No._____

Supreme Court of the United States

Robert Grundstein Esq.

vs

Lamoille Superior Court Docket Entries/Orders dated 1-24-2012 and 1-8-2013 in Lecv 148-8-05 (P.O. Box 570, 154 Main Street, Hyde Park, VT 05655;

Lamoille Superior Court Docket Entry/Order dated 6-15-16 (Appellate No. 2016 VT 242) in Lecv 87-4-10;

Lamoille Superior Clerk of Courts, P.O. Box 570, 154 Main Street, Hyde Park, VT 05655, as Docket Administrator

Vermont Attorney General T.J. Donovan, 109 State Street, Montpelier, VT 05609-1001

Randall Mulligan, 591 A Cricket Hill Road, Hyde Park VT 05655

On Petition for Writ of Certiorari to the U.S. Second Circuit Court of Appeals

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Robert H. Grundstein Esq.
18 Griggs Road
Morrisville, Vermont 05661
rgrunds@pshift.com
802-397-8839
Attorney for Petitioner

David Boyd Esq./Assistant AG
109 State Street
Montpelier, VT 05609
david.boyd@vermont.gov
802-828-5529
Attorney of Record on Appeal

Federal District Court
Vermont

Robert Grundstein Esq.
18 Griggs Road
Morrisville, VT 05661
802-397-8839/rgrunds@pshift.com 5:17 cv 00151 gwc

Plaintiff
vs

Lamoille Superior Docket Entries/ Orders dated 1-24-2012 and 1-8-2013 in Lecv 148-8-05
Lamoille Superior Docket Entry/ Order dated 6-15-16 (Appellate No. 2016-242) in Lecv 87-4-10
Lamoille Superior Clerk of Court as Docket Administrator (Counts I through VII)

Lamoille Superior Court
P.O. Box 570
154 Main Street
Hyde Park, VT 05655

State of Vermont /Attorney General T.J. Donovan
109 State Street
Montpelier VT 05609-1001

Verified Complaint
1. Temporary Restraining Order/Injunction under Civ. Rule 65 (Count I Only)
2. Declaratory Relief under 28 USC 22011(All Counts)
3. Injunction under Ex Parte Young 209 US 123 for Violations of 42 USC 1983 (Counts I-V and VII-VIII)

Parties to This Action

Plaintiff	Defendant(s)
Robert Grundstein Esq. 18 Griggs Road Morrisville VT 05661 802-888-3334 rgrunds@pshift.com	Lamoille Superior Court Docket Entries Lamoille Superior Docket Administrator Attorney General T.J. Donovan 109 State Street Montpelier, VT 05602 802 828-3171

Table of Contents

Statement of Jurisdiction
Federal Questions under 28 USC 1331

Grundstein brings this claim pertinent to an unconstitutionally vague and unpredictable "use, custom and practice" of judge damages and sanctions imposed without Jurisdiction, Due Process Notice and Hearing and unreferenced to any objective standard such as a state statute or court rules. "Inherent Court Powers" do not give a judge the right to levy fines and take away property without Constitutional limitations and protections. **A judgment entered without procedural Due Process is void ab initio, "Griffin v Griffin" 327 U.S. 220.**

This action cites violations of federal constitutional rights guaranteed in the 1st, 5th, 6th 8th and 14th amendments to the Constitution. It also asks relief under the Federal Declaratory Relief statute, 28 USC 2201 and "Ex Parte Young".

Introduction

State Judge Cannot Remove Property Interests
without Due Process/Notice and Hearing
State Judge Cannot Remove Property Interest without
Jurisdiction
State Court Imposition of Attorney fees is an
"Unconstitutional Usage" exercised without Due Process
Notice and Hearing
Cannot Charge Attorney Fees without Civ. Rule 11
Compliance and Other Procedural Prerequisites

The general rule, under state and federal law, is that **"judgments are void if the court that rendered it lacked jurisdiction of the subject matter, or of the parties or if it acted in a matter inconsistent with Due Process."**, "Evans v Cote", 2009 VT 326, citing "Wright,

Miller and Kane, Federal Practice and Procedure", sec 2862 at 326-29 (2nd Ed. 1995)

This Complaint is concerned with four orders;

1) Order Number 1, dated August 3, 2007, **(EX 1)** in which all legal interest in a subject property was given to Grundstein, subject to an equitable interest in proceeds to former joint tenants (**127 Peninsula Road, Eden Mills, VT**);

2) Order Number 2, dated January 24, 2012, which, without jurisdiction or due process, illegally removed the interest created in Order 1 and Grundstein's right to enter and remain on his property (Count I);

3) Order Number 3, dated January 8, 2013 which, without jurisdiction or due process, awarded a penalty of $10,000.00 as attorney fees (Ten Thousand Dollars) to plaintiffs without Notice, Due Process, compliance with Civ. Rule 11 or authority (Count II);

4) Order Number 4, dated June 15, 2016, by which damages of $84,000.00 were awarded without notice of charges, presentment of evidence and opportunity to address charges;

Count I

Temporary Restraining Order/Preliminary Injunction/
Declaratory Relief/
Illegal Taking of Fee Interest in Real Property
without Jurisdiction
Violation of 5th and 14th Amendment Rights to Property
Violation of Due Process Notice and Hearing

1. On August 3, 2007, (EX 1) all legal interest in a subject property (Lake Eden, Vermont) was given to Grundstein, subject to an equitable interest in proceeds to former joint tenants;

2. On January 24, 2012, a state judge, acting under color of law, illegally removed this interest and right to enter and remain on his property;

3. The judge had lost jurisdiction over this case as stated in his August 3, 2007 order;

4. There was no notice or hearing by which Grundstein was notified that his property rights were in jeopardy or that he could have been divested of his property rights;

5. There was no statute, rule, mechanism, or procedure by which Grundstein could have been divested of his real property rights. He was not subject to foreclosure.

6. Grundstein was divested of his right to own enter and possess his property without reference to law, notice, hearing or any other process recognized at law or equity. It is an illegal taking;

7. This has become an unpermitted practice, usage and custom by J. Pearson at the state level.

THEREFORE, Grundstein asks this court for immediate relief by way of Temporary Restraining Order/Preliminary Injunction and for Declaratory relief in acknowledgement of his right to enter, maintain and enjoy his property and direct the Clerk of Courts to strike the January 24th 2012 order which contradicts this right.

Count II

Declaratory Relief/Injunction
State Cannot Charge Attorney Fees without
Due Process Notice and Hearing
State Cannot Makes Determinations in a Case
Over Which it has Lost Jurisdiction
Unconstitutional Practice Custom and Usage

8. Grundstein re-states the prior contents of this Complaint;

9. On January 8, 2013, Sua Sponte, without notice or hearing, under color of law, state court judge Pearson levied a penalty of $10,000.00 as attorney fees (Ten Thousand Dollars) against Plaintiff . There was no calculation of how the judge arrived at this figure. It was arbitrary and impossible to anticipate;

10. The judge had lost jurisdiction over this case as stated in his August 3, 2007 order;

11. There was **no notice or hearing** by which Grundstein was told that he could be subject to this penalty. See "Lawson's v Brown's Day Care Center", 2004 VT 6, (Eaton, J.);

12. There was **no Statute, Rule or Procedure** by which Grundstein could have been fined under the conditions at that time.

13. There was **no Civ. Rule 11 motion** filed against him which is **a necessary pre-condition** under Vermont law for attorney fees. Civ. Rule 11 is the mechanism for attorney fees for actions at law in Vermont. See "Bennington Realty v. Jard Co", 169 Vt. 538, citing "Cameron v. Burke", 153 Vt. 565, confirmed by "Agency of Nat. Resources. v. Lyndonville Bank" 174 Vt. 498;

14. He was **not in contempt**. He **had not violated an injunction** or other restriction;

15. **There was no hearing** at which an independent, third party witness attorney testified with respect to the reasonableness of attorney fees as required in Vermont case "Schreck v Black River Brewing", 643-10-07, Wrcv (J. Eaton)

16. Grundstein was penalized without reference to fact, law, notice, hearing or any other process recognized at law or equity;

17. This is an unpermitted practice, usage and custom of sanctions at the state level. They may not be practiced in this manner

THEREFORE, Grundstein asks this court to enjoin this money charge against Grundstein, declare it void and direct the Clerk of Courts to strike the January 8th 2013 order which publishes this charge.

Count III

Declaratory Relief/Injunction re: Pearson Order of June 15, 2016/Docket Number Lecv 87-4-10
Eighty Four Thousand Dollar Judgment and Award of Attorney Fees without Notice of Charges, without Any Evidence or Compliance with Civ. Rule 11
Is Unconstitutional
Violates 5th and 14th Amendment Due Process, 6th Amendment Right to Confront Evidence and 1st Amendment Right of Meaningful Access to Courts

18. Plaintiff restates the prior contents of this complaint;

19. In May of 2010, Grundstein filed Case number 87-4-10 Lecv against Defendant M. Levin in Lamoille County Vermont, Superior court;

20. Grundstein's complaint sought damages for Conversion of personal property;

21. Defendant Counterclaimed for equitable relief. Two of her three claims were struck from the claim; (filing injunction, struck from claim and not litigated), action to import a judgment (struck from the claim and not litigated). A third paragraph was in the Counterclaim (lines 32-35) for money damages which failed to state a claim, recite specific events and dates or amounts;

22. A stipulated agreement to conduct mandatory state Alternative Dispute Resolution was signed by Grundstein and counsel for Defendant Levin. ADR is mandatory under VT Court Rule 16.3 , the Vermont State Arbitration Act; Title 12, Chapter 192 and the Vermont Uniform Mediation Act; Title 12, Chapter 194;

23. Judge Pearson signed the agreement as a stipulated order;

24. Grundstein provided a list of suitable mediators;

25. Counsel for Levin refused to participate in mediation, despite the contract obligation and court order to do so;

26. No discovery had taken place prior to the appointed interval for mediation;

27. Grundstein moved the court to enforce its order for mediation and for contempt against counsel for Levin;

28. J. Pearson refused to enforce his order and mediation did not take place;

29. Grundstein moved to recuse J. Pearson. J. Pearson refused to remove himself;

30. Grundstein moved to change venue. This motion was also refused by J. Pearson;

31. J. Pearson rotated out and J. Tomasi took his place in fall of 2011;

32. Grundstein moved for hearing. Nothing took place;

33. J. Tomasi rotated out and J. Rainville took his place;

34. Grundstein moved for hearing again in early 2013. Nothing was scheduled;

35. After several years, J. Pearson rotated back in;

36. Grundstein moved to have J. Pearson recused. The motion was denied;

37. Trial on the merits was held on July 6, 2015. It lasted approximately one hour and a half;

38. Defendant Levin **did not articulate a cause of action as a basis for a counterclaim**;

39. Defendant Levin **did not testify**;

40. Defendant Levin **did not articulate a Counterclaim damage amount in dollars or any other value;**

41. Defendant Levin **did not call any witnesses or provide any extrinsic or documentary evidence** to prove a cause of action or damages;

42. Defendant Levin did not provide any evidence of any sort;

43. There were **no Civ. Rule 15 motions** by which Defendant Levin could have amended her Answer or establish a counterclaim;

44. **No notice or offer of proof was made by any party or judge by which judicial notice of facts could have been used** as a basis to amend Defendant Levin's Counterclaim (**See Rule of Evidence 201(e)** and "In re A.M." 2015 VT 109 (J. Eaton);

45. **Defendant never articulated sufficient facts or dates to give notice of any cause of action alleged to have occurred at a specific time**;

46. Grundstein proved his damages with affidavits and receipts;

47. There were **no Civ. Rule 11 motions or hearings for illegal filings, sanctions or practice**;

48. There was no reason to violate The American Rule for attorney fees;

49. Civ. Rule 11 is the mechanism to charge attorney fees for actions at law in Vermont. See "Bennington Realty v. Jard Co", 169 Vt. 538, citing "Cameron v. Burke", 153 Vt. 565, confirmed by "Agency of Nat. Resources v. Lyndonville Bank" 174 Vt. 498.

50. There was no basis in law or fact for attorney fees;

51. There was no procedural compliance to assign attorney fees against any party. See "Schreck v Black River Brewing" Wrcv 643-10-07 (Eaton, J.) 8-10- 2010, "Lawson v. Brown's Home Day Care Center, Inc.", No. 195-9-97 ;

52. There was **no hearing with independent third party testimony** in support of specific dollar amounts for attorney charges as required by Vermont State law. (See "Schreck", et seq, op cit);

53. There was **no proof of malice or outrageous conduct.** These not proven at hearing **nor was there a required hearing to ascertain the financial effect of an award of punitive damages against the party least able to pay them.** See "Coty v. Ramsey Associates, Inc.", 149 Vt. 451;

54. On June 15, 2016, J. Pearson awarded Defendant $84,000.00 (eighty four thousand dollars) and attorney fees;

56. The order is angry and unbalanced against Grundstein. It proves personal animus against Grundstein sufficient to establish bias

57. J. Pearson claimed Grundstein committed Malicious Prosecution;

58. Grundstein was never accused of malicious prosecution in Levin's pleadings nor were the prima facie elements contained in Defendant Levin's counterclaim or anywhere else in the record. Grundstein had never initiated a criminal or civil action against Levin prior to this suit;

59. **It was impossible to anticipate this order because J. Pearson created it independent of the record, facts, testimony and the pleadings. It was created from his own mind without reference to the case history and transcripts;**

THEREFORE, Grundstein asks that the order of June 15, 2016 be vacated and declared unenforceable. He also asks for an instruction that the Lamoille Superior Clerk of Courts be directed to strike this order from the docket or to act in conformity with this opinion.

Count IV
Declaratory Relief/Injunction
Vermont Civ. Rule 8 is Unconstitutional
A Complaint or Counterclaim Must Articulate Money Damages in a Specific Amount

60. Grundstein restates the prior contents of his complaint;

61. Vermont Civ. Rule 8 does not require a party to articulate a specific dollar amount for damages in a Complaint or Counterclaim;

62. State and Federal Due Process requires a party to have notice of the potential costs to litigate or not litigate a case:

> "Like the Court, I believe there is a need, grounded in the rule of law itself, to assure that punitive damages are awarded according to meaningful standards that will provide notice of how harshly certain acts will be punished...." citing "Philip Morris USA v. Williams", 127 S. Ct. 1057, 1062 (2007). "Unless a State insists upon proper standards that will cabin the jury's discretionary authority, its punitive damages system may deprive a defendant of 'fair notice... of the severity of the penalty that a State may impose...." ; citing "BMW v Gore", 517 U.S. at 574).

63. See also ("Greenup v. Rodman", (1986) 42 Cal.3d 822, 826):

> **Ordinarily, "[i]f the recovery of money or damages is demanded [in a complaint], the amount demanded shall be stated [in the complaint]." (Code Civ. Proc., § 425.10.)**
>
> ...."[D]ue process requires notice to defendants, whether they default by inaction or by wilful obstruction, of the potential consequences of a refusal to pursue their defense. Such notice enables a defendant to exercise his right to choose — at any point before trial, even after

> discovery has begun — between (1) giving up his right to defend in exchange for the certainty that he cannot be held liable for more than a known amount, and (2) exercising his right to defend at the cost of exposing himself to greater liability." ("Greenup", supra, 42 Cal.3d at p. 829.)

THEREFORE, Grundstein asks this court to declare that Vermont Civ. Rule 8 should be amended to require that damages be articulated in a Complaint or Counterclaim as dollar amounts. He also asks for instructions to the state court that Civ. Rule 8 be applied in its new form to Lamoille Superior defendant Levin's Answer/Counterclaim on re-hearing in the state court or to strike her Answer/Counterclaim in its entirety and that all damages amounts against Grundstein in Lecv 87-4-10 be enjoined.

Count V

Declaratory Relief/Injunction
Violation of Vermont and Federal Law
against Excessive Fines
Award without Evidence, Due Process or
Contemplation of Economic Effect on Party Violates
5th, 6th, 8th and 14th Amendments, Vermont Constitution
Article 39 against Excessive Fines and Vermont Case Law

64. Grundstein restates the prior contents of his Complaint;

65. A judgment of this magnitude (Eighty Four Thousand Dollars) will ruin Grundstein financially;

66. Under the circumstances of this case, ANY award of money damages is excessive;

67. It was impossible to anticipate any damages for Levin's Counterclaim;

68. There was no evidence for them;

69. Dollar amounts as damages were not articulated in a pleading;

70. There was no cause of action to support an award of damages;

71. There was no evidence of damages;

72. They were not litigated or discussed at hearing or anywhere else in motions and pleadings;

73. The award is excessive and seems to be a judicial Bill of Attainder or punitive damages, executed without Due Process, findings of malice, bad faith or evidence;

74. There was no state hearing as required in Vermont law to ascertain the financial effect of punitive damages on the person against whom they were levied (Grundstein);

> "In the course of assessing punitive damages, the financial status of the least wealthy defendant must be taken into account.", "Woodhouse v. Woodhouse", 99 Vt. 91, 155, 130 A. 758 (1925).
>
> THEREFORE, Grundstein asks that the award of $84,000.00 in Lamoille Superior court is enjoined and declared unenforceable with instructions to the clerk to strike the order.

Count VI

Declaratory Relief Claim under State Law Procedure
Levin Claims Should Have Been Dismissed
after Levin Refused to Do Court Ordered ADR
Opposing Counsel Contributed to Delay by Refusing
to Participate in Court Ordered ADR
Levin Counterclaim Should Have been Dismissed
under State Law
Lower Court Exercised Prejudicial and Unexplained
Five Year Delay

75. Grundstein restates the prior contents of his Complaint:
76. Vermont Administrative Order 10, Judicial Canon 3, Section (8), says:

> "(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly."

77. Grundstein filed his case in spring of 2010. J. Pearson refused to enforce his own ADR order. J. Pearson allowed Levin to remain in contempt of his ADR order.
78. Grundstein asked for a hearing several times between 2011 and 2013. It was not set until July of 2015. J. Pearson's order came out a year later.

79. With respect to Vt. Civ. Rule 41(b), a court may dismiss a claim for prejudicial delay. VT found an interval of three months sufficient to dismiss a claim. See "Altman v Altman", 96 VT 485;

> ..."Later that month, defendants' attorney sent plaintiff a letter at the stated address containing a proposed discovery schedule. When he did not receive a response, counsel sent plaintiff another letter in August concerning the proposed schedule. Failing again to receive a response, defendants' counsel requested the court to schedule a discovery conference. The court sent plaintiff a notice on October 6 directing him to appear at a status conference on October 18. Plaintiff failed to appear at the scheduled conference. Defendants' attorney thereupon moved to dismiss plaintiff's action for failure to prosecute under V.R.C.P. 41(b)(2). The court granted the motion and, on October 31, issued an order dismissing plaintiff's action with prejudice..."

80. Levin's claims against Grundstein should have been dismissed after Levin refused to participate in Court Ordered ADR.

THEREFORE, Grundstein asks this court for Declaratory Relief stating that the state court should have dismissed Superior Court Defendant Levin Answer and any Counterclaims.

Count VII

Judge Bias Spoils Due Process
Need Peremptory Right of Recusal

Grundstein restates the prior contents of his Complaint;

81. The personal animus against Grundstein is patent in state Judge Pearson's procedural and substantive violations against him;

82. This animus is also patent in the tone of his June 15, 2016 order;

83. "When a judge becomes personally embroiled in the controversy with an accused he must defer trial .....to another judge" (case involved contempt hearing), "Mayberry v. Pennsylvania" 400 U.S. 455 (1971).

84. "Even in the absence of a personal attack on a judge that

would tend to impair his detachment, **the judge may still be required to excuse himself and turn a citation for contempt over to another judge** if the response to the alleged misconduct in his courtroom partakes of the character of "marked personal feelings" being abraded on both sides, so that it is likely the judge has felt a "sting" sufficient to impair his objectivity." "Taylor v. Hayes", 418 U.S. 488 (1974

THEREFORE, Grundstein asks for Declaratory and Injunctive Relief against all Lamoille Superior Court orders described in this Complaint (and in particular the June 15, 2016 order) by which Grundstein is ordered to pay damages and is restricted from his own property on Lake Eden.

Count VIII

Vermont Expedited Appellate Docket is Statistically Biased against Appellants
Violates 14th Amendment Equal Protection
Appellant Success 15% in "Rocket Docket" vs. 33% with Full Banc of Judges
Three Banc Decisions Have no Precedential Value/Body of Secret Law is Plainly Wrong

Grundstein restates the prior contents of his Complaint;

84. Grundstein appeal number 2016-242 was before three judges of the Vermont Supreme Court;

85. An appellant is over 100 per cent more likely to win an appeal before the full five judge banc of the Vermont Supreme Court compared to the abbreviated three judge banc;

86. See Table 3, pg 286, Journal of Appellate Practice and Process; "To Expediency and Beyond: Vermont's Rocket Docket", Tracy Bach. (2002);

87. The appellant success rate is 15% on the expedited docket but 33% with a full banc of judges;

88. This practice violates Equal Protection. All appellants should have an equal opportunity to conduct a successful appeal;

THEREFORE, Grundstein asks this court to declare existing Vermont appellate Expedited Docket procedure to be uncon-

stitutional, for an injunction against orders generated pursuant to defective procedure and for an opinion directing the state appellate court to act in conformity with this opinion.

S/s Robert Grundstein
Robert Grundstein Esq.
18 Griggs Road
Morrisville, VT 05661
rgrunds@pshift.com/802-888-3334

Verification

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

S/s Robert Grundstein
Robert Grundstein Esq.

Certificate of Notice

I certify that on September 17, 2017, notice of application for TRO under Count I, and a copy of this Complaint in its entirety, a Request to Waiver Service and Waiver of Service with SASE was sent to the Vermont Attorney General at the following address by email and USPS;

T.J. Donovan
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05652

S/s Robert Grundstein Esq.
Robert Grundstein Esq.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

Case No. 5:l 7-cv-151

ROBERT GRUNDSTEIN ,)
)
Plaintiff,)
)
V.)
)
LAMOILLE SUPERIOR)
DOCKET ENTRIES/ORDERS;)
LAMOILLE SUPERIOR DOCKET)
ENTRY/ORDER; LAMOILLE SUPERIOR)
CLERK OF COURT; LAMOILLE)
SUPERIOR COURT; T.J. DONOVAN;)
RANDALL MULLIGAN,)
)
Defendants.)

ORDER ON MOTIONS TO DISMISS, MOTION FOR SANCTIONS AND MOTION TO STRIKE OFFER OF SETTLEMENT AGREEMENT (Docs. 11, 13, 24, 26)

Plaintiff Robert Grundstein, proceeding pro se, initially brought this action against Lamoille Superior Court Docket Entries and Orders, the Lamoille Superior Court and its Clerk of Court, and Vermont Attorney General T.J. Donovan. (Doc. 1.) The action concerns a property in Lake Eden, Vermont that has been the subject of considerable litigation. (*See id.* at 3--4.) On October 10, 2017, Mr. Grundstein filed a First Amended Complaint adding a claim and naming Randall Mulligan as a defendant. (Doc. 3.) On April 4, 2018, the Vermont Attorney General, Thomas J. Donovan, Jr., moved to dismiss the action in its entirety under Federal Rule of Civil Procedure 12(b)(l) for lack of subject-matter jurisdiction. (Doc. 11.) On April 12, 2018, Defendant Randall Mulligan moved to dismiss the action under Federal Rule of Civil Procedure 12(b)(l), (4), (5), and (6). (Doc. 13.) Mr. Grundstein opposes the motions. (Docs. 14-15, 17, 21-22.)

Following these responses, on May 9, 2018, Mr. Mulligan filed a motion for sanctions under Federal Rule of Civil Procedure 11. (Docs. 24, 28.) Mr. Grundstein did not respond to the motion for sanctions. Instead, he filed an Offer of Settlement Agreement (Doc. 25) which
Mr. Mulligan then moved to strike on June 20, 2018 (Doc. 26). Mr. Grundstein filed a response to the motion to strike on July 9. (Doc. 27.) For the reasons discussed below, the motions to dismiss are granted and the motion to strike is denied as moot.

Background[1]

Mr. Grundstein and his siblings inherited a camp on Lake Eden in Vermont. In August 2005, Mr. Grundstein's siblings brought a partition action in Lamoille Superior Court. On August 3, 2007, following a hearing, the trial court assigned the property to Mr. Grundstein subject to conditions. Mr. Grundstein attached the state court's August 3, 2007 Final Judgment to his original complaint in this federal case. It stated in part:

> All right, title and interest in and to the subject real property is hereby assigned and conveyed solely to Defendant Robert H. Grundstein ... all *subject to the terms and provisions* of the Order of the court stated in separate Findings of Fact, Conclusions of Law, and Order of even date herewith.

(Doc. **1-1** (citing 12 V.S.A. § 5174) (emphasis added).) The salient condition was that he pay his three siblings $25,000 each for their shares by June 1, 2008. Ifhe failed to make the payments, the property would be put up for sale and the proceeds divided among all four owners.

Mr. Grundstein did not make the payments. His siblings

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1 This factual summary is largely derived from the Vermont Supreme Court's opinions in *Levin v. Grundstein,* No. 2011-201, 2013 WL 2631310 (Vt. Apr. 18, 2013) (mem.), and *Grundstein v. Levin,* No. 2016-242, 2017 WL 571272 (Vt. Feb. 1, 2017) (mem.). Those Vermont Supreme Court opinions-like all of the Vermont Supreme Court opinions in Mr. Grundstein's appeals discussed below-were decided by a three-justice panel of the Court under the provisions of V.R.A.P. 33.1 (Summary Procedures on Appeal).

found a buyer in the summer of 2008 and planned to close the following October. After Mr. Grundstein refused to vacate the property, his siblings obtained an injunction on September 29, 2008, requiring him to vacate the property and to remove his personal possessions. He appealed the order and the Vermont Supreme Court affirmed, holding that the partition order was proper and that Mr. Grundstein "did not obtain a fee simple interest in the property ... without first having paid the money required to obtain such an interest." *Levin v. Grundstein,* No. 2008-417, 2009 WL 2427820, at *1 (Vt. Mar. 5, 2009) (mem.).

Mr. Grundstein's continued interference doomed the sale. His siblings sought an order of contempt for violation of the August 2007 judgment order. On June 22, 2009, following a hearing, the trial court granted the contempt motion but allowed Mr. Grundstein to comply with the prior order by June 26, which he again failed to do. On July 6, 2009, the trial court issued a final order of contempt. Mr. Grundstein appealed the order and the Vermont Supreme Court affirmed, holding that his "vague constitutional arguments claiming a deprivation of property without due process have no merit." *Levin v. Grundstein,* No. 2009-254, 2010 WL 1266673, at *l (Vt. Apr. 1, 2010) (mem.).

In June 2009, Mr. Grundstein's siblings moved for an award of attorney's fees. In February 2011, the trial court held a hearing on several pending motions, including the motion for attorney's fees and a motion to amend the partition judgment. On April 22, 2011, the trial court granted the motion to amend, assigning Mr. Grundstein's siblings title to the property, granting Mr. Grundstein a one-quarter interest in the proceeds of any sale, and granting the siblings' motion for attorney's fees. *See Levin v. Grundstein,* No. 2011-201, 2013 WL 2631310, at *2 (Vt. Apr. 18, 2013) (mem.). The trial court, however, sought more detailed billing information from the siblings' attorney on the issue of the amount of the fees. Mr. Grundstein appealed the order. The appeal was stayed and the matter remanded to the trial court to rule on post-judgment motions. *See id.*

On January 24, 2012, the trial court denied Mr. Grundstein's motion to reconsider the April 22, 2011 order, denied his motion for access to the property, and granted his request for additional time to file objections to the attorney's billing statements. On January 8, 2013, following an evidentiary hearing, the trial court entered an order awarding attorney's fees of $10,622.11. The court ruled that Mr. Grundstein' s intentional and repeated efforts to delay and frustrate his siblings' established right to sell the property, in violation of a court order, entitled them to attorney's fees under the limited exception to the "American Rule" for wrongful conduct. Mr. Grundstein appealed the order and the Vermont Supreme Court affirmed, finding no merit in his claims that the fee award was untimely, was unauthorized by any statutory or contractual provision, failed to comply with Rule 11, was legally and factually unsupported, and was based on fraudulent billing records. *Levin,* 2013 WL 2631310, at *3.

Mr. Grundstein then initiated an action in Lamoille Superior Court against his sister for conversion of the personal property he left at the camp. She counterclaimed for abuse of process and malicious prosecution, seeking to recover for the financial loss incurred from the failure of the planned sale of the camp and other damages. This new action was consolidated with the ongoing partition proceeding. In July 2015, the trial court held an evidentiary hearing on the claims.

The trial court issued a written ruling on July 15, 2016. The court noted that Mr. Grundstein had waived his conversion claim at the hearing and had only contested whether he owed any fees for storage of his personal property removed by his siblings. With regard to the counterclaims, the court rejected the abuse-of-process claim but upheld the malicious prosecution claim. The court awarded damages of $84,218 for the lost sale of the camp, subsequent property repairs and maintenance, property taxes paid, and moving and storage fees for Mr. Grundstein's personal property, as well as the previously awarded attorney's fees.

Mr. Grundstein appealed the order.

The Vermont Supreme Court rejected Mr. Grundstein's claim that he was not "afforded 'fair notice of the likely severity' of the damage award, in violation [of] V.R.C.P. 8 and his constitutional due process rights." *Id.* at *2. The Court ruled that the elements of his counterclaim were not proven and that there was no basis for recusal of the trial judge. The Court denied Mr. Grundstein's claims that the award of attorney's fees against him was a court "sanction" imposed without due process and that the trial court erred in denying a motion to compel mediation. *Id.* at *2-3. Accordingly, the Vermont Supreme Court affirmed the trial court decision in all respects except that it reduced the damage award to $69,272 because the attorney's fees could not be included as the final judgment in the partition action had already awarded the same relief. *Grundstein v. Levin,* No. 2016-242, 2017 WL 571272, at *3 (Vt. Feb. 1, 2017) (mem.).

In May 2011, Mr. Grundstein filed his first action in federal court regarding the Lake Eden property. *See Grundstein v. Vermont,* No. 1:l 1-cv-134, 2011 WL 6291955 (D. Vt. Dec. 15, 2011). He sued the State of Vermont and various members of the Vermont judiciary, claiming rulings issued in the state-court proceedings were erroneous and unconstitutional. *Id.* at* 1. The court granted defendants' motions to dismiss, holding that it lacked subject-matter jurisdiction under the doctrines of *Rooker-Feldman* and *Younger* abstention. *Id.* at *2-5.

Mr. Grundstein commenced this case on August 7, 2017, and filed a First Amended Complaint ("FAC") on October 10, 2017. Mr. Grundstein alleges the court has federal-question jurisdiction under 28 U.S.C. § 1331 because his federal constitutional rights have been violated. (Doc. 3 at 3.) He also seeks "relief under the Federal Declaratory Relief statute," 28 U.S.C. § 2201. *(Id.)* He notes the FAC is concerned with four state trial court orders: (1) the August 3, 2007 order, "in which all legal interest in a subject property was given to Grundstein, subject to an equitable interest in proceeds to former joint tenants"; (2) the January 24, 2012 order, "which, without jurisdiction or due process, illegally removed the interest created in [the August 3] Order ... and

Grundstein's right to enter and remain on his property"; (3) the January 8, 2013 order, "which, without jurisdiction or due process, awarded a penalty of $10,000 as attorney fees to plaintiffs without Notice, Due Process, compliance with [V.R.C.P.] Rule 11 or authority"; and (4) the June 15, 2016 order, "by which damages of $84,000.00 were awarded without notice of charges, presentment of evidence and opportunity to address charges." *(Id.* at 3-4.)

The FAC added a claim to "set aside deed," quiet title, and for declaratory relief.[2] (Doc. 3 at 14.) Mr. Grundstein alleges that although the property could not be sold without his "permission and signatures," the Lake Eden property was transferred to Defendant Randall Mulligan on June 5, 2017. *(Id.* at 15.) He states the court has subject-matter jurisdiction over the claim for declaratory relief based on supplemental jurisdiction. *(Id.)*

Mr. Grundstein seeks various injunctive and declaratory relief including requesting the court order the state court clerks to strike state court orders from the dockets. He also seeks an order from this court declaring the Vermont Supreme Court's Expedited Docket procedure unconstitutional. *See* V.R.A.P. 33.1 (Summary Procedures on Appeal).

Analysis

I. Motions to Dismiss

a. Rule 12(b)(1) Standard

A case is properly dismissed under Federal Rule of Civil Procedure 12(b)(1) "for lack of subject matter jurisdiction if the court 'lacks the statutory or constitutional power to adjudicate it '" *Cortlandt St. Recovery Corp. v. Hel las Telecomms., S.A.R.L.,* 790 F.3d 411,417 (2d Cir. 2015) (quoting *Makarova v. United States,* 201 F.3d 110, 113 (2d Cir. 2000)). Determining subject-matter jurisdiction is a

2 On August 7, 2018, the court granted Mr. Grundstein's August 3 motion to amend his complaint and responses to the defendants' motions to dismiss. *(See* Docs. 30, 31.) The only change to the FAC, which the court continues to consider the operative complaint, is to the title of Count IX. *(See* Doc. 30 at 1.)

"threshold inquiry," and should be addressed prior to any consideration of a complaint's substantive merits. *Arar v. Ashcroft,* 532 F.3d 157, 168 (2d Cir. 2008). On a Rule 12(b)(1) motion, the court accepts as true "'all material allegations of the complaint[] and ... construe[s] the complaint in favor the complaining party.'" *Cortlandt St.,* 790 F.3d at 417 (first brackets in original) (quoting *WR. Huff Asset Mgmt. Co. v. Deloitte & Touche LLP,* 549 F.3d 100, 106 (2d Cir. 2008)). "In deciding a Rule 12(b)(1) motion, the court may also rely on evidence outside the complaint." *Id* The plaintiff bears the burden of proof of establishing jurisdiction by a preponderance of the evidence. *Makarova,* 201 F.3d at 113 (2d Cir. 2000); *see also Blockbuster, Inc. v. Galeno,* 472 F.3d 53, 57 (2d Cir. 2006).

b. *Rooker-Feldman* Doctrine

The *Rooker-Feldman* doctrine "established the clear principle that federal district courts lack jurisdiction over suits that are, in substance, appeals from state-court judgments[.]"

Hoblock v. Albany Cty. Bd. of Elections, 422 F.3d 77, 84 (2d Cir. 2005). The doctrine "pertains not to the validity of the suit but to the federal court's subject matter jurisdiction to hear it." *Vossbrinckv. Accredited Home Lenders, Inc.,* 773 F.3d 423,427 (2d Cir. 2014). Federal courts may not entertain "cases brought by state-court losers complaining of injuries caused by state court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.,* 544 U.S. 280, 284 (2005). When it is asserted that a prior state court order precludes federal jurisdiction under the *Rooker-Feldman* doctrine, "the Court takes judicial notice of the state court record." *Gadreault v. Grearson,* No. 2:11-cv-63, 2011 WL 4915746, at *1 n.1 (D. Vt. Oct. 14, 2011).

The Second Circuit has identified four requirements for the application of the *Rooker- Feldman* doctrine:

> First, the federal-court plaintiff must have lost in state court. Second, the plaintiff must "complain[] of injuries

> caused by [a] state-court judgment[.]" Third, the plaintiff must "invit[e] district court review and rejection of [that] judgment[]." Fourth, the state-court judgment must have been "rendered before the district court proceedings commenced"-i.e., *Rooker-Feldman* has no application to federal-court suits proceeding in parallel with ongoing state court litigation.

Hoblock, 422 F.3d at 85 (citing *Exxon Mobil,* 544 U.S. at 284).

The first and last requirements are procedural. Here, the first is satisfied because Mr. Grundstein "has lost repeatedly in state court." *See Grundstein v. Vermont,* No. 1:11-cv- 134, 2011 WL 6291955, at *3 (D. Vt. Dec. 15, 2011). He has appealed multiple times and lost each appeal. The FAC makes it clear that he wishes this court to review four state-court orders in which he was the losing party. The last *Rooker-Feldman* requirement is satisfied because each of the orders referenced in the FAC was issued as of August 2017, when Grundstein commenced this case in this federal district court.

The second and third requirements are substantive. "[A] federal suit complains of injury from a state-court judgment, even if it appears to complain only of a third party's actions, when the third party's actions are produced by a state-court judgment." *Hoblock,* 422 F.3d at 88. Mr. Grundstein complains of injuries he has suffered from the state-court orders relating to the Lake Eden property and he seeks damages aimed at compensating him for its loss. He also alleges the rulings have violated his constitutional rights. Because granting the relief Mr. Grundstein seeks would require the court, impermissibly, to review and reject the four state court orders, the court finds his claims satisfy the second and third requirements. *See id.* at 87 (noting that if a plaintiff alleges in federal court that a state court order terminating his constitutional rights was unconstitutional, "he is complaining of an injury caused by the state judgment").

Because all four requirements of the *Rooker-Feldman* doctrine are satisfied, this court lacks subject-matter jurisdiction to review the decisions rendered against Mr. Grundstein in

the state courts. "[O]nly the Supreme Court [of the United States] may hear appeals from state-court judgments." *Id.* Accordingly, the court lacks jurisdiction over Counts I, II, III, IV (to the extent it seeks to enjoin the state-court damage award), V, VI, VII[3] and VIII (to the extent it seeks to enjoin the Supreme Court order) under the *Rooker-Feldman* doctrine. The Attorney General's motion to dismiss (Doc. **11**) must be GRANTED as to those counts because this court lacks subject-matter jurisdiction.

c. Res Judicata

Mr. Grundstein's claims would also be barred by res judicata because they are predicated on the same transactions and occurrences that formed the basis of his previous state-court actions. Res judicata, "a rule of fundamental repose," provides that:

> when a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties to the suit and their privies are thereafter bound not only as to every matter which was offered and received ... but as to any other admissible matter which might have been offered for that purpose.

In re Teltronics Servs., Inc., 762 F.2d 185, 190 (2d Cir. 1985). Accordingly,"[e]ven claims based upon different legal theories are barred [by res judicata] provided they arise from

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3 Count VII, titled "Judge Bias Spoils Due Process[;] Need Peremptory Right of Recusal," purports to allege that Vermont Judge Pearson was biased and seeks declaratory and injunctive relief against state-court orders, in particular the June 15, 2016 Order. *(See* Doc. 3 at 13.) Mr. Grundstein has litigated his allegations of bias against Judge Pearson, and the Vermont Supreme Court has rejected them. In affirming the June 15 Order, the Supreme Court stated:

> Plaintiff next contends that the trial judge "should have recused himself," arguing that the amount of the award alone "was sufficient" to prove bias, and that the trial judge had "a history of personal animus" toward plaintiff as demonstrated by a variety of rulings against him. These allegations are insufficient to demonstrate bias. Plaintiff's related argument that he should have had the "peremptory" right to remove a judge is unsupported, and contravenes the salutary and well settled principle that courts enjoy a "presumption of honesty and integrity" and the burden is on "the moving party to show otherwise."

the same transaction or occurrence." *L-Tec Elecs. Corp. v. Cougar Elec. Org., Inc.,* 198 F.3d 85, 88 (2d Cir. 1999).

Here, as discussed above, Mr. Grundstein has extensively litigated issues relating to the Lake Eden camp. The remaining counts of his current Complaint either were or could have been raised in those actions. Count VIII of the FAC alleges the Vermont Supreme Court's procedure for three-justice appeals violates equal protection and seeks an injunction against "orders generated pursuant to defective procedure." *(See* Doc. 3 at 13-14.) To the extent *Grundstein,* 2017 WL 571272, at *3 (internal citations omitted). Mr. Grundstein seeks to challenge the outcome of his Vermont Supreme Court appeal, his claim is barred by *Rooker-Feldman* as discussed above. To the extent he seeks generally to challenge the constitutionality of the Vermont Supreme Court's use of three-justice panels, this claim could have been raised in that appeal and is accordingly barred by res judicata. *L-Tec Elecs. Corp.,* 198 F.3d at 88 ("[C] laims based upon different legal theories are barred [by res judicata] provided they arise from the same transaction or occurrence").[4] The Attorney General's motion to dismiss (Doc. 11) is GRANTED as to the remainder of Count VIII because it is barred by res judicata.

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4 Although the Attorney General focuses on these procedural points, they are hardly the only deficiencies in the claim. The Vermont Supreme Court considered and rejected a similar challenge premised on provisions of Vermont law. See State v. Mills, 167 Vt. 365,371, 706 A.2d 953, 956 (1998) ("[T] here is no constitutional impediment to the summary procedure created by V.R.A.P. 33.1."). And Mr. Grundstein cites no plausible basis for his claim that the Vermont Supreme Court's use of three-justice panels violates the federal Equal Protection Clause or other federal law. He cites no authority aside from referring to statistics of appellants' success rates on appeal before three-justice panels compared to the full five-justice Vermont Supreme Court. See Tracy Bach, To Expediency and Beyond: Vermont's Rocket Docket, 4 J. App. Prac. & Process 277 (2002). But Professor Bach found nothing unjust about the summary procedures. See id. at 288 ("[I]t strikes a reasonable balance among efficacy, cost-effectiveness , and fairness."). Notably, cases before the federal intermediate appellate courts are routinely decided by panels of three judges with no suggestion of constitutional infirmity. See 28 U.S.C. § 46(b) (circuit courts may authorize hearing and determination of cases and controversies byseparate three-judge panels).

d. Defendant Mulligan's Motion to Dismiss

Defendant Randall Mulligan purchased the Lake Eden property from Mr. Grundstein's siblings in June 2017. (Doc 3 at 15; Doc. 13-1 at 3.) Mr. Mulligan moves to dismiss the claim against him arguing the court lacks subject-matter jurisdiction, improper venue, insufficient process or service of process, and failure to state a claim upon which relief can be granted. (Doc. 13.)

Defendant Mulligan first argues that the court lacks subject-matter jurisdiction because diversity is lacking between himself and Mr. Grundstein, both Vermont residents.

Mr. Grundstein, however, has filed suit alleging the court has federal question jurisdiction and invokes supplemental jurisdiction over his state-law claim against Mr. Mulligan. (Doc. 3 at 14- 15.)

A "district court 'cannot exercise supplemental jurisdiction unless there is first a proper basis for original federal jurisdiction.'" *Cohen v. Postal Holdings, LLC,* 873 F.3d 394, 399 (2d Cir. 2017) (quoting *Nowak v. Ironworkers Local 6 Pension Fund,* 81 F.3d 1182, 1187 (2d Cir. 1996)). Subject-matter jurisdiction over the state-law claim against Defendant Mulligan is lacking because of the court's dismissal of the alleged federal-question claims. Because the court dismissed all federal claims for lack of subject-matter jurisdiction under Rule 12(b)(1), it is "precluded from exercising supplemental jurisdiction over related state-law claims." *Cohen,* 873 F.3d at 399.

This is not a case like *Catzin v. Thank You & Good Luck Corp.,* No. 17-2497, 2018 WL 3747364 (2d Cir. Aug. 8, 2018). In that case, the district court had federal question jurisdiction in an initial stage of the case, but sua sponte decided not to exercise supplemental jurisdiction one week before trial was to begin. The Second Circuit vacated and remanded the case, concluding that the district court had erred by failing to exercise supplemental jurisdiction under the circumstances. Here, in contrast, all federal question claims were dismissed on the authority of the *Rooker-Feldman* doctrine. This court lacked federal-question jurisdiction from

the outset and therefore supplemental jurisdiction over state-law claims was never present.

Further, even if the court had supplemental jurisdiction over his claim, and Mr. Grundstein had timely served Mr. Mulligan according to the court's Order, *(see* Doc. 5), the court would nonetheless dismiss the claim. Though Mr. Grundstein styles his claim as against Mr. Mulligan, the relief he seeks is to set aside the deed transferring ownership of the Lake Eden camp to Mulligan because-he asserts - he retains all legal interest in the property pursuant to the August 3, 2007 state court order. As discussed above, Mr. Grundstein's interest in the property consists only of a one-quarter interest in the proceeds of any sale.

On April 22, 2011, the state trial court granted his siblings' motion to amend the partition award and assigned Mr. Grundstein ' s siblings title to the property, leaving Mr. Grundstein only an interest in the proceeds of any sale.[5] The court subsequently denied Mr. Grundstein' s motion to reconsider. *See Levin,* 2013 WL 2631310, at *2. The Vermont Supreme Court affirmed the trial court ' s order in April 2013, holding:

> To the extent that Grundstein asserts the trial court lacked authority to amend the partition judgment, he cites no case, statute, or other authority to support the claim, and we have held that the trial court enjoys broad discretion to amend a judgment in the interests of justice under the catchall provision of Rule 60(b)(6). Grundstein makes no showing, moreover, of how the order vesting title in [his siblings] prejudiced his interests in any respect, inasmuch as it had no impact on the provision requiring an ultimate sale of the property due to his failure to make the required buyout payments.

Id. (internal citations omitted). Accordingly, this claim is

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5 As of 2009, the Vermont Supreme Court had held the partition order was proper and Mr. Grundstein "did not obtain a fee simple interest in the property . . . without first having paid the money required to obtain such an interest." Levin v. Grundstein, No. 2008-417, 2009 WL 2427820, at *1 (Mar. 5, 2009).

barred by the *Rooker-Feldman* doctrine because it clearly invites review and rejection of a state-court judgment. Mr. Grundstein lost in state court and now seeks an end-run around the effect of the state-court judgment rendered before this proceeding commenced. *See Exxon Mobil Corp.*, 544 U.S. at 284. This court lacks subject-matter jurisdiction over Count IX. Defendant Mulligan's motion to dismiss (Doc. 13) is therefore GRANTED.

II. Motions for Sanctions and to Strike

On May 9, 2018, Mr. Mulligan filed a motion for sanctions pursuant to Federal Rule of Civil Procedure 11. (Docs. 24, 28.) Mr. Grundstein did not respond to the motion for sanctions, instead filing with the court, on June 18, an Offer of Settlement Agreement (Doc. 25) which

Mr. Mulligan then moved to strike on June 20, 2018 (Doc. 26). Mr. Grundstein filed a response to the motion to strike on July 9. (Doc. 27.)

The dismissal of Mr. Grundstein's claim for lack of subject-matter jurisdiction does not deprive the court of jurisdiction over Mulligan's motion for sanctions under Federal Rule of Civil Procedure 11. *See Willy v. Coastal Corp.*, 503 U.S. 131 (1992); *Chemiakin v. Yefimov,* 932 F.2d 124, 129 (1st Cir. 1991). But a decision on the sanctions issue will require a further hearing. Counsel for Mr. Mulligan shall advise the court within 10 days whether the motion for sanctions is withdrawn in light of the court's ruling or whether Mr. Mulligan wishes to pursue the motion. If Mr. Mulligan continues to seek sanctions, the court will schedule a hearing.

The motion to strike is DENIED AS MOOT in light of the court's ruling.

Conclusion

The Vermont Attorney General's Motion to Dismiss (Doc. 11) and Randall Mulligan's Motion to Dismiss (Doc. 13) are GRANTED. Plaintiffs First Amended Verified Complaint (Doc. 3) is DISMISSED without prejudice.

The Second Circuit has cautioned that the court "should

not dismiss a pro se complaint 'without granting leave to amend at least once,' unless amendment would be futile." *Garcia v. Superintendent of Great Meadow Corr. Facility,* 841 F.3d 581, 583 (2d Cir. 2016) (per curiam) (quoting *Cuoco v. Moritsugu,* 222 F.3d 99, 112 (2d Cir. 2000)). Here, amendment would be futile; better pleading could not cure the substantive defect of this court's lack of subject-matter jurisdiction over Mr. Grundstein's claims.

In light of the dismissal of the FAC for lack of subject-matter jurisdiction, Mr. Mulligan's Motion to Strike (Doc. 26) is DENIED AS MOOT.

The court reserves ruling on Mr. Mulligan's Motion for Sanctions (Doc. 24). Counsel for Mulligan shall advise the court within 10 days whether the motion for sanctions is withdrawn in light of the court's ruling or whether Mulligan wishes to pursue the motion.

SO ORDERED.

Dated at Rutland, in the District of Vermont, this 7 day of September, 2018.

Geoffrey W. Crawford, Chief Judge
United States District Court

A Cricken Hill Road, Hyde Park, VT 05655,
Defendants-Appellees

FOR PLAINTIFF-APPELLANT:	ROBERT GRUNDSTEIN pro se, Morrisville, VT.
FOR DEFENDANTS-APPELEES T. J. DONOVAN, LAMOILLE SUPERIOR COURT, AND LAMOILLE SUPERIOR CLERK OF COURT:	DAVID A. BOYD Assistant Attorney General, *for* T. J. Donovan, Jr. Attorney General of Vermont, Montpelier, VT.
FOR DEFENDANT-APPELLEE RANDALL MULLIGAN	SHANNON A. BERTRAND Facey Goss & McPhee P.C., Rutland, VT.

Appeal from a judgment of the United States District Court for the District of Vermont (Crawford, C. J.).

UPON DUE CONSIDERATION IT IS HERESY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Appellant Robert Grundstein, proceeding pro se, appeals the district court's judgment dismissing his, amended complaint for tack of subject-matter jurisdiction Grundstein has engaged in extensive litigation in state and federal court in connection with real property that he and his siblings inherited. In this action, He sued Vermont's attorney general, the Lamoille Superior Court and its clerk of court, three state court orders, and the present owner of the property under 42 U.S.C. § 1983 and state law. He asserts that the state court acted without jurisdiction and in violation of his constitutional rights when it ordered partition of the property by sale and awarded attorney's fees and damages to his siblings. He also challenges the constitutionality of certain state rules and procedures and seeks to set aside the present owner's deed. We assume the parties familiarity with the underlying facts, the_procedural history of the case, and the issues on appeal.

We review *de novo* the district court's dismissal of the amended complaint for lack of subject-matter jurisdiction

pursuant to the *Rooker-Feldman* doctrine. *Hoblock v. Albany Cnty. Bd. of Elections*, 422 F.3d 77, 83 (2d Cir. 2005). Under the *Rooker-Feldman* doctrine, lower federal courts lack jurisdiction over "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district Court review and rejection of those Judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).[1] The doctrine applies-where the federal court plaintiff: (1) lost in state court, (2) complains of injuries caused by a state-court judgment, (3) invites the district court to review and reject the state-court judgment, and (4) commenced the district court proceedings after the state-court judgment was rendered. *Vossbrinck v. Accredited Home Lenders, Inc.*, 773 F.3d 423, 426 (2d Cir. 2014).

The district court properly concluded that the *Rooker-Feldman* doctrine bars Grundstein's claims to the extent that he challenges the result of state court orders conferring title to the disputed property to his siblings, ordering partition of the property by sale, and awarding his siblings attorney's fees and other damages, as welt as other adverse orders entered by an allegedly biased Vermont Superior Court judge and decisions made against him by the Vermont Supreme Court pursuant to its expedited appellate procedure. Each of these orders was adverse to Grundstein, and each resulting judgment was entered prior to the commencement of this case in August 2017. *See Grundstein v. Levin*, No. 2016-242, 2017 W L 571272, at * 1 (Vt. Feb. 1, 2017) (unpublished) (summarizing state-court litigation). Grundstein also complains of injuries caused by the state court judgments: the alleged injuries include Grundstein's loss of title to the disputed property, the requirement that he pay attorney's fees and damages to his siblings, and the state court's violation of Grundstein constitutional rights. The amended complaint plainly invited the district court to review and reject state court judgments by requesting that the court (1) find that the orders were entered without jurisdiction, in contravention of state law, or in

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1 Unless otherwise indicated, in quoting cases, we omit all internal citations, quotation marks, footnotes, and alterations.

violation of his constitutional rights, and (2) provide relief by striking the orders, enjoining their enforcement, or unwinding the subsequent transfer of the property. *Cf Vossbrinck,* 713 F.3d at 427 (finding it "evident from the relief [plaintiff] request[ed]"-which was title and tender of property and a declaration that a state judgment was void—that the injury complained of was a state foreclosure judgment). Grundstein's challenges to this finding are without merit. Contrary to his argument, *Rooker-Feldman* can reach issues that were not raised before or decided by the state court. *See Hoblock*, 422 F.3d at 86 ("[P]resenting in federal court a legal theory not raised in state court . . . cannot insulate a federal plaintiff's suit from *Rooker-Feldman* if the federal suit nonetheless complains of injury from a state-court judgment and seeks to have that state-court judgment reversed."). Nor have courts recognized general exceptions to the *Rooker-Feldman* doctrine for federal suits asserting that the state court acted without jurisdiction or in violation of the requirements o f due process. *See, e.g., Doe v. Mann*, 415 F.3d 1038, 1042 n.6 (9th Cir. 2005) ("*Rooker-Feldman* applies where the plaintiff in federal court claims that the state court did not have jurisdiction to render a judgment."); D.C. *Ct. of Appeals v. Feldman*, 460 U.S. 462, 486 (J 983) (district courts lack jurisdiction "over challenges to state court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional" because, in that event, review is appropriate only in the Supreme Court). There is likewise no general exception to the doctrine when it is alleged that the state court judgment was procured by fraud. *See Vossbrinck,* 773 F.3d at 427 (claim that foreclosure judgment was obtained by fraud was barred by *Rooker-Feldman* because it "would require the federal court to review the state proceedings and determine that the foreclosure judgment was issued in error").

To the extent that Grundstein raises general challenges to the constitutionality of state court rules and procedures that are not barred by the *Rooker-Feldman* doctrine in Counts 4 and 8 of his amended complaint, we affirm the district court's dismissal of these claims because Grundstein failed to estab-

lish standing. *See Leon v. Murphy*, 988 F.2d 303, 308 (2d Cir. 1993) (noting that this Court may affirm a judgment on any ground "for which there is a record sufficient to permit conclusions of law"). In order to establish standing, Grundstein had to plead that he suffered an injury that is "concrete and particularized" and "actual or imminent" that was "fairly traceable" to the challenged rules and procedures. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Grundstein did not allege that he is involved in any ongoing state litigation in Vermont or otherwise plead any facts from which we can infer that he will be injured by the prospective application of Vermont Rule of Civil Procedure 8 or the Vermont Supreme Court's expedited appellate procedure. The district court therefore properly dismissed Grundstein's amended complaint in remaining part. *See id.*

We have considered all of Grundstein's remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgement of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

19-2998
Grundstein v. Lamoille Superior Docket Entries/Orders

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 11th day of September, two thousand twenty.

PRESENT:

JOHN M. WALKER, JR.,
ROBERT A. KATZMANN,
RAYMOND J. LOHIER, JR.,
Circuit Judges.

Robert Grundstein,

Plaintiff-Appellant,

v. 19-2998

Lamoille Superior Docket Entries/Orders, P.O. Box 570, 154 Main Street, Hyde Park, VT 05655, dated 1-24-2012 and 1-8-2013 in Lecv 148-8-05, Lamoille Superior Docket Entry/Order, P.O. Box 570, 154 Main Street, Hyde Park, VT 05655, dated 6-15-16 (Appellate No. 2016-242) in Lecv 87-4-10, Lamoille Superior Clerk of Court, P.O. Box 570, 154 Main Street, Hyde Park, VT 05655, as Docket Administrator (Counts I through VII), Lamoille Superior Court, P.O. Box 570, 154 Main Street, Hyde Park, VT 05655, T.J. Donovan, 109 State Street, Montpelier, VT 05609-1001, State of Vermont / Attorney General, Randall Mulligan, 591

A Cricken Hill Road, Hyde Park, VT 05655,

Defendants-Appellees.

FOR PLAINTIFF-APPELLANT:	ROBERT GRUNDSTEIN pro se, Morrisville, VT.
FOR DEFENDANTS-APPELLEES T.J. DONOVAN, LAMOILLE SUPERIOR COURT, AND LAMOILLE SUPERIOR CLERK OF COURT:	DAVID A. BOYD Assistant Attorney General, *for* T.J. Donovan, Jr., Attorney General of Vermont, Montpelier, VT.
FOR DEFENDANT-APPELLEE RANDALL MULLIGAN:	SHANNON A. BERTRAND Facey Goss & McPhee P.C., Rutland, VT.

Appeal from a judgment of the United States District Court for the District of Vermont (Crawford, *C.J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Appellant Robert Grundstein, proceeding pro se, appeals the district court's judgment dismissing his amended complaint for lack of subject-matter jurisdiction. Grundstein has engaged in extensive litigation in state and federal court in connection with real property that he and his siblings inherited. In this action, he sued Vermont's attorney general, the Lamoille Superior Court and its clerk of court, three state court orders, and the present owner of the property under 42 U.S.C. § 1983 and state law. He asserts that the state court acted without jurisdiction and in violation of his constitutional rights when it ordered partition of the property by sale and awarded attorney's fees and damages to his siblings. He also challenges the constitutionality of certain state rules and procedures and seeks to set aside the present owner's deed. We assume the

parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

We review *de novo* the district court's dismissal of the amended complaint for lack of subject-matter jurisdiction pursuant to the *Rooker-Feldman* doctrine. *Hoblock v. Albany Cnty. Bd. of Elections*, 422 F.3d 77, 83 (2d Cir. 2005). Under the *Rooker-Feldman* doctrine, lower federal courts lack jurisdiction over "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).[1] The doctrine applies where the federal court plaintiff: (1) lost in state court, (2) complains of injuries caused by a state-court judgment, (3) invites the district court to review and reject the state-court judgment, and (4) commenced the district court proceedings after the state-court judgment was rendered. *Vossbrinck v. Accredited Home Lenders, Inc.*, 773 F.3d 423, 426 (2d Cir. 2014).

The district court properly concluded that the *Rooker-Feldman* doctrine bars Grundstein's claims to the extent that he challenges the result of state court orders conferring title to the disputed property to his siblings, ordering partition of the property by sale, and awarding his siblings attorney's fees and other damages, as well as other adverse orders entered by an allegedly biased Vermont Superior Court judge and decisions made against him by the Vermont Supreme Court pursuant to its expedited appellate procedure. Each of these orders was adverse to Grundstein,

[1] Unless otherwise indicated, in quoting cases, we omit all internal citations, quotation marks, footnotes, and alterations.

and each resulting judgment was entered prior to the commencement of this case in August 2017. *See Grundstein v. Levin*, No. 2016-242, 2017 WL 571272, at *1 (Vt. Feb. 1, 2017) (unpublished) (summarizing state-court litigation). Grundstein also complains of injuries caused by the state-court judgments: the alleged injuries include Grundstein's loss of title to the disputed property, the requirement that he pay attorney's fees and damages to his siblings, and the state court's violation of Grundstein's constitutional rights. The amended complaint plainly invited the district court to review and reject state court judgments by requesting that the court (1) find that the orders were entered without jurisdiction, in contravention of state law, or in violation of his constitutional rights, and (2) provide relief by striking the orders, enjoining their enforcement, or unwinding the subsequent transfer of the property. *Cf. Vossbrinck*, 773 F.3d at 427 (finding it "evident from the relief [plaintiff] request[ed]"—which was title and tender of property and a declaration that a state judgment was void—that the injury complained of was a state foreclosure judgment).

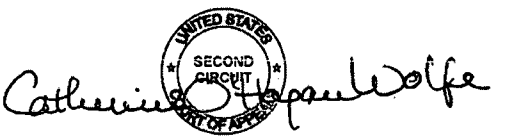
Grundstein's challenges to this finding are without merit. Contrary to his argument, *Rooker-Feldman* can reach issues that were not raised before or decided by the state court. *See Hoblock*, 422 F.3d at 86 ("[P]resenting in federal court a legal theory not raised in state court . . . cannot insulate a federal plaintiff's suit from *Rooker-Feldman* if the federal suit nonetheless complains of injury from a state-court judgment and seeks to have that state-court judgment reversed."). Nor have courts recognized general exceptions to the *Rooker-Feldman* doctrine for federal suits asserting that the state court acted without jurisdiction or in violation of the requirements of due process. *See, e.g., Doe v. Mann*, 415 F.3d 1038, 1042 n.6 (9th Cir. 2005) ("*Rooker-Feldman* applies where the plaintiff in federal court claims that the state court did not

have jurisdiction to render a judgment."); *D.C. Ct. of Appeals v. Feldman,* 460 U.S. 462, 486 (1983) (district courts lack jurisdiction "over challenges to state court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional" because, in that event, review is appropriate only in the Supreme Court). There is likewise no general exception to the doctrine when it is alleged that the state court judgment was procured by fraud. *See Vossbrinck*, 773 F.3d at 427 (claim that foreclosure judgment was obtained by fraud was barred by *Rooker-Feldman* because it "would require the federal court to review the state proceedings and determine that the foreclosure judgment was issued in error").

To the extent that Grundstein raises general challenges to the constitutionality of state-court rules and procedures that are not barred by the *Rooker-Feldman* doctrine in Counts 4 and 8 of his amended complaint, we affirm the district court's dismissal of these claims because Grundstein failed to establish standing. *See Leon v. Murphy*, 988 F.2d 303, 308 (2d Cir. 1993) (noting that this Court may affirm a judgment on any ground "for which there is a record sufficient to permit conclusions of law"). In order to establish standing, Grundstein had to plead that he suffered an injury that is "concrete and particularized" and "actual or imminent" that was "fairly traceable" to the challenged rules and procedures. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Grundstein did not allege that he is involved in any ongoing state litigation in Vermont or otherwise plead any facts from which we can infer that he will be injured by the prospective application of Vermont Rule of Civil Procedure 8 or the Vermont Supreme Court's expedited appellate procedure. The district court therefore properly dismissed Grundstein's amended complaint in remaining part. *See id.*

We have considered all of Grundstein's remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



UNITED STATES DISTRICT COURT

for the
District of Vermont

Robert Grundstein

Plaintiff(s)

v.

Lamoille Superior Docket Entries/Orders, Lamoille Superior Docket Entry/Order, Lamoille Superior Clerk of Court, Lamoille Superior Court, T.J. Donovan, Randall Mulligan

Defendant(s)

Civil Action No. 5:17-cv-151

JUDGMENT IN A CIVIL ACTION

☐ **Jury Verdict.**

☑ **Decision by Court.**

IT IS ORDERED AND ADJUDGED that pursuant to the court's Order (Document No. 37) filed September 7, 2018, defendant T. J. Donovan's Motion to Dismiss (Document No. 11) and defendant Randall Mulligan's Motion to Dismiss Presenting Defenses of Lack of Service of Process, Lack of Jurisdiction and Failure to State a Claim Under Rule 12(b) (Document No. 13) are GRANTED. Plaintiff's First Amended Verified Complaint (Document No. 3) is DISMISSED WITHOUT PREJUDICE.

Additionally, pursuant to the court's Opinion and Order (Document No. 83) filed July 18, 2019, defendant Randall Mulligan's Motion for Sanctions (Document No. 24) is DENIED.

Date: August 29, 2019

JEFFREY S. EATON
CLERK OF COURT

JUDGMENT ENTERED ON DOCKET
DATE ENTERED: 8/29/2019

/s/ Elizabeth S. Britt
Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

ROBERT GRUNDSTEIN, Plaintiff, v. LAMOILLE SUPERIOR DOCKET ENTRIES/ORDERS; LAMOILLE SUPERIOR DOCKET ENTRY/ORDER; LAMOILLE SUPERIOR CLERK OF COURT; LAMOILLE SUPERIOR COURT; T.J. DONOVAN; RANDALL MULLIGAN, Defendants.	)	Case No. 5:17-cv-151

OPINION AND ORDER
(Docs. 24, 41, 78, 80)

Plaintiff Robert Grundstein commenced this action in August 2017. A former attorney, he represents himself. This case is one in a series of state and federal actions filed by Mr. Grundstein about ownership of a family camp on Lake Eden in Vermont. Mr. Grundstein lost his interest in the camp in state court litigation. He has long complained that the rulings of the Vermont state courts were erroneous and unconstitutional. *See Grundstein v. Levin*, No. 2016-242, 2017 WL 571272 (Vt. 2017)(fourth appeal to the Vermont Supreme Court).

Plaintiff's claims in this case concern four orders entered by the Vermont Superior Court, Lamoille Unit. He alleged that these orders violated his due process rights as well as provisions of state law. (Doc. 1).

In October 2017 Plaintiff filed a First Amended Complaint ("FAC") adding a state-law claim against Defendant Randall Mulligan to his existing claims against the Vermont judiciary.

On May 9, 2018, Defendant Mulligan moved for sanctions under Federal Rule of Civil Procedure 11. (Doc. 24.)

Ruling on multiple motions to dismiss, the court dismissed the FAC in its entirety n September 7, 2018. (Doc. 37). Plaintiff filed a motion to set aside the judgment under Federal Rule of Civil Procedure 60(b). (Doc. 41.)

On April 1 and June 25, 2019, the court held hearings on the motion for sanctions. Plaintiff then filed motions to correct the record and to amend his complaint. (Docs. 78, 80.) For the reasons discussed below, the motions are DENIED with the exception of the motion to correct the record.

Procedural History

For the factual background of the case, please see the court's September 7, 2018 Order dismissing Plaintiff's FAC. (Doc. 37.)

As relevant here, Plaintiff brought Defendant Mulligan into this action in October 2017, when he amended his complaint to include a claim to set aside the deed, to quiet title, and for declaratory relief. Plaintiff alleged that although the property could not be sold without his permission and signatures, it was transferred to Defendant Mulligan on June 5, 2017. (Doc. 3 ¶¶ 89-102.) Defendant Mulligan was served on March 27, 2018, and his attorneys entered their notice of appearance together with a motion to dismiss the complaint on April 12, 2018. The motion notified the court that Defendant Mulligan intended to serve Plaintiff with a motion for sanctions under Rule 11 simultaneously with the motion to dismiss. (Doc. 13-1 at 11 n.3.) On May 1, 2018, Plaintiff filed a preemptive response to Defendant Mulligan's not-yet-filed motion for sanctions. (Doc. 21.) On May 9, 2018, Defendant Mulligan filed the motion for sanctions with the court.

In ruling on the motions to dismiss, the court held it lacked subject-matter jurisdiction to review the decisions rendered against Mr. Grundstein in the state courts under the *Rooker-Feldman* doctrine (Doc. 37 at 9) and, because it lacked federal question jurisdiction,

supplemental jurisdiction over the state-law claim against Mr. Mulligan regarding the property was never present (*id.* at 12). With regard to the motion for sanctions, the court allowed Defendant Mulligan ten days within which to notify the court if he intended to pursue the motion in light of the dismissal of the claim against him. The court noted a further hearing would be required on the motion for sanctions.

Following Defendant Mulligan's September 14, 2018 response, a hearing was initially scheduled for October 3, 2018. (*See* Docs. 38-39.) On September 20, Plaintiff filed a motion to set aside the judgment under Rule 60(b) and, on September 26, Plaintiff filed a hearing brief. (Docs. 41, 45.) On October 2, Defendant Mulligan filed an emergency motion to continue the hearing as a result of a medical emergency suffered by his attorney. The motion was granted and the hearing, after counsel's recovery, rescheduled. (*See* Docs. 47, 56.)

Plaintiff did not attend the April 1, 2019 hearing on the motion for sanctions. The court heard argument and received evidence from counsel for Defendant Mulligan. Among the evidence presented was testimony by attorney Melissa Thomas of Facey Goss & McPhee, P.C., one of Defendant Mulligan's attorneys, regarding the billing records of the firm with regard to this case as well as by attorney Thomas Aicher of Cleary Shahi & Aicher, P.C., who opined as to the reasonableness and necessity of the hourly rate and amount of attorneys' fees. The court admitted Exhibit E, the billing records of Defendant Mulligan's attorneys from October 2017 through January 2019. On April 2, the court issued an order allowing Plaintiff two weeks to submit a written response to the exhibit. (Doc. 63.)

On April 12, 2019, Plaintiff filed a motion to reconvene the hearing. (Docs. 65.) On April 13 and 15, Plaintiff filed responses to evidence introduced at the first sanctions hearing. (Docs. 66-68.) On May 31, the court granted the motion to reconvene the hearing. (Doc. 72.) The court held a second hearing on Defendant Mulligan's motion for sanctions on June 25, 2019.

The court again heard argument from the parties and received evidence from counsel for Defendant Mulligan. Among the evidence presented was testimony by Thomas, Aicher, and Mr. Grundstein. The court took the motion under advisement.

On the day of the reopened hearing, Plaintiff filed a motion to correct the record with respect (1) to a representation made at the hearing regarding a prior state court action and (2) "confusion with safe harbor compliance created by simultaneous actions." (Doc. 78 at 1, 3.) Following the reopened hearing, Plaintiff filed a proposed order regarding the sanctions motion (Doc. 79), a motion to amend his complaint (Doc. 80), and a proposed order regarding his Rule 60(b) motion (Doc. 82). Defendant Mulligan opposes the motion to amend. (Doc. 81.)

Analysis

I. Motion for Sanctions (Doc. 24)

A. Requirements of Federal Rule of Civil Procedure 11

Rule 11 requires the "attorney or unrepresented party" filing litigation documents to certify that the documents:

> (1) [are] not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
> (2) the claims defenses, and other legal contentions are warranted by exiting law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; [and]
> (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

Fed. R. Civ. P. 11(b)(1)-(3). Under Rule 11(c), a motion for sanctions must be served but may not be filed "if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service." *Id.* 11(c)(2). If, on motion and after notice and a reasonable opportunity to be heard, the court determines that Rule 11(b) has been violated, "the court may impose an appropriate sanction," such as "an order directing payment to the

movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation." *Id.* 11(c)(1), (4). A district court's determination of sanctions under Rule 11 is reviewed for abuse of discretion. *Kim v. Kimm*, 884 F.3d 98, 106 (2d Cir. 2018).

"[T]he standard for triggering sanctions under Rule 11 is objective unreasonableness." *Star Mark Mgmt., Inc. v. Koon Chun Hing Kee Soy & Sauce Factory, Ltd.*, 682 F.3d 170, 178 (2d Cir. 2012) (internal quotation marks omitted). With respect to legal contentions, the "operative question is whether the argument is frivolous, i.e., the legal position has no chance of success, and there is no reasonable argument to extend, modify or reverse the law as it stands." *Fishoff v. Coty Inc.*, 634 F.3d 647, 654 (2d Cir. 2011) (internal quotation marks omitted). The imposition of Rule 11 sanctions "should be reserved for extreme cases, and 'all doubts should be resolved in favor of the signing'" party. *Sorenson v. Wolfson*, 170 F. Supp. 3d 622, 626 (S.D.N.Y. 2016) (quoting *K.M.B. Warehouse Distribs., Inc. v. Walker Mfg. Co.*, 61 F.3d 123, 131 (2d Cir. 1995)). Rule 11 applies both to unrepresented and self-represented litigants. *Maduakolam v. Columbia Univ.*, 866 F.2d 53, 56 (2d Cir. 1989).

Under its inherent powers, a district court has the authority to award attorney's fees to the prevailing party when the losing party "has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *F.D. Rich Co. v. United States ex rel. Indus. Lumber Co.*, 417 U.S. 116, 129 (1974); *see also Oliveri v. Thompson*, 803 F.2d 1265, 1272 (2d Cir. 1986).

B. Compliance with Rule 11(c)(2)

As an initial matter, the court will not consider Defendant Mulligan's motion for sanctions if Defendant did not comply with Rule 11(c)(2), which requires the motion be served under Rule 5 but not be filed for at least 21 days. Plaintiff asserts Defendant did not follow the requirements of the rule because he was "served the Federal Motion the same day it was filed in Federal Court." (Doc. 21 at 3.) Plaintiff makes this assertion in a filing titled "Response to

Mulligan Civ. Rule 11 Motion" that was filed on May 1, 2018. Defendant Mulligan's motion for sanctions, however, was not filed with the court until May 9, 2018. (*See* Doc. 24.)

Defendant Mulligan's attorney, Rodney McPhee, submitted an affidavit with the motion for sanctions in which he detailed his compliance with Rule 11(c)(2). (*See* Doc. 24-4.) The motion for sanctions was served on Plaintiff on April 12, 2018. (Doc. 24-4 at 3.) On May 9, more than 21 days after service of the motion on Plaintiff, Defendant Mulligan filed the motion for sanctions with the court as Plaintiff had not withdrawn his claim against Defendant Mulligan.

On June 25, 2019, the day of the second hearing on the motion for sanctions, Plaintiff filed a motion to correct the record with a section titled "Confusion with safe harbor compliance created by simultaneous actions." (Doc. 78 at 3.) He stated: "Since there were two actions on the same facts and related causes of action, it was possible to become confused with respect to what Civ. Rule 11 'Safe Harbor' documents were served with respect to which actions." *Id.*

Plaintiff's motion to correct the record is GRANTED. The motion disposes of his claim that Defendant Mulligan failed to comply with Rule 11(c)(2). The court proceeds to consider the merits of the motion for sanctions.

C. Merits of Rule 11 Motion

Defendant Mulligan asserts sanctions against Plaintiff are necessary in this case because Plaintiff continues to seek review of final state court proceedings in federal court notwithstanding the failure of his first federal case for lack of subject matter jurisdiction. Defendant Mulligan asserts Plaintiff's "allegations concerning Mulligan seem related to his ownership interest in the property he purchased from Grundstein's siblings, but Grundstein does not actually allege facts that would indicate Mulligan did anything violating or requiring the extension or reversal of a Federal law." (Doc. 24 at 4-5.) Defendant Mulligan seeks reasonable expenses and attorney's fees incurred in presenting the motion for sanctions and in defense of

Plaintiff's complaint. At the April 1 motion hearing, Defendant Mulligan clarified he did not seek attorney's fees for the time to prepare for and appear at the hearing and was requesting $10,000 in attorney's fees incurred in defending the federal action, a reduction from the $13,000 (or more) actually expended.

Though Plaintiff has filed multiple state and federal prior actions concerning the Lake Eden property, the FAC contained Plaintiff's first claim against Defendant Mulligan in this court. The claim was dismissed at an early stage under F.R.Civ.P. 12(b) for lack of supplemental jurisdiction over the state-law claim. Accordingly, the court did not reach the merits of the claim. *See Carter v. HealthPort Tech., LLC*, 822 F.3d 47, 54-55 (2d Cir. 2016) (noting that where a court lacks jurisdiction, it "lacks the power to adjudicate the merits of the case").

The court denies the motion for sanctions because this litigation concluded at an early stage before the court reached the merits. The case was dismissed because the constitutional claims sought to review the decisions of the Vermont state courts. The claim brought against Defendant Mulligan was brought under state law only and was dismissed because there was no longer a basis for federal question jurisdiction and the court declined to extend supplemental jurisdiction to the state law claims. The court harbors no illusions about the repetitive, baseless qualities of Plaintiff's lawsuits against people involved in the dispute over the family camp and, in this case, even against the very docket entries in his state court case. But having dismissed the FAC on jurisdictional grounds, the court is cautious about imposing monetary sanctions in a case in which it has not considered the merits. *See Sorenson*, 170 F. Supp. 3d at 626 ("Courts should be cautious in granting Rule 11 sanctions.)

Defendant Mulligan's Rule 11 motion is DENIED.

D. Filing Injunction

Defendant Mulligan also requests the court issue an order requiring Mr. Grundstein to "apply to the Court for leave to file any further pleadings with this Court in matters concerning Defendant Mulligan or the Lake Eden property," and further requiring leave be denied "unless [he] has retained a licensed attorney admitted to practice before this Court to represent him." (Doc. 28 at 2; Doc. 62 (Proposed Order) at 2.)

District courts "have the power and the obligation to protect the public and the efficient administration of justice from individuals who have a history of litigation entailing vexation, harassment and needless expense to [other parties] and an unnecessary burden on the courts and their supporting personnel." *Lau v. Meddaugh*, 229 F.3d 121, 123 (2d Cir. 2000) (internal quotation marks omitted); *Safir v. U.S. Lines, Inc.*, 792 F.2d 19, 23 (2d Cir. 1986) ("A district court not only may but should protect its ability to carry out its constitutional functions against the threat of onerous, multiplicitous, and baseless litigation") (internal quotation marks omitted). Thus, the court may prohibit an individual from filing new actions in the venue when he or she "abuse[s] the process of the Courts to harass and annoy others with meritless, frivolous, vexatious or repetitive [filings.]" *In re Hartford Textile Corp.*, 659 F.2d 299, 305 (2d Cir. 1981). However, the court "may not impose a filing injunction on a litigant *sua sponte* without providing [that] litigant with notice and an opportunity to be heard." *Moates v. Barkley*, 147 F.3d 207, 208 (2d Cir. 1998).

In this case, Defendant Mulligan's request for a filing injunction is premature and his request to require a licensed attorney represent Plaintiff reaches too far. The Constitution provides a right of access to the courts. *See Cal. Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972) (stating the "right of access to the courts is . . . one aspect of the right of petition" protected by the Bill of Rights). With regard to a filing injunction, Mr. Grundstein is

hereby warned that future filings or new actions which lack merit for the reasons set out in the rulings in this case will be subject to the potential sanction of a filing injunction.

II. Motion to Modify Order (Doc. 41).

Plaintiff has filed a motion to modify its order of September 7, 2018. The motion repeats the legal arguments plaintiff has already advanced concerning his views about the shortcomings and failures of the Vermont judicial system. It illustrates the reason this court dismissed the FAC as an improper effort to obtain review of state court decision-making. The motion is DENIED.

III. Motion to Amend (Doc. 80).

In ruling on Plaintiff's appeal in *Grundstein v. Levin*, No. 2016-242, 2017 WL 571272, the Vermont Supreme Court reduced an award of attorneys fees to Plaintiff's siblings. Plaintiff filed a motion to amend the FAC to reflect this change. (Doc. 80). The motion to amend is rendered moot by the dismissal of the case.

Conclusion

For the reasons discussed above, Defendant Mulligan's Motion for Sanctions (Doc. 24) is DENIED. Plaintiff Grundstein's Rule 60(b) Motion (Doc. 41) is DENIED. Plaintiff's Motion to Correct Record (Doc. 78) is GRANTED. Plaintiff's Motion to Amend Complaint (Doc. 80) is DENIED AS MOOT.

Dated at Rutland, in the District of Vermont, this 18th day of July, 2019.

Geoffrey W. Crawford, Chief Judge
United States District Court

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

ROBERT GRUNDSTEIN, Plaintiff, v. LAMOILLE SUPERIOR DOCKET ENTRIES/ORDERS; LAMOILLE SUPERIOR DOCKET ENTRY/ORDER; LAMOILLE SUPERIOR CLERK OF COURT; LAMOILLE SUPERIOR COURT; T.J. DONOVAN; RANDALL MULLIGAN, Defendants.	)	Case No. 5:17-cv-151

ORDER ON MOTIONS TO DISMISS, MOTION FOR SANCTIONS AND MOTION TO STRIKE OFFER OF SETTLEMENT AGREEMENT
(Docs. 11, 13, 24, 26)

Plaintiff Robert Grundstein, proceeding pro se, initially brought this action against Lamoille Superior Court Docket Entries and Orders, the Lamoille Superior Court and its Clerk of Court, and Vermont Attorney General T.J. Donovan. (Doc. 1.) The action concerns a property in Lake Eden, Vermont that has been the subject of considerable litigation. (*See id.* at 3–4.) On October 10, 2017, Mr. Grundstein filed a First Amended Complaint adding a claim and naming Randall Mulligan as a defendant. (Doc. 3.) On April 4, 2018, the Vermont Attorney General, Thomas J. Donovan, Jr., moved to dismiss the action in its entirety under Federal Rule of Civil Procedure 12(b)(1) for lack of subject-matter jurisdiction. (Doc. 11.) On April 12, 2018, Defendant Randall Mulligan moved to dismiss the action under Federal Rule of Civil Procedure 12(b)(1), (4), (5), and (6). (Doc. 13.) Mr. Grundstein opposes the motions. (Docs. 14–15, 17, 21–22.)

Following these responses, on May 9, 2018, Mr. Mulligan filed a motion for sanctions under Federal Rule of Civil Procedure 11. (Docs. 24, 28.) Mr. Grundstein did not respond to the motion for sanctions. Instead, he filed an Offer of Settlement Agreement (Doc. 25) which Mr. Mulligan then moved to strike on June 20, 2018 (Doc. 26). Mr. Grundstein filed a response to the motion to strike on July 9. (Doc. 27.) For the reasons discussed below, the motions to dismiss are granted and the motion to strike is denied as moot.

Background[1]

Mr. Grundstein and his siblings inherited a camp on Lake Eden in Vermont. In August 2005, Mr. Grundstein's siblings brought a partition action in Lamoille Superior Court. On August 3, 2007, following a hearing, the trial court assigned the property to Mr. Grundstein subject to conditions. Mr. Grundstein attached the state court's August 3, 2007 Final Judgment to his original complaint in this federal case. It stated in part:

> All right, title and interest in and to the subject real property is hereby assigned and conveyed solely to Defendant Robert H. Grundstein . . . all *subject to the terms and provisions* of the Order of the court stated in separate Findings of Fact, Conclusions of Law, and Order of even date herewith.

(Doc. 1-1 (citing 12 V.S.A. § 5174) (emphasis added).) The salient condition was that he pay his three siblings $25,000 each for their shares by June 1, 2008. If he failed to make the payments, the property would be put up for sale and the proceeds divided among all four owners.

[1] This factual summary is largely derived from the Vermont Supreme Court's opinions in *Levin v. Grundstein*, No. 2011-201, 2013 WL 2631310 (Vt. Apr. 18, 2013) (mem.), and *Grundstein v. Levin*, No. 2016-242, 2017 WL 571272 (Vt. Feb. 1, 2017) (mem.). Those Vermont Supreme Court opinions—like all of the Vermont Supreme Court opinions in Mr. Grundstein's appeals discussed below—were decided by a three-justice panel of the Court under the provisions of V.R.A.P. 33.1 (Summary Procedures on Appeal).

Mr. Grundstein did not make the payments. His siblings found a buyer in the summer of 2008 and planned to close the following October. After Mr. Grundstein refused to vacate the property, his siblings obtained an injunction on September 29, 2008, requiring him to vacate the property and to remove his personal possessions. He appealed the order and the Vermont Supreme Court affirmed, holding that the partition order was proper and that Mr. Grundstein "did not obtain a fee simple interest in the property . . . without first having paid the money required to obtain such an interest." *Levin v. Grundstein*, No. 2008-417, 2009 WL 2427820, at *1 (Vt. Mar. 5, 2009) (mem.).

Mr. Grundstein's continued interference doomed the sale. His siblings sought an order of contempt for violation of the August 2007 judgment order. On June 22, 2009, following a hearing, the trial court granted the contempt motion but allowed Mr. Grundstein to comply with the prior order by June 26, which he again failed to do. On July 6, 2009, the trial court issued a final order of contempt. Mr. Grundstein appealed the order and the Vermont Supreme Court affirmed, holding that his "vague constitutional arguments claiming a deprivation of property without due process have no merit." *Levin v. Grundstein*, No. 2009-254, 2010 WL 1266673, at *1 (Vt. Apr. 1, 2010) (mem.).

In June 2009, Mr. Grundstein's siblings moved for an award of attorney's fees. In February 2011, the trial court held a hearing on several pending motions, including the motion for attorney's fees and a motion to amend the partition judgment. On April 22, 2011, the trial court granted the motion to amend, assigning Mr. Grundstein's siblings title to the property, granting Mr. Grundstein a one-quarter interest in the proceeds of any sale, and granting the siblings' motion for attorney's fees. *See Levin v. Grundstein*, No. 2011-201, 2013 WL 2631310, at *2 (Vt. Apr. 18, 2013) (mem.). The trial court, however, sought more detailed billing

information from the siblings' attorney on the issue of the amount of the fees. Mr. Grundstein appealed the order. The appeal was stayed and the matter remanded to the trial court to rule on post-judgment motions. *See id.*

On January 24, 2012, the trial court denied Mr. Grundstein's motion to reconsider the April 22, 2011 order, denied his motion for access to the property, and granted his request for additional time to file objections to the attorney's billing statements. On January 8, 2013, following an evidentiary hearing, the trial court entered an order awarding attorney's fees of $10,622.11. The court ruled that Mr. Grundstein's intentional and repeated efforts to delay and frustrate his siblings' established right to sell the property, in violation of a court order, entitled them to attorney's fees under the limited exception to the "American Rule" for wrongful conduct. Mr. Grundstein appealed the order and the Vermont Supreme Court affirmed, finding no merit in his claims that the fee award was untimely, was unauthorized by any statutory or contractual provision, failed to comply with Rule 11, was legally and factually unsupported, and was based on fraudulent billing records. *Levin*, 2013 WL 2631310, at *3.

Mr. Grundstein then initiated an action in Lamoille Superior Court against his sister for conversion of the personal property he left at the camp. She counterclaimed for abuse of process and malicious prosecution, seeking to recover for the financial loss incurred from the failure of the planned sale of the camp and other damages. This new action was consolidated with the ongoing partition proceeding. In July 2015, the trial court held an evidentiary hearing on the claims.

The trial court issued a written ruling on July 15, 2016. The court noted that Mr. Grundstein had waived his conversion claim at the hearing and had only contested whether he owed any fees for storage of his personal property removed by his siblings. With regard to

the counterclaims, the court rejected the abuse-of-process claim but upheld the malicious prosecution claim. The court awarded damages of $84,218 for the lost sale of the camp, subsequent property repairs and maintenance, property taxes paid, and moving and storage fees for Mr. Grundstein's personal property, as well as the previously awarded attorney's fees. Mr. Grundstein appealed the order.

The Vermont Supreme Court rejected Mr. Grundstein's claim that he was not "afforded 'fair notice of the likely severity' of the damage award, in violation [of] V.R.C.P. 8 and his constitutional due process rights." *Id.* at *2. The Court ruled that the elements of his counterclaim were not proven and that there was no basis for recusal of the trial judge. The Court denied Mr. Grundstein's claims that the award of attorney's fees against him was a court "sanction" imposed without due process and that the trial court erred in denying a motion to compel mediation. *Id.* at *2–3. Accordingly, the Vermont Supreme Court affirmed the trial court decision in all respects except that it reduced the damage award to $69,272 because the attorney's fees could not be included as the final judgment in the partition action had already awarded the same relief. *Grundstein v. Levin*, No. 2016-242, 2017 WL 571272, at *3 (Vt. Feb. 1, 2017) (mem.).

In May 2011, Mr. Grundstein filed his first action in federal court regarding the Lake Eden property. *See Grundstein v. Vermont*, No. 1:11-cv-134, 2011 WL 6291955 (D. Vt. Dec. 15, 2011). He sued the State of Vermont and various members of the Vermont judiciary, claiming rulings issued in the state-court proceedings were erroneous and unconstitutional. *Id.* at *1. The court granted defendants' motions to dismiss, holding that it lacked subject-matter jurisdiction under the doctrines of *Rooker-Feldman* and *Younger* abstention. *Id.* at *2–5.

Mr. Grundstein commenced this case on August 7, 2017, and filed a First Amended Complaint ("FAC") on October 10, 2017. Mr. Grundstein alleges the court has federal-question jurisdiction under 28 U.S.C. § 1331 because his federal constitutional rights have been violated. (Doc. 3 at 3.) He also seeks "relief under the Federal Declaratory Relief statute," 28 U.S.C. § 2201. (*Id.*) He notes the FAC is concerned with four state trial court orders: (1) the August 3, 2007 order, "in which all legal interest in a subject property was given to Grundstein, subject to an equitable interest in proceeds to former joint tenants"; (2) the January 24, 2012 order, "which, without jurisdiction or due process, illegally removed the interest created in [the August 3] Order . . . and Grundstein's right to enter and remain on his property"; (3) the January 8, 2013 order, "which, without jurisdiction or due process, awarded a penalty of $10,000 as attorney fees to plaintiffs without Notice, Due Process, compliance with [V.R.C.P.] Rule 11 or authority"; and (4) the June 15, 2016 order, "by which damages of $84,000.00 were awarded without notice of charges, presentment of evidence and opportunity to address charges." (*Id.* at 3–4.)

The FAC added a claim to "set aside deed," quiet title, and for declaratory relief.[2] (Doc. 3 at 14.) Mr. Grundstein alleges that although the property could not be sold without his "permission and signatures," the Lake Eden property was transferred to Defendant Randall Mulligan on June 5, 2017. (*Id.* at 15.) He states the court has subject-matter jurisdiction over the claim for declaratory relief based on supplemental jurisdiction. (*Id.*)

[2] On August 7, 2018, the court granted Mr. Grundstein's August 3 motion to amend his complaint and responses to the defendants' motions to dismiss. (*See* Docs. 30, 31.) The only change to the FAC, which the court continues to consider the operative complaint, is to the title of Count IX. (*See* Doc. 30 at 1.)

Mr. Grundstein seeks various injunctive and declaratory relief including requesting the court order the state court clerks to strike state court orders from the dockets. He also seeks an order from this court declaring the Vermont Supreme Court's Expedited Docket procedure unconstitutional. *See* V.R.A.P. 33.1 (Summary Procedures on Appeal).

Analysis

I. Motions to Dismiss

a. Rule 12(b)(1) Standard

A case is properly dismissed under Federal Rule of Civil Procedure 12(b)(1) "for lack of subject matter jurisdiction if the court 'lacks the statutory or constitutional power to adjudicate it . . . .'" *Cortlandt St. Recovery Corp. v. Hellas Telecomms., S.À.R.L.*, 790 F.3d 411, 417 (2d Cir. 2015) (quoting *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000)). Determining subject-matter jurisdiction is a "threshold inquiry," and should be addressed prior to any consideration of a complaint's substantive merits. *Arar v. Ashcroft*, 532 F.3d 157, 168 (2d Cir. 2008). On a Rule 12(b)(1) motion, the court accepts as true "'all material allegations of the complaint[] and . . . construe[s] the complaint in favor the complaining party.'" *Cortlandt St.*, 790 F.3d at 417 (first brackets in original) (quoting *W.R. Huff Asset Mgmt. Co. v. Deloitte & Touche LLP*, 549 F.3d 100, 106 (2d Cir. 2008)). "In deciding a Rule 12(b)(1) motion, the court may also rely on evidence outside the complaint." *Id.* The plaintiff bears the burden of proof of establishing jurisdiction by a preponderance of the evidence. *Makarova*, 201 F.3d at 113 (2d Cir. 2000); *see also Blockbuster, Inc. v. Galeno*, 472 F.3d 53, 57 (2d Cir. 2006).

b. *Rooker-Feldman* Doctrine

The *Rooker-Feldman* doctrine "established the clear principle that federal district courts lack jurisdiction over suits that are, in substance, appeals from state-court judgments[.]"

Hoblock v. Albany Cty. Bd. of Elections, 422 F.3d 77, 84 (2d Cir. 2005). The doctrine "pertains not to the validity of the suit but to the federal court's subject matter jurisdiction to hear it." *Vossbrinck v. Accredited Home Lenders, Inc.*, 773 F.3d 423, 427 (2d Cir. 2014). Federal courts may not entertain "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). When it is asserted that a prior state court order precludes federal jurisdiction under the *Rooker-Feldman* doctrine, "the Court takes judicial notice of the state court record." *Gadreault v. Grearson*, No. 2:11-cv-63, 2011 WL 4915746, at *1 n.1 (D. Vt. Oct. 14, 2011).

The Second Circuit has identified four requirements for the application of the *Rooker-Feldman* doctrine:

> First, the federal-court plaintiff must have lost in state court. Second, the plaintiff must "complain[] of injuries caused by [a] state-court judgment[.]" Third, the plaintiff must "invit[e] district court review and rejection of [that] judgment[]." Fourth, the state-court judgment must have been "rendered before the district court proceedings commenced"—*i.e.*, *Rooker-Feldman* has no application to federal-court suits proceeding in parallel with ongoing state-court litigation.

Hoblock, 422 F.3d at 85 (citing *Exxon Mobil*, 544 U.S. at 284).

The first and last requirements are procedural. Here, the first is satisfied because Mr. Grundstein "has lost repeatedly in state court." *See Grundstein v. Vermont*, No. 1:11-cv-134, 2011 WL 6291955, at *3 (D. Vt. Dec. 15, 2011). He has appealed multiple times and lost each appeal. The FAC makes it clear that he wishes this court to review four state-court orders in which he was the losing party. The last *Rooker-Feldman* requirement is satisfied because each

of the orders referenced in the FAC was issued as of August 2017, when Grundstein commenced this case in this federal district court.

The second and third requirements are substantive. "[A] federal suit complains of injury from a state-court judgment, even if it appears to complain only of a third party's actions, when the third party's actions are produced by a state-court judgment." *Hoblock*, 422 F.3d at 88. Mr. Grundstein complains of injuries he has suffered from the state-court orders relating to the Lake Eden property and he seeks damages aimed at compensating him for its loss. He also alleges the rulings have violated his constitutional rights. Because granting the relief Mr. Grundstein seeks would require the court, impermissibly, to review and reject the four state-court orders, the court finds his claims satisfy the second and third requirements. *See id.* at 87 (noting that if a plaintiff alleges in federal court that a state court order terminating his constitutional rights was unconstitutional, "he is complaining of an injury caused by the state judgment").

Because all four requirements of the *Rooker-Feldman* doctrine are satisfied, this court lacks subject-matter jurisdiction to review the decisions rendered against Mr. Grundstein in the state courts. "[O]nly the Supreme Court [of the United States] may hear appeals from state-court judgments." *Id.* Accordingly, the court lacks jurisdiction over Counts I, II, III, IV (to the extent it seeks to enjoin the state-court damage award), V, VI, VII[3] and VIII (to the extent it seeks to

[3] Count VII, titled "Judge Bias Spoils Due Process[;] Need Peremptory Right of Recusal," purports to allege that Vermont Judge Pearson was biased and seeks declaratory and injunctive relief against state-court orders, in particular the June 15, 2016 Order. (*See* Doc. 3 at 13.) Mr. Grundstein has litigated his allegations of bias against Judge Pearson, and the Vermont Supreme Court has rejected them. In affirming the June 15 Order, the Supreme Court stated:

> Plaintiff next contends that the trial judge "should have recused himself," arguing that the amount of the award alone "was sufficient" to prove bias, and

enjoin the Supreme Court order) under the *Rooker-Feldman* doctrine. The Attorney General's motion to dismiss (Doc. 11) must be GRANTED as to those counts because this court lacks subject-matter jurisdiction.

c. Res Judicata

Mr. Grundstein's claims would also be barred by res judicata because they are predicated on the same transactions and occurrences that formed the basis of his previous state-court actions. Res judicata, "a rule of fundamental repose," provides that:

> when a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties to the suit and their privies are thereafter bound not only as to every matter which was offered and received . . . but as to any other admissible matter which might have been offered for that purpose.

In re Teltronics Servs., Inc., 762 F.2d 185, 190 (2d Cir. 1985). Accordingly, "[e]ven claims based upon different legal theories are barred [by res judicata] provided they arise from the same transaction or occurrence." *L-Tec Elecs. Corp. v. Cougar Elec. Org., Inc.*, 198 F.3d 85, 88 (2d Cir. 1999).

Here, as discussed above, Mr. Grundstein has extensively litigated issues relating to the Lake Eden camp. The remaining counts of his current Complaint either were or could have been raised in those actions. Count VIII of the FAC alleges the Vermont Supreme Court's procedure for three-justice appeals violates equal protection and seeks an injunction against "orders generated pursuant to defective procedure." (*See* Doc. 3 at 13–14.) To the extent

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> that the trial judge had "a history of personal animus" toward plaintiff as demonstrated by a variety of rulings against him. These allegations are insufficient to demonstrate bias. Plaintiff's related argument that he should have had the "peremptory" right to remove a judge is unsupported, and contravenes the salutary and well settled principle that courts enjoy a "presumption of honesty and integrity" and the burden is on "the moving party to show otherwise."

Grundstein, 2017 WL 571272, at *3 (internal citations omitted).

Mr. Grundstein seeks to challenge the outcome of his Vermont Supreme Court appeal, his claim is barred by *Rooker-Feldman* as discussed above. To the extent he seeks generally to challenge the constitutionality of the Vermont Supreme Court's use of three-justice panels, this claim could have been raised in that appeal and is accordingly barred by res judicata. *L-Tec Elecs. Corp.*, 198 F.3d at 88 ("[C]laims based upon different legal theories are barred [by res judicata] provided they arise from the same transaction or occurrence").[4] The Attorney General's motion to dismiss (Doc. 11) is GRANTED as to the remainder of Count VIII because it is barred by res judicata.

d. Defendant Mulligan's Motion to Dismiss

Defendant Randall Mulligan purchased the Lake Eden property from Mr. Grundstein's siblings in June 2017. (Doc 3 at 15; Doc. 13-1 at 3.) Mr. Mulligan moves to dismiss the claim against him arguing the court lacks subject-matter jurisdiction, improper venue, insufficient process or service of process, and failure to state a claim upon which relief can be granted. (Doc. 13.)

[4] Although the Attorney General focuses on these procedural points, they are hardly the only deficiencies in the claim. The Vermont Supreme Court considered and rejected a similar challenge premised on provisions of Vermont law. *See State v. Mills*, 167 Vt. 365, 371, 706 A.2d 953, 956 (1998) ("[T]here is no constitutional impediment to the summary procedure created by V.R.A.P. 33.1."). And Mr. Grundstein cites no plausible basis for his claim that the Vermont Supreme Court's use of three-justice panels violates the federal Equal Protection Clause or other federal law. He cites no authority aside from referring to statistics of appellants' success rates on appeal before three-justice panels compared to the full five-justice Vermont Supreme Court. *See* Tracy Bach, *To Expediency and Beyond: Vermont's Rocket Docket*, 4 J. App. Prac. & Process 277 (2002). But Professor Bach found nothing unjust about the summary procedures. *See id.* at 288 ("[I]t strikes a reasonable balance among efficacy, cost-effectiveness, and fairness."). Notably, cases before the federal intermediate appellate courts are routinely decided by panels of three judges with no suggestion of constitutional infirmity. *See* 28 U.S.C. § 46(b) (circuit courts may authorize hearing and determination of cases and controversies by separate three-judge panels).

Defendant Mulligan first argues that the court lacks subject-matter jurisdiction because diversity is lacking between himself and Mr. Grundstein, both Vermont residents. Mr. Grundstein, however, has filed suit alleging the court has federal question jurisdiction and invokes supplemental jurisdiction over his state-law claim against Mr. Mulligan. (Doc. 3 at 14-15.)

A "district court 'cannot exercise supplemental jurisdiction unless there is first a proper basis for original federal jurisdiction.'" *Cohen v. Postal Holdings, LLC*, 873 F.3d 394, 399 (2d Cir. 2017) (quoting *Nowak v. Ironworkers Local 6 Pension Fund*, 81 F.3d 1182, 1187 (2d Cir. 1996)). Subject-matter jurisdiction over the state-law claim against Defendant Mulligan is lacking because of the court's dismissal of the alleged federal-question claims. Because the court dismissed all federal claims for lack of subject-matter jurisdiction under Rule 12(b)(1), it is "precluded from exercising supplemental jurisdiction over related state-law claims." *Cohen*, 873 F.3d at 399.

This is not a case like *Catzin v. Thank You & Good Luck Corp.*, No. 17-2497, 2018 WL 3747364 (2d Cir. Aug. 8, 2018). In that case, the district court had federal question jurisdiction in an initial stage of the case, but sua sponte decided not to exercise supplemental jurisdiction one week before trial was to begin. The Second Circuit vacated and remanded the case, concluding that the district court had erred by failing to exercise supplemental jurisdiction under the circumstances. Here, in contrast, all federal question claims were dismissed on the authority of the *Rooker-Feldman* doctrine. This court lacked federal-question jurisdiction from the outset and therefore supplemental jurisdiction over state-law claims was never present.

Further, even if the court had supplemental jurisdiction over his claim, and Mr. Grundstein had timely served Mr. Mulligan according to the court's Order, (*see* Doc. 5), the

court would nonetheless dismiss the claim. Though Mr. Grundstein styles his claim as against Mr. Mulligan, the relief he seeks is to set aside the deed transferring ownership of the Lake Eden camp to Mulligan because—he asserts—he retains all legal interest in the property pursuant to the August 3, 2007 state court order. As discussed above, Mr. Grundstein's interest in the property consists only of a one-quarter interest in the proceeds of any sale.

On April 22, 2011, the state trial court granted his siblings' motion to amend the partition award and assigned Mr. Grundstein's siblings title to the property, leaving Mr. Grundstein only an interest in the proceeds of any sale.[5] The court subsequently denied Mr. Grundstein's motion to reconsider. *See Levin*, 2013 WL 2631310, at *2. The Vermont Supreme Court affirmed the trial court's order in April 2013, holding:

> To the extent that Grundstein asserts the trial court lacked authority to amend the partition judgment, he cites no case, statute, or other authority to support the claim, and we have held that the trial court enjoys broad discretion to amend a judgment in the interests of justice under the catchall provision of Rule 60(b)(6). Grundstein makes no showing, moreover, of how the order vesting title in [his siblings] prejudiced his interests in any respect, inasmuch as it had no impact on the provision requiring an ultimate sale of the property due to his failure to make the required buyout payments.

Id. (internal citations omitted). Accordingly, this claim is barred by the *Rooker-Feldman* doctrine because it clearly invites review and rejection of a state-court judgment. Mr. Grundstein lost in state court and now seeks an end-run around the effect of the state-court judgment rendered before this proceeding commenced. *See Exxon Mobil Corp.*, 544 U.S. at 284. This court lacks subject-matter jurisdiction over Count IX. Defendant Mulligan's motion to dismiss (Doc. 13) is therefore GRANTED.

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[5] As of 2009, the Vermont Supreme Court had held the partition order was proper and Mr. Grundstein "did not obtain a fee simple interest in the property . . . without first having paid the money required to obtain such an interest." *Levin v. Grundstein*, No. 2008-417, 2009 WL 2427820, at *1 (Mar. 5, 2009).

II. Motions for Sanctions and to Strike

On May 9, 2018, Mr. Mulligan filed a motion for sanctions pursuant to Federal Rule of Civil Procedure 11. (Docs. 24, 28.) Mr. Grundstein did not respond to the motion for sanctions, instead filing with the court, on June 18, an Offer of Settlement Agreement (Doc. 25) which Mr. Mulligan then moved to strike on June 20, 2018 (Doc. 26). Mr. Grundstein filed a response to the motion to strike on July 9. (Doc. 27.)

The dismissal of Mr. Grundstein's claim for lack of subject-matter jurisdiction does not deprive the court of jurisdiction over Mulligan's motion for sanctions under Federal Rule of Civil Procedure 11. *See Willy v. Coastal Corp.*, 503 U.S. 131 (1992); *Chemiakin v. Yefimov*, 932 F.2d 124, 129 (1st Cir. 1991). But a decision on the sanctions issue will require a further hearing. Counsel for Mr. Mulligan shall advise the court within 10 days whether the motion for sanctions is withdrawn in light of the court's ruling or whether Mr. Mulligan wishes to pursue the motion. If Mr. Mulligan continues to seek sanctions, the court will schedule a hearing.

The motion to strike is DENIED AS MOOT in light of the court's ruling.

Conclusion

The Vermont Attorney General's Motion to Dismiss (Doc. 11) and Randall Mulligan's Motion to Dismiss (Doc. 13) are GRANTED. Plaintiff's First Amended Verified Complaint (Doc. 3) is DISMISSED without prejudice.

The Second Circuit has cautioned that the court "should not dismiss a pro se complaint 'without granting leave to amend at least once,' unless amendment would be futile." *Garcia v. Superintendent of Great Meadow Corr. Facility*, 841 F.3d 581, 583 (2d Cir. 2016) (per curiam) (quoting *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000)). Here, amendment would be

futile; better pleading could not cure the substantive defect of this court's lack of subject-matter jurisdiction over Mr. Grundstein's claims.

In light of the dismissal of the FAC for lack of subject-matter jurisdiction, Mr. Mulligan's Motion to Strike (Doc. 26) is DENIED AS MOOT.

The court reserves ruling on Mr. Mulligan's Motion for Sanctions (Doc. 24). Counsel for Mulligan shall advise the court within 10 days whether the motion for sanctions is withdrawn in light of the court's ruling or whether Mulligan wishes to pursue the motion.

SO ORDERED.

Dated at Rutland, in the District of Vermont, this 7 day of September, 2018.

Geoffrey W. Crawford, Chief Judge
United States District Court

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

ROBERT GRUNDSTEIN, ESQ., Plaintiff, v. LAMOILLE SUPERIOR COURT DOCKET ENTRIES/ORDERS dated 1/24/12 and 1/8/13 In Lecv 148-8-05, LAMOILLE SUPERIOR COURT DOCKET ENTRIES/ORDERS dated 6/15/16 (Appellate No. 2106-242) in Lecv 87-4-10, LAMOILLE SUPERIOR CLERK OF COURT as Docket Administrator (Counts I Through VII), STATE OF VERMONT/ ATTORNEY GENERAL T.J. DONOVAN, and RANDALL MULLIGAN, Defendants.	)	Civil No. 5:17-cv-151

DEFENDANT'S MOTION FOR SANCTIONS PURSUANT TO F.R.C.P. 11

NOW COMES Defendant, Randall Mulligan, by and through his attorney, Rodney E. McPhee, Esq., of the firm Facey Goss & McPhee, P.C., and hereby moves for sanctions against Plaintiff Robert Grundstein under F.R.C.P. Rule 11. In support of its motion, the Defendant submits the following Memorandum of Law and Affidavit of Rodney E. McPhee, Esq.

Factual Background

This matter arises from over ten years of state court litigation involving plaintiff Robert Grundstein concerning the property Defendant Mulligan ultimately purchased from Grundstein's siblings. Grundstein and his three siblings inherited a family camp in Eden, Vermont. Plaintiff had defended a partition action concerning this property in the Lamoille Division of the Vermont Superior Court. On August 3, 2007, Vermont Superior Court Judge Dennis Pearson ordered the

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& McPHEE P.C.
P.O. BOX 578
RUTLAND, VT
05702-0578
(802) 773-3300

property be wholly assigned to Grundstein on the condition that he pay each of his siblings $25,000 no later than June 1, 2008. If the payments were not made by that date, the property was to be put up for sale. *See* Levin v. Grundstein, Vermont Superior Court Order Granting Partition issued August 3, 2007, Docket No. 148-8-05 Lecv attached as **Exhibit A.** Plaintiff never appealed the order, rendering the partition order a final order—although Plaintiff did appeal a series of post-judgment orders in this and related claims, and lost all of them. *See, e.g.* Grundstein v. Levin, Vermont Superior Court Findings of Fact and Conclusions of Law issued June 15, 2016, Docket No. 87-4-10 Lecv attached as **Exhibit B** ("[T]he partition action itself...was final and absolute; it was never actually appealed by the Plaintiff...although it was described in detail, and effectively 'affirmed' in the several collateral appeals Grundstein took from other post-judgment orders."); Id. at 7.[1]

After Plaintiff failed to pay his siblings to obtain the fee simple interest in the camp, the siblings entered into a purchase and sale contract as authorized by the partition order, however, Plaintiff interfered with the sale by refusing to vacate the property or remove personal belongings. The trial court found that plaintiff's multiple post-partition motions and appeals were baseless; that there was no objectively reasonable basis to believe that they were meritorious; that they were brought by plaintiff "in bad faith and with ill will and actual malice" and "solely out of spite and for the purpose of thwarting his siblings and preventing them from exercising their rights duly granted them by the partition judgment. *See* Grundstein v. Levin, 2017 Vt. Unpub. LEXIS 20, *4, 159 A.3d 650 issued February 9, 2017, attached as **Exhibit C.** The sale fell through because Plaintiff failed to vacate the property. *Id.* More litigation ensued, and the Vermont trial court granted the siblings' motion to amend the partition judgment by assigning them title to the property and granting Plaintiff

[1] Plaintiff Grundstein appealed these findings of fact and conclusions of law; the order of damages was modified but the order was affirmed in all other respects. *See* **Exhibit C.**

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RUTLAND, VT
05702-0578
(802) 773-3300

a one-quarter interest in the proceeds of any sale. *See* **Exhibit B**. The trial court also awarded attorney's fees of over $10,000 to the siblings, finding that Plaintiff's "intentional and repeated efforts to delay and frustrate their established right to sell" the property, in violation of a court order, entitled them to attorney's fees under the limited exception to the "American Rule" for wrongful conduct. *Id.* Plaintiff even filed an action against the State of Vermont, Judge Dennis Pearson, Justice Skoglund, Justice Johnson, Justice Burgess, Justice Dooley, and Chief Justice Reiber in this Court, Case No. 1:11-cv-134-jgm, which was dismissed for lack of subject matter jurisdiction.

Eventually, Plaintiff, through his repeated attempts to question the finality, constitutionality, and/or enforceability of the Vermont Superior Court orders, was found responsible for abuse of process and sanctioned. *See* **Exhibits B** and **C**.

The Vermont Superior Court and Supreme Courts issued orders awarding or affirming sole ownership of the property to Grundstein's siblings. Defendant Randall Mulligan was a bona fide purchaser who purchased the subject property after the orders became final. He is, essentially, an innocent bystander who should not be embroiled in Grundstein's misguided efforts to call the Vermont Superior Court and Supreme Court orders into question.

Memorandum of Law

The Court dismissed Grundstein's complaint in Grundstein I for lack of subject matter jurisdiction, in part because the Court does not have jurisdiction to review final state court proceedings and rulings. *See* Grundstein I, Case No. 1:11-cv-134-jgm. Incredibly, Grundstein now petitions the Court a second time to review final state court proceedings and rulings, naming the actual state court cases identified by docket number as defendants, along with the Lamoille Superior Court, the State of Vermont, and Mulligan himself. *See generally* Plaintiff's First Amended Verified Complaint (Doc. 3).

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P.O. BOX 578
RUTLAND, VT
05702-0578
(802) 773-3300

A pleading "violates Rule 11 either when it has been interposed for any improper purpose, or where, after reasonable inquiry, a competent attorney could not form a reasonable belief that the pleading is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law." Kropelnicki v. Siegel, 290 F.3d 118, 131 (2d Cir. 2002) (internal quotation marks omitted). For example, Rule 11 is violated "where it is patently clear that a claim has absolutely no chance of success under the existing precedents." Eastway Constr. Corp. v. City of New York, 762 F.2d 243, 254 (2d Cir. 1985), *superseded on other grounds by rule*.

The Second Circuit Court of Appeals has warned that relitigating matters that have gone to final judgment, relitigating matters that might have been raised in prior actions, or bringing otherwise frivolous actions can result in personal liability for monetary or other sanctions—even for *pro se* litigants such as Grundstein. *See* Fed. R. Civ. P. 11; Manwani v. Brunelle, No. 95-6080, 1995 U.S. App. LEXIS 39938, 1995 WL 732686 at * 2 (2d Cir. Dec. 8, 1995) (affirming imposition of monetary sanctions on *pro se* litigant for relitigation of previously litigated claims); In re Martin-Trigona, 737 F.2d 1254 (2d Cir. 1984) (discussing federal courts' inherent power to protect their jurisdiction from frivolous, vexatious litigation); Sassower v. Field, 973 F.2d 75, 79-81 (2d Cir. 1992) (affirming imposition of monetary sanctions on F.R.C.P. 11 grounds and under district court's "inherent authority to sanction parties appearing before it for acting in bad faith, vexatiously, wantonly, or for oppressive reasons"), *cert. denied*, 507 U.S. 1043, 123 L. Ed. 2d 497, 113 S. Ct. 1879 (1993).

In this case, Grundstein's allegations concerning Mulligan seem related to his ownership interest in the property he purchased from Grundstein's siblings, but Grundstein does not actually allege facts that would indicate Mulligan did anything violating or requiring the extension or

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P.O. BOX 578
RUTLAND, VT
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(802) 773-3300

reversal of a Federal law. *See generally* Plaintiff's First Amended Verified Complaint (Doc. 3). Instead, this matter is predicated on Grundstein's insistence that the Vermont state courts' rulings should be relitigated in Federal District Court. Id.

Grundstein's claims are without merit pursuant to the doctrine of *res judicata*, which prohibits litigants from relitigating settled matters. *See* Allaire Corp. v. Okumus, 433 F.3d 248, 249-50 (2d Cir. 2006). "New legal theories arising out of the same operative facts will not avoid the application of *res judicata*." Waldman v. Village of Kiryas Joel, 207 F.3d 105, 108 (2d Cir. 2000). Grundstein goes as far as to name the actual court decisions he wants reviewed as defendants in the action he filed with the Court. *See generally* Plaintiff's First Amended Verified Complaint (Doc. 3). The Court should exercise its authority to sanction Grundstein for acting in bad faith, vexatiously, and wantonly attempting to call into question state court judgments that gave rise to Mulligan's legal ability to purchase and (hopefully) peacefully enjoy, his property on Lake Eden.

Through his actions in this and in the Vermont State courts, Grundstein has shown he is not likely to stop his pattern of filing repeatedly to question the state court judgments with respect to this property. *See generally* **Exhibits B and C**. As discussed above, Grundstein filed, and this Court dismissed, a similar action in 2011. Grundstein filed that action in the midst of his campaign in the state courts to undermine his siblings' ability to sell the property Mulligan eventually purchased. Clearly, Grundstein will not stop unless the Court intervenes.

Conclusion

Defendant Mulligan requests that the motion for sanctions be granted in the present case under F.R.C.P. 11. Mulligan could not have purchased the property on Lake Eden unless the question of its ownership had been established and settled—which it was, through the proper channels, after years of litigation in the Vermont state courts. Grundstein therefore filed his

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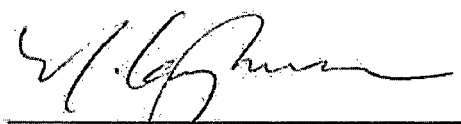
& McPHEE P.C.
P.O. BOX 578
RUTLAND, VT
05702-0578
(802) 773-3300

complaint wantonly, vexatiously and in bad faith, seeking redress for matters that have already been litigated, and should be subject to personal liability for monetary or other sanctions.

WHEREFORE, Pursuant to Rule 11, Defendant respectfully requests that this court sanction Plaintiff by awarding Defendant reasonable expenses and attorney's fees, for the cost incurred in presenting this Motion and defense of Grundstein's complaint. Defendant further requests the Court order Plaintiff to sign a bond to secure such expense, and grant such other and further relief the Court deems just and appropriate.

DATED at Rutland, Vermont this 12th day of April, 2018.

RANDALL MULLIGAN



Rodney E. McPhee, Esq.
Melissa Kate Thomas, Esq.
Facey Goss & McPhee, P.C.
71 Allen Street, Suite 401
PO Box 578
Rutland, Vermont 05701
rmcphee@fgmvt.com
kthomas@fgmvt.com

Court

Federal District Court
Vermont

Robert Grundstein Esq.
18 Griggs Road
Morrisville, VT 05661
802-397-8839/rgrunds@pshift.com

5:17 cv 00151 gwc

Plaintiff

vs

Lamoille Superior Docket Entries/ Orders dated 1-24-2012 and 1-8-2013 in Lecv 148-8-05
Lamoille Superior Docket Entry/ Order dated 6-15-16 (Appellate No. 2016-242) in Lecv 87-4-10
Lamoille Superior Clerk of Court as Docket Administrator (Counts I through VII)
Lamoille Superior Court
P.O. Box 570
154 Main Street
Hyde Park, VT 05655

State of Vermont /Attorney General T.J. Donovan
109 State Street
Montpelier VT 05609-1001

Randall Mulligan
591 A Cricket Hill Road
Hyde Park, VT 05655

First Amended Verified Complaint/Added Count IX

1. Temporary Restraining Order/Injunction under Civ. Rule 65 (Count I Only)
2. Declaratory Relief under 28 USC 22011(All Counts)
3. Injunction under Ex Parte Young 209 US 123 for Violations of 42 USC 1983 (Counts I-V and VII-VIII)
4. Action to Set Aside Deed (Count IX)

Parties to This Action

Plaintiff	Defendant(s)
Robert Grundstein Esq. 18 Griggs Road Morrisville VT 05661 802-888-3334/rgrunds@pshift.com	Lamoille Superior Court Docket Entries Lamoille Superior Docket Administrator Attorney General T.J. Donovan Randall Mulligan

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Statement of Jurisdiction
Federal Questions under 28 USC 1331

Grundstein brings this claim pertinent to an unconstitutionally vague and unpredictable "use, custom and practice" of judge damages and sanctions imposed without Jurisdiction, Due Process Notice and Hearing and unreferenced to any objective standard such as a state statute or court rules. "Inherent Court Powers" do not give a judge the right to levy fines and take away property without Constitutional limitations and protections. **A judgment entered without procedural Due Process is void ab initio, "Griffin v Griffin" 327 U.S. 220.**

This action cites violations of federal constitutional rights guaranteed in the 1st, 5th, 6th 8th and 14th amendments to the Constitution. It also asks relief under the Federal Declaratory Relief statute, 28 USC 2201 and "Ex Parte Young".

Introduction
State Judge Cannot Remove Property Interests without Due Process/Notice and Hearing
State Judge Cannot Remove Property Interest without Jurisdiction
State Court Imposition of Attorney fees is an "Unconstitutional Usage" exercised without Due Process Notice and Hearing
Cannot Charge Attorney Fees without Civ. Rule 11 Compliance and Other Procedural Prerequisites

The general rule, under state and federal law, is that **"judgments are void if the court that rendered it lacked jurisdiction of the subject matter, or of the parties or if it acted in a matter inconsistent with Due Process."**, "Evans v Cote", 2009 VT 326, citing "Wright, Miller and Kane, Federal Practice and Procedure", sec 2862 at 326-29 (2nd Ed. 1995)

This Complaint is concerned with four orders;

1) Order Number 1, dated August 3, 2007, **(EX 1)** in which all legal interest in a subject property was given to Grundstein, subject to an equitable interest in proceeds to former joint tenants (**127 Peninsula Road, Eden Mills, VT**);

2) Order Number 2, dated January 24, 2012, which, without jurisdiction or due process, illegally removed the interest created in Order 1 and Grundstein's right to enter and remain on his property (Count I);

3) Order Number 3, dated January 8, 2013 which, without jurisdiction or due process, awarded a penalty of $10,000.00 as attorney fees (Ten Thousand Dollars) to plaintiffs without Notice, Due Process, compliance with Civ. Rule 11 or authority (Count II);

4) Order Number 4, dated June 15, 2016, by which damages of $84,000.00 were awarded without notice of charges, presentment of evidence and opportunity to address charges;

Count I
Temporary Restraining Order/Preliminary Injunction/ Declaratory Relief/
Illegal Taking of Fee Interest in Real Property without Jurisdiction
Violation of 5th and 14th Amendment Rights to Property
Violation of Due Process Notice and Hearing

1. On August 3, 2007, (EX 1) all legal interest in a subject property (Lake Eden, Vermont) was given to Grundstein, subject to an equitable interest in proceeds to former joint tenants;

2. On January 24, 2012, a state judge, acting under color of law, illegally removed this interest and right to enter and remain on his property;

3. The judge had lost jurisdiction over this case as stated in his August 3, 2007 order;

4. There was no notice or hearing by which Grundstein was notified that his property rights were in jeopardy or that he could have been divested of his property rights;

5. There was no statute, rule, mechanism, or procedure by which Grundstein could have been divested of his real property rights. He was not subject to foreclosure.

6. Grundstein was divested of his right to own enter and possess his property without reference to law, notice, hearing or any other process recognized at law or equity. It is an

illegal taking;

7. This has become an unpermitted practice, usage and custom by J. Pearson at the state level.

THEREFORE, Grundstein asks this court for immediate relief by way of Temporary Restraining Order/Preliminary Injunction and for Declaratory relief in acknowledgement of his right to enter, maintain and enjoy his property and direct the Clerk of Courts to strike the January 24th 2012 order which contradicts this right.

Count II
Declaratory Relief/Injunction
State Cannot Charge Attorney Fees without Due Process Notice and Hearing
State Cannot Makes Determinations in a Case Over Which it has Lost Jurisdiction
Unconstitutional Practice Custom and Usage

8. Grundstein re-states the prior contents of this Complaint;

9. On January 8, 2013, Sua Sponte, without notice or hearing, under color of law, state court judge Pearson levied a penalty of $10,000.00 as attorney fees (Ten Thousand Dollars) against Plaintiff . There was no calculation of how the judge arrived at this figure. It was arbitrary and impossible to anticipate;

10. The judge had lost jurisdiction over this case as stated in his August 3, 2007 order;

11. There was **no notice or hearing** by which Grundstein was told that he could be subject to this penalty. See "Lawson's v Brown's Day Care Center", 2004 VT 6, (Eaton, J.);

12. There was **no Statute, Rule or Procedure** by which Grundstein could have been fined under the conditions at that time.

13. There was **no Civ. Rule 11 motion** filed against him which is **a necessary pre-condition** under Vermont law for attorney fees. Civ. Rule 11 is the mechanism for attorney fees for

actions at law in Vermont. See "Bennington Realty v. Jard Co", 169 Vt. 538, citing "Cameron v. Burke", 153 Vt. 565, confirmed by "Agency of Nat. Resources. v. Lyndonville Bank" 174 Vt. 498;

14. He was **not in contempt**. He **had not violated an injunction** or other restriction;

15. **There was no hearing** at which an independent, third party witness attorney testified with respect to the reasonableness of attorney fees as required in Vermont case "Schreck v Black River Brewing", 643-10-07, Wrcv (J. Eaton)

16. Grundstein was penalized without reference to fact, law, notice, hearing or any other process recognized at law or equity;

17. This is an unpermitted practice, usage and custom of sanctions at the state level. They may not be practiced in this manner

THEREFORE, Grundstein asks this court to enjoin this money charge against Grundstein, declare it void and direct the Clerk of Courts to strike the January 8th 2013 order which publishes this charge.

Count III

Declaratory Relief/Injunction re: Pearson Order of June 15, 2016/Docket Number Lecv 87-4-10 Eighty Four Thousand Dollar Judgment and Award of Attorney Fees without Notice of Charges, without Any Evidence or Compliance with Civ. Rule 11 Is Unconstitutional Violates 5th and 14th Amendment Due Process, 6th Amendment Right to Confront Evidence and 1st Amendment Right of Meaningful Access to Courts

18. Plaintiff restates the prior contents of this complaint;

19. In May of 2010, Grundstein filed Case number 87-4-10 Lecv against Defendant M. Levin in Lamoille County Vermont, Superior court;

20. Grundstein's complaint sought damages for Conversion of personal property;

21. Defendant Counterclaimed for equitable relief. Two of her three claims were struck from the claim; (filing injunction, struck from claim and not litigated), action to import a judgment (struck from the claim and not litigated). A third paragraph was in the Counterclaim (lines 32-35) for money damages which failed to state a claim, recite specific events and dates or amounts;

22. A stipulated agreement to conduct mandatory state Alternative Dispute Resolution was signed by Grundstein and counsel for Defendant Levin. ADR is mandatory under VT Court Rule 16.3 , the Vermont State Arbitration Act; Title 12, Chapter 192 and the Vermont Uniform Mediation Act; Title 12, Chapter 194;

23. Judge Pearson signed the agreement as a stipulated order;

24. Grundstein provided a list of suitable mediators;

25. Counsel for Levin refused to participate in mediation, despite the contract obligation and court order to do so;

26. No discovery had taken place prior to the appointed interval for mediation;

27. Grundstein moved the court to enforce its order for mediation and for contempt against counsel for Levin;

28. J. Pearson refused to enforce his order and mediation did not take place;

29. Grundstein moved to recuse J. Pearson. J. Pearson refused to remove himself;

30. Grundstein moved to change venue. This motion was also refused by J. Pearson;

31. J. Pearson rotated out and J. Tomasi took his place in fall of 2011;

32. Grundstein moved for hearing. Nothing took place;

33. J. Tomasi rotated out and J. Rainville took his place;

34. Grundstein moved for hearing again in early 2013. Nothing was scheduled;

35. After several years, J. Pearson rotated back in;

36. Grundstein moved to have J. Pearson recused. The motion was denied;

37. Trial on the merits was held on July 6, 2015. It lasted approximately one hour and a half;

38. Defendant Levin **did not articulate a cause of action as a basis for a counterclaim**;

39. Defendant Levin **did not testify**;

40. Defendant Levin **did not articulate a Counterclaim damage amount in dollars or any other value;**

41. Defendant Levin **did not call any witnesses or provide any extrinsic or documentary evidence** to prove a cause of action or damages;

42. Defendant Levin did not provide any evidence of any sort;

43. There were **no Civ. Rule 15 motions** by which Defendant Levin could have amended her Answer or establish a counterclaim;

44. **No notice or offer of proof was made by any party or judge by which judicial notice of facts could have been used** as a basis to amend Defendant Levin's Counterclaim (**See Rule of Evidence 201(e)** and "In re A.M." 2015 VT 109 (J. Eaton);

45. **Defendant never articulated sufficient facts or dates to give notice of any cause of action alleged to have occurred at a specific time**;

46. Grundstein proved his damages with affidavits and receipts;

47. There were **no Civ. Rule 11 motions or hearings for illegal filings, sanctions or practice**;

48. There was no reason to violate The American Rule for attorney fees;

49. Civ. Rule 11 is the mechanism to charge attorney fees for actions at law in Vermont. See "Bennington Realty v. Jard Co", 169 Vt. 538, citing "Cameron v. Burke", 153 Vt. 565, confirmed by "Agency of Nat. Resources v. Lyndonville Bank" 174 Vt. 498.

50. There was no basis in law or fact for attorney fees;

51. There was no procedural compliance to assign attorney fees against any party. See "Schreck v Black River Brewing" Wrcv 643-10-07 (Eaton, J.) 8-10- 2010, "Lawson v. Brown's Home Day Care Center, Inc.", No. 195-9-97 ;

52. There was **no hearing with independent third party testimony** in support of specific dollar amounts for attorney charges as required by Vermont State law. (See "Schreck", et seq, op cit);

53. There was **no proof of malice or outrageous conduct**. These not proven at hearing **nor was there a required hearing to ascertain the financial effect of an award of punitive damages against the party least able to pay them.** See "Coty v. Ramsey Associates, Inc.", 149 Vt. 451;

54. On June 15, 2016, J. Pearson awarded Defendant $84,000.00 (eighty four thousand dollars) and attorney fees;

56. The order is angry and unbalanced against Grundstein. It proves personal animus against Grundstein sufficient to establish bias

57. J. Pearson claimed Grundstein committed Malicious Prosecution;

58. Grundstein was never accused of malicious prosecution in Levin's pleadings nor were the prima facie elements contained in Defendant Levin's counterclaim or anywhere else in the record. Grundstein had never initiated a criminal or civil action against Levin prior to this suit;

59. **It was impossible to anticipate this order because J. Pearson created it independent of the record, facts, testimony and the pleadings. It was created from his own mind without reference to the case history and transcripts**;

THEREFORE, Grundstein asks that the order of June 15, 2016 be vacated and declared unenforceable. He also asks for an instruction that the Lamoille Superior Clerk of Courts be directed to strike this order from the docket or to act in conformity with this opinion.

Count IV
Declaratory Relief/Injunction
Vermont Civ. Rule 8 is Unconstitutional
A Complaint or Counterclaim Must Articulate Money Damages in a Specific Amount

60. Grundstein restates the prior contents of his complaint;

61. Vermont Civ. Rule 8 does not require a party to articulate a specific dollar amount for damages in a Complaint or Counterclaim;

62. State and Federal Due Process requires a party to have notice of the potential costs to litigate or not litigate a case:

"Like the Court, I believe there is a need, grounded in the rule of law itself, to assure that punitive damages are awarded according to meaningful standards that will provide notice of how harshly certain acts will be punished...." citing "Philip Morris USA v. Williams", 127 S. Ct. 1057, 1062 (2007). "Unless a State insists upon proper standards that will cabin the jury's discretionary authority, its punitive damages system may deprive a defendant of 'fair notice... of the severity of the penalty that a State may impose...." ; citing "BMW v Gore", 517 U.S. at 574).

63. See also ("Greenup v. Rodman", (1986) 42 Cal.3d 822, 826):

Ordinarily, "[i]f the recovery of money or damages is demanded [in a complaint], the amount demanded shall be stated [in the complaint]." (Code Civ. Proc., § 425.10.)

...."[D]ue process requires notice to defendants, whether they default by inaction or by wilful obstruction, of the potential consequences of a refusal to pursue their defense. Such notice enables a defendant to exercise his right to choose — at any point before trial, even after discovery has begun — between (1) giving up his right to defend in exchange for the certainty that he cannot be held liable for more than a known amount, and (2) exercising his right to defend at the cost of exposing himself to greater liability." ("Greenup", supra, 42 Cal.3d at p. 829.)

THEREFORE, Grundstein asks this court to declare that Vermont Civ. Rule 8 should be amended to require that damages be articulated in a Complaint or Counterclaim as dollar amounts. He also asks for instructions to the state court that Civ. Rule 8 be applied in its new form to Lamoille Superior defendant Levin's Answer/Counterclaim on re-hearing in the state court or to strike her Answer/Counterclaim in its entirety and that all damages amounts against Grundstein in Lecv 87-4-10 be enjoined.

Count V
Declaratory Relief/Injunction
Violation of Vermont and Federal Law against Excessive Fines
Award without Evidence, Due Process or Contemplation of Economic Effect on Party Violates 5th, 6th, 8th and 14th Amendments, Vermont Constitution Article 39 against Excessive Fines and Vermont Case Law

64. Grundstein restates the prior contents of his Complaint;

65. A judgment of this magnitude (Eighty Four Thousand Dollars) will ruin Grundstein financially;

66. Under the circumstances of this case, ANY award of money damages is excessive;

67. It was impossible to anticipate any damages for Levin's Counterclaim;

68. There was no evidence for them;

69. Dollar amounts as damages were not articulated in a pleading;

70. There was no cause of action to support an award of damages;

71. There was no evidence of damages;

72. They were not litigated or discussed at hearing or anywhere else in motions and pleadings;

73. The award is excessive and seems to be a judicial Bill of Attainder or punitive damages, executed without Due Process, findings of malice, bad faith or evidence;

74. There was no state hearing as required in Vermont law to ascertain the financial effect of punitive damages on the person against whom they were levied (Grundstein);

"In the course of assessing punitive damages, the financial status of the least wealthy defendant must be taken into account.", "Woodhouse v. Woodhouse", 99 Vt. 91, 155, 130 A. 758 (1925).

THEREFORE, Grundstein asks that the award of $84,000.00 in Lamoille Superior court is enjoined and declared unenforceable with instructions to the clerk to strike the order.

Count VI
Declaratory Relief Claim under State Law Procedure
Levin Claims Should Have Been Dismissed after Levin Refused to Do Court Ordered ADR
Opposing Counsel Contributed to Delay by Refusing to Participate in Court Ordered ADR
Levin Counterclaim Should Have been Dismissed under State Law
Lower Court Exercised Prejudicial and Unexplained Five Year Delay

75. Grundstein restates the prior contents of his Complaint:

76. Vermont Administrative Order 10, Judicial Canon 3, Section (8), says:
"(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly."

77. Grundstein filed his case in spring of 2010. J. Pearson refused to enforce his own ADR order. J. Pearson allowed Levin to remain in contempt of his ADR order.

78. Grundstein asked for a hearing several times between 2011 and 2013. It was not set until July of 2015. J. Pearson's order came out a year later.

79. With respect to Vt. Civ. Rule 41(b), a court may dismiss a claim for prejudicial delay. VT found an interval of three months sufficient to dismiss a claim. See "Altman v Altman", 96 VT 485;

..."Later that month, defendants' attorney sent plaintiff a letter at the stated address containing a proposed discovery schedule. When he did not receive a response, counsel sent plaintiff another letter in August concerning the proposed schedule. Failing again to receive a response, defendants' counsel requested the court to schedule a discovery conference. The court sent plaintiff a notice on October 6 directing him to appear at a status conference on October 18. Plaintiff failed to appear at the scheduled conference. Defendants' attorney thereupon moved to dismiss plaintiff's action for failure to prosecute under V.R.C.P. 41(b)(2). The court granted the motion and, on October 31, issued an order dismissing plaintiff's action with prejudice..."

80. Levin's claims against Grundstein should have been dismissed after Levin refused to participate in Court Ordered ADR.

THEREFORE, Grundstein asks this court for Declaratory Relief stating that the state court should have dismissed Superior Court Defendant Levin Answer and any Counterclaims.

Count VII
Judge Bias Spoils Due Process
Need Peremptory Right of Recusal

Grundstein restates the prior contents of his Complaint;

81. The personal animus against Grundstein is patent in state Judge Pearson's procedural and substantive violations against him;

82. This animus is also patent in the tone of his June 15, 2016 order;

83. "When a judge becomes personally embroiled in the controversy with an accused he must defer trial .....to another judge" (case involved contempt hearing), "Mayberry v. Pennsylvania" 400 U.S. 455 (1971).

84. "Even in the absence of a personal attack on a judge that would tend to impair his detachment, **the judge may still be required to excuse himself and turn a citation for contempt over to another judge** if the response to the alleged misconduct in his courtroom partakes of the character of "marked personal feelings" being abraded on both sides, so that it is likely the judge has felt a "sting" sufficient to impair his objectivity." "Taylor v. Hayes", 418 U.S. 488 (1974

THEREFORE, Grundstein asks for Declaratory and Injunctive Relief against all Lamoille Superior Court orders described in this Complaint (and in particular the June 15, 2016 order) by which Grundstein is ordered to pay damages and is restricted from his own property on Lake Eden.

Count VIII
Vermont Expedited Appellate Docket is Statistically Biased against Appellants
Violates 14th Amendment Equal Protection
Appellant Success 15% in "Rocket Docket" vs. 33% with Full Banc of Judges
Three Banc Decisions Have no Precedential Value/Body of Secret Law is Plainly Wrong

Grundstein restates the prior contents of his Complaint;

84. Grundstein appeal number 2016-242 was before three judges of the Vermont Supreme Court;

85. An appellant is over 100 per cent more likely to win an appeal before the full five judge banc of the Vermont Supreme Court compared to the abbreviated three judge banc;

86. See Table 3, pg 286, Journal of Appellate Practice and Process; "To Expediency and Beyond: Vermont's Rocket Docket", Tracy Bach. (2002);

87. The appellant success rate is 15% on the expedited docket but 33% with a full banc of judges;

88. This practice violates Equal Protection. All appellants should have an equal opportunity to conduct a successful appeal;

THEREFORE, Grundstein asks this court to declare existing Vermont appellate Expedited Docket procedure to be unconstitutional, for an injunction against orders generated pursuant to defective procedure and for an opinion directing the state appellate court to act in conformity with this opinion.

Count IX
Cause of Action to Set Aside Deed
Or
Declaratory Relief

89. Grundstein re-states the prior contents of this Complaint;

90. On August 3, 2007, **(EX 1)** all legal interest in a subject property was given to Plaintiff Grundstein, subject to an equitable interest in proceeds to former joint tenants **(137 Peninsula Road, Eden Mills, VT)**. See pg. 3, supra;

91. This interest was never extinguished at law or equity;

92. According to the Eden Vermont Town Record, the subject property was transferred to Randall Mulligan, Defendant, on June 5, 2017;

93. Grundstein was not given notice that Mulligan was an interested buyer;

94. Grundstein was not shown or notified of an offer to buy;

95. Grundstein was not shown a Purchase and Sale agreement;

96. **Grundstein did not sign a deed**;

97. Grundstein was never notified that a transfer had been consummated;

98. Grundstein was never provided with an accounting;

99. Grundstein was never sent any proceeds of sale;

100. The subject property could not be sold without Grundstein's permission and signatures;

101. Grundstein has a right to an accounting and any proceeds of sale;

102. This court has subject matter jurisdiction for this count pursuant to its supplemental jurisdiction. This count is substantially related to the facts and legal issues in this case;

THEREFORE, Grundstein asks this court to set aside the June, 2017 Deed to Randall Mulligan and for an order by which the Eden Town Record is corrected to show Grundstein is the current owner in fee of the subject property, or in the alternative, an opinion concerning the state of the title.

S/s Robert Grundstein
Robert Grundstein Esq.
18 Griggs Road
Morrisville, VT 05661
rgrunds@pshift.com/802-888-3334

Verification

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

S/s Robert Grundstein
Robert Grundstein Esq.