plaintiff has repeatedly had the following sanctions ordered against him by various Courts in the last few months, none of which seem to change his behavior:

Date of Order Granting Sanctions	Cause No.	Basis for Sanctions Sought/Granted
12/8/2023	2023-37863	Order Imposing Sanctions - For filing frivolous pleadings, harassing filings, and over 21 "irrelevant, harassing, and invasive subpoenas "
1/4/2024	2023-41519	Order Granting Defendants D P S Contracting, Inc , David Smith, Karen Smith, and Clayton Kopecky's Motion to Require Plaintiff Payment of Court Costs and Motion for Sanctions -For a pattern of discovery abuse and process abuse
2/5/2024	4 23-cv-03499	Memorandum Opinion and Final Judgment - For harassing counsel, refusing to comply with Court orders, and engaging in tactics of delay, oppression, harassment, and massive expense
2/7/2024	2023-41519	Order Granting Sanctions Against Plaintiff - For harassing defendant at home and work, sending 100s of emails, and making ad hominem attacks on parties
2/8/2024	2023-41519	Sua Sponte Order Concerning Pro Se Plaintiff Henry Keculah's Repetitive Harassing Filings and Behavior - For excessive baseless filings, ad hominem attacks on counsel, harassing court staff, attempts at ex parte communication, and threats
Pending Hearing	2023-41519	Defendant D P S Contracting, Inc 's Motion for Finding Discovery Abuse and Motion for Discovery Sanctions - For discovery abuse, including noticing the deposition of D P S counsel's wife, filing false expert designations and reports, and filing frivolous motions to disqualify counsel

A defendant need only show that the pro se plaintiff satisfies one of the three statutorily enumerated criteria to qualify as a vexatious litigant: (1) prior litigation misconduct within seven years, (2) repeatedly relitigating issues after adverse decisions, or (3) prior declaration as a vexatious litigant on the same facts. *McCann*, No. 14-19-00242-CV, 2021 Tex. App. LEXIS 985, at &4-5; *Douglass v. Redmond*, 2012 Tex. App. LEXIS 9712, at *16-17 (Tex. App.—Houston 14th Dist.] 2010, pet. denied).

Therefore, the Court **FINDS** that:

1. There is not a reasonable probability Mr. Keculah will prevail in the current litigation with regard to his claims against Defendants Marcussen, Crawford, Crain, or Lugenbuhl.

2. Mr. Keculah has commenced, prosecuted or maintained at least five litigations as a pro se litigant in the past five years that have either been finally determined adversely to him or determined to be frivolous or groundless.
3. Mr. Keculah has repeatedly relitigated or attempted to relitigate several matters which were already finally determined.
4. Mr. Keculah has repeatedly and unrepentantly engaged in litigation misconduct.
5. Henry Keculah meets the criteria of a vexatious litigant.

ORDER

Accordingly, the Court **ORDERS** Henry Keculah adjudicated to be a vexatious litigant.

The Court **ORDERS** Henry Keculah be prohibited from filing new litigation in state court without first obtaining permission from the appropriate local administrative judge. See TEX. CIV. PRAC. & REM. CODE §11.101. The administrative judge will grant permission to file only if the litigation appears to have merit and is not filed for the purposes of harassment or delay. The administrative judge may condition such permission on the furnishing of a security.

The Court also admonishes Henry Keculah that if he fails to obey this order, he may be sanctioned or found in contempt and subject to punishment.

The Court **ORDERS** the Harris County District Clerk to refuse the filing of any new litigation by Henry Keculah unless he first obtains written permission from the appropriate local administrative judge.

SIGNED this the 16th day of February, 2024.

FEB 16 2024


JUDGE PRESIDING



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this February 21, 2024

Certified Document Number: 112861928 Total Pages: 7

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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