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APP.- II

THIRD CIRCUIT OPINION AND JUDGMENT
(DECEMBER 10, 2018)

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

No. 18-2152

DANIEL KING,

Appellant

V.

JUDGE CHARLES B. BURR, II, Individually;
RIVER WATCH CONDOMINIUM OWNER'S
ASSOCIATION

Appeal from the United States District Court for
the Eastern District of Pennsylvania (D.C. Civil
Action No. 2-17-cv-02315)

District Judge: Honorable Michael M. Baylson

Submitted Under Third Circuit L.A.R. 34.1(a)
November 5, 2018

Before: AMBRO, SCIRICA, and RENDELL,
Circuit Judges

(Opinion filed: December 10, 2018)

OPINION*

AMBRO, Circuit Judge

APP.- III

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

This is the second appeal filed in this case. *See King v. Burr et al.*, 728 F. App'x 83 (3d Cir. 2018). Plaintiff Daniel King was the owner of a condominium in the Riverwatch Condominium complex in Delaware County, Pennsylvania. After a dispute concerning Riverwatch's right of access to King's residence to make repairs to the roof, Riverwatch obtained a judgment for approximately \$8,500 in a bench trial before Judge Charles Burr in the Court of Common Pleas in June 2010. After King's post-trial motions were denied, he or more specifically his attorney Thomas Gannon filed dozens upon dozens of appeals in the Pennsylvania courts, along with an unsuccessful petition for a writ of *certiorari* to the United States Supreme Court. *King v. Riverwatch Condo. Owners' Ass'n*, 138 S.Ct. 520 (2017). In May 2017 King filed this action in federal court against Riverwatch and against Judge Burr, alleging that the latter had acted without jurisdiction and thereby violated King's due process rights and that Riverwatch was seeking to enforce void court orders. The District Court dismissed under the *Rooker-Feldman* doctrine,¹ and we affirmed. *See King*, 728 F. App'x at 86. On remand, the District Court imposed sanctions against

¹ This doctrine, named for *Rooker v. Fidelity Trust Co.*, 263 U.S. 414 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), states that a federal District Court should not sit in direct review of a state court decision.

APP.- IV

Gannon under 28 U.S.C. § 1927,² which states that "[a]ny attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." The District Court held that Gannon had multiplied the proceedings "in willful bad faith," such that § 1927 sanctions were appropriate, and awarded attorneys' fees against him in the amount of \$3,985.00. On appeal, King now argues it was improper for the District Court to impose sanctions under § 1927 without giving Gannon notice and an opportunity to be heard, the Court lacked jurisdiction under § 1927 because King's initial lawsuit had been dismissed for want of jurisdiction, the sanctions were wrongly imposed on Gannon for his conduct in state rather than federal court, and the District Court did not adequately find on the record that the amount of the award was proper. We cannot address the merits of these arguments because we lack jurisdiction to entertain the appeal. Federal Rule of Appellate Procedure 3(c) states that the notice of appeal must "specify the party or parties taking the appeal." In 1988, the Supreme Court held that this is a jurisdictional requirement, and that because failure to name a party in a notice of

² The District Court's award of attorneys' fees to defendants was initially entered against King himself, but on March 20, 2018 it amended its earlier award to be against Gannon instead after defendants clarified that they were only seeking fees against him.

APP.- V

appeal "constitutes a failure of that party to appeal," it deprives the Court of Appeals of power over that party. *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 314 (1988). Four years later, we held accordingly that we lack jurisdiction where a district court has imposed sanctions under Federal Rule of Civil Procedure 11 only against a party's lawyer, but the notice of appeal names only the client, not the lawyer, as the appellant. *See Collier v. Marshall, Dennehey, Warner, Coleman & Goggin*, 977 F.3d 93, 95 (3d Cir. 1992). In such a case, the real party in interest on appeal is the lawyer against whom sanctions were imposed and who therefore has something riding on the outcome of the appeal. The lawyer's failure to appeal, by listing only his client as the appellant, thus means there is no live controversy on appeal for us to decide.

That is what happened here: the notice of appeal listed only King as the appellant in the case caption, and in its body text stated that:

Notice is hereby given that Daniel King, plaintiff, in the above named case hereby appeals to the United States Court of Appeals for the Third Circuit from Judgment entered on March 20, 2018 by Judge Michael B. Baylson, granting the defendant, Riverwatch Condominium Owners' Association attorney fees under 28 U.S.C. § 1927.

APP.- VI

Notice of Appeal at 1. This is materially identical to the notice of appeal in *Collier*. See 977 F.3d at 94. Our case, in which Gannon has pursued endless appeals to his own client's detriment, underscores the observation in *Collier* that a lawyer's interests and his client's may well diverge in cases involving attorney sanctions. *Id.* at 95

And while *Collier* concerned sanctions under Rule 11, rather than 28 U.S.C. § 1927, this distinction has no significance. See *CTC Imports and Exports v. Nigerian Petroleum Corp.*, 951 F.3d 573, 576 (3d Cir. 1991) (no jurisdiction as to lawyer sanctioned under § 1927 who filed appeal only in his client's name). See also *Agee v. Paramount Communications, Inc.*, 114 F.3d 395, 399-400 (2d Cir. 1997) (same).

Accordingly, the appeal is dismissed.

APP.- VII

UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

No. 18-2152

DANIEL KING,
Appellant

v.

JUDGE CHARLES B. BURR, II, Individually;
RIVER WATCH CONDOMINIUM OWNER'S
ASSOCIATION

Appeal from the United States District Court for the
Eastern District of Pennsylvania (D.C. Civil Action
No. 2-17-cv-02315)

District Judge: Honorable Michael M. Baylson

Submitted Under Third Circuit L.A.R. 34.1(a)
November 5, 2018

Before: AMBRO, SCIRJCA, and RENDELL, Circuit
Judges

JUDGMENT

This cause came on to be heard on the record before the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit L.A.R. 34.1 (a) on November 5, 2018. On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the appeal of the judgment of the District Court entered on March 22, 2018, is hereby dismissed. Costs taxed against

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Appellant. All of the above in accordance with the
opinion of this Court.

ATTEST:

s/Patricia S. Dodszeit Clerk

Dated: December 10, 2018

APP.- IX

DISTRICT COURT AMENDED ORDER (MARCH
20, 2018)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

Daniel KING, Plaintiff,	CIVIL ACTION
v.	NO. 2:17-cv-02315- MMB
Judge Charles B. BURR, II et al., Defendants.	

AMENDED ORDER

AND NOW this 20th day of March, 2018, in light of the Third Circuit's affirmance of the Court's Order (ECF 17) granting Defendants' Motion to Dismiss Plaintiff's Amended Complaint, and having considered Plaintiff's Motions to Vacate (ECF 24, modified on January 8, 2018 by ECF 26), the Motions (ECF 24, 26) are **GRANTED IN PART AND DENIED IN PART**. The Court will modify its Order issued on December 7, 2017 (ECF 23).

Plaintiff's counsel has multiplied the proceedings unreasonably and vexatiously, in willful bad faith, in violation of 28 U.S.C. § 1927. This is the latest in a long line of cases filed and pursued in various courts by Plaintiff's counsel. None of the cases has had any merit, and the case in this Court is no

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exception. Thus, Plaintiff's counsel "transcend[ed] the bounds of zealous advocacy on behalf of a client." Baker Industries, Inc. v. Cerberus Ltd., 764 F.2d 204, 211 (3d Cir. 1985). In doing so, he improperly imposed costs of defense on Riverwatch Condominium Owner's Association.

Moreover, Plaintiff's counsel filed motions such as a Motion to Dismiss Defendants' Motion to Dismiss, an improper motion, on the grounds that it was Defendant who sought review of a state court judgment on the merits, in violation of the Rooker-Feldman doctrine. These vexatious motions unreasonably multiplied the proceedings and abused access to this Court by "violati[ng] recognized standards." LaSalle Nat. Bank v. First Connecticut Holding Grp., LLC, 287 F.3d 279, 289 (3d Cir. 2002).

Judgment is hereby entered in favor of Riverwatch Condominium Owner's Association against Plaintiff's counsel, Thomas P. Gannon, in the amount of \$3,985.00. The Clerk shall close this case.

BY THE COURT:
/s/ Michael M. Baylson
MICHAEL M. BAYLSON
United States District Court Judge

APP.- XI

DISTRICT COURT ORDER (ENTERED: APRIL 25,
2018)

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

Daniel KING, Plaintiff, v. Judge Charles B. BURR, II et al, Defendants,	CIVIL ACTION NO. 2:17-cv-02315- MMB
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ORDER

AND NOW this 24th day of April, 2018, Plaintiff King's Motion to Vacate (ECF 30) and Motion for Leave to File Supplemental Appendix (ECF 31) are DENIED. The Motion to Vacate repeats prior arguments, which this Court previously considered in Plaintiff's previously-filed Motions to Vacate (ECF 24 and 26). The Motion for Leave seeks to submit old complaints filed by Plaintiff against Defendant Riverwatch. These materials are neither new nor relevant to Plaintiff's case, which this Court has already dismissed. (ECF 17, Order Dismissing Amended Complaint).

The Court has previously noted King's prolific filings. (See ECF 22 at 2, Memorandum Awarding Counsel Fees to Defendant Riverwatch ("King has

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filed approximately forty-eight appeals related to this litigation.")). This Order serves as notice to Plaintiff King that any further frivolous filings will justify additional sanctions.

BY THE COURT:

/s/ Michael M. Baylson

MICHAEL M. BAYLSON

United States District Court Judge

APP.- XIII

THIRD CIRCUIT DENIAL OF REHEARING
(JANUARY 30, 2018)

UNITED STATE COURT OF APPEALS FOR
THE THIRD CIRCUIT

DANIEL KING, Appellant	No. 18-2152
v.	
JUDGE CHARLES B. BURR, II, Individually; RIVER WATCH CONDOMINIUM OWNER'S ASSOCIATION	

Appeal from the United States District Court for
the Eastern District of Pennsylvania (D.C. Civil
Action No. 2-17-cv-02315)

District Judge: Honorable
Michael M. Baylson

SUR PETITION FOR REHEARING

Before: SMITH, Chief Judge, McKEE, AMERO,
CHAGARES, JORDAN, HARDIMAN ,
GREENAWAY, Jr., SHWARTZ, KRAUSE,
RESTREPO, BIBAS, PORTER, SCIRICA* and
RENDELL*, Circuit Judges

APP.- XIV

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court *en bane*, is denied.

By the Court,

s/Thomas L.Ambro, Circuit Judge

Dated: January 30, 2019

* Judge Scirica's and Judge Rendell's votes limited to panel rehearing only.

APP.- XV

NOTICE OF APPEAL (May 22, 2018)

CASE NO.: 2:17-02315-MMB

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

Daniel King,
Plaintiff-Appellant

v.

Judge Charles B. Burr II, and Riverwatch
Condominium Owners' Association
Defendants- Appellees

NOTICE OF APPEAL

Notice is hereby given that Daniel King, plaintiff, in the above named case hereby appeals to the United States Court of Appeals for the Third Circuit from Judgment entered on March 20, 2018 by Judge Michael B. Baylson, granting the defendant, Riverwatch Condominium Owners' Association attorney fees under 28 U.S.C. § 1927.

s/Thomas P. Gannon
Attorney for Appellant

APP.- XVI

LITIGANT'S MOTION (May 25, 2018)

UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

DANIEL KING,
Appellant

v.

JUDGE CHARLES B.
BURR II,
and
RIVERWATCH
CONDOMINIUM
OWNERS
ASSOCIATION

Appellees

Case # 2018 - 02152

MOTION TO QUASH APPEAL DUE TO FILING
BEYOND THIRTY DAY DEADLINE

17. On May 22, 2018 Attorney Gannon filed an appeal to this Third Circuit of Judge Baylson's March 20, 2018 Order.

WHEREFORE, Petitioner, Riverwatch Condominium Owners Association, respectfully request this Honorable Court of Appeals to Quash this latest appeal filed by Thomas P. Gannon, Esquire.

s/ Robert C. Ewing, Esquire
Attorney for Petitioner/Appellee

Riverwatch Condominium Owners Assn

Date: May 25, 2018