

APPENDIX A

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

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 30th day of January, two thousand eighteen.

Midamines SPRL Ltd., Hassan A. Abbas,
Plaintiffs – Appellants,

v.

KBC Bank N.V., Antwerp Diamantse Bank NV,
Defendants – Appellees.

ORDER

Docket Nos: 16-1048 (L), 16-3427 (Con)

Appellants, Midamines SPRL Ltd., and Hassan A. Abbas, filed a petition for panel rehearing, or, in the alternative, for rehearing en banc. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing en banc.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

APPENDIX B

**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 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 6th day of December, two thousand seventeen.

PRESENT: DENNIS JACOBS, REENA RAGGI,
CHRISTOPHER F. DRONEY, Circuit Judges.

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16-1048

16-3427 n)

-----X

Midamines SPRL Ltd., Hassan A. Abbas,
Appellants,

-v.-

KBC Bank N.V., Antwerp Diamantse Bank
NV,
Appellees.

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FOR APPELLANTS: Hassan A. Abbas, Hanover
Park, Illinois.

FOR APPELLEES: Alvin Lee (Peter A. Bicks, Kelly
M. Daley, on the brief), Orrick Herrington & Sutcliffe
LLP, New York, New York.

Appeal from a judgment of the United States District
Court for the Southern District of New York
(Sullivan, J.).

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

Hassan A. Abbas and his alter ego entity
Midamines SPRL Ltd. ("Midamines") appeal from
the judgment of the United States District Court for
the Southern District of New York denying leave to
file a declaratory judgment action and sanctioning
them in the amount of \$75,722.50. We assume the
parties' familiarity with the underlying facts, the
procedural history, and the issues presented for
review.

The dispute between the appellants and KBC Bank N.V. (“KBC”) has been before this court before. In brief, Abbas sued in 2012 to recover funds allegedly due to Midamines from KBC, a Belgian bank headquartered in Brussels. Since the appellants were required to adjudicate any dispute arising in connection with the Midamines’ accounts in Belgium, the court dismissed on the ground of forum non conveniens in 2013. *Midamines SPRL Ltd. v. KBC Bank NV*, 2014 WL 1116875 (S.D.N.Y. Mar. 18, 2014), *aff’d* 601 F. App’x 43 (2d Cir. 2015)(summary order). Abbas has since continued to pursue his underlying grievances with the appellees and their counsel through vexatious and duplicative motion practice. This appeal concerns two narrow issues arising from this pattern of frivolous conduct: (1) whether the district court’s calculation of attorneys’ fees for sanctions imposed against Abbas was reasonable; and (2) whether Abbas and his alter egos are barred by a filing injunction from pursuing their rehashed allegations in a new declaratory judgment action.

The sanctions award followed a motion to disqualify appellees’ counsel, Orrick, Herrington & Sutcliffe LLP (“Orrick”), filed by Abbas after his claims were dismissed. That motion intentionally disclosed the content of a privileged communication between an Orrick attorney and KBC. Since Abbas’ motion was intended only to harass opposing counsel, and precipitated months of unnecessary litigation, we granted the appellants’ request for attorneys’ fees and costs, and remanded to the district court solely

to determine whether the amount requested was reasonable.¹

The district court approved \$75,722.50 as a reasonable sanction for Abbas' frivolous motion to disqualify the adversary counsel and gratuitous disclosure of privileged communications. We review "all aspects of a District Court's decision to impose sanctions for abuse of discretion." *United States v. Seltzer*, 227 F.3d 36, 39 (2d Cir. 2000)(internal quotation marks omitted). A district court has "considerable discretion" in determining a reasonable attorneys' fee amount, and its assignment of a "lodestar" figure will result in a "presumptively reasonable fee." See *Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cty. of Albany & Albany Cty. Bd. Of Elections*, 522 F.3d 182, 190 (2d Cir. 2008).

The district court did not abuse its discretion in determining that the requested amount of \$75,722.50 reflected reasonable fees and costs. Applying the lodestar method, it found that Orrick's average rate of \$379 per hour and stated total of 197.9 hours billed were reasonable for the work

¹ In that order, we admonished appellants for "hav[ing] filed a number of frivolous motions in this appeal, including their June 8, 2014 motion to disqualify and some of the present motions. Accordingly, appellants are hereby warned that the continued filing of duplicative, vexatious, or clearly meritless motions or other papers will result in the imposition of sanctions." J. App'x at 39.

performed. See *id.* at 184. The court noted that \$379 per hour was actually a “substantial reduction,” and in line with or below rates for Orrick attorneys approved by other courts. See *Amaprop Ltd. v. Indiabulls Fin. Servs. Ltd.*, No. 10-cv-1853 (PGG), 2011 WL 1002439, at *5 (S.D.N.Y. Mar. 16, 2011). Orrick’s rate was likewise consistent with those regularly approved in the Southern District. See *id.* at *6 (in determining what rates are reasonable, a court may look to comparable rates charged by lawyers in its district).

Judge Sullivan also found that 197.9 billed hours was reasonable. Orrick submitted detailed billing records to support KBC’s total request, specifying the attorney, date, hours, and nature of the work done. See *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (placing burden on the claimant to submit evidence of hours worked and rates claimed to justify attorneys’ fees); *N.Y.S. Ass’n for Retarded Children, Inc. v. Carey*, 711 F.2d 1136, 1141 (2d Cir. 1983). These records show hours billed for responding to the motion to disqualify, filing a motion to seal privileged documents exposed by the appellants, proposing redactions to protect privileged material, and preparing for the appellants’ subsequent motion for reconsideration—all necessitated by the appellants’ frivolous litigation strategy. The lodestar calculation of the hours billed multiplied by the blended rate is therefore presumptively reasonable. Abbas offers no authority

for his bare allegations that Orrick was inefficient or duplicative.²

Abbas separately challenges the district court's ruling enjoining him from filing a declaratory judgment action in aid of his claim to possession of the funds allegedly held by KBC. After being ordered to pay attorneys' fees, Abbas filed another frivolous lawsuit against Orrick alleging tortious interference. *Hassan A. Abbas, Esq. v. Orrick, Herrington & Sutcliffe LLP*, No. 15-cv-01545 (RJS), 2016 WL 1071033 (S.D.N.Y.). The district court dismissed the complaint, noting that it "does not come close to satisfying the standard for a tortious interference claim" but "[r]ather, it seemed designed, like many of [Abbas'] previous motions in the Midamines Action, to prolong litigation and to continue to harass Orrick based on the firm's representation of [KBC]." *Id.* at *6. Judge Sullivan then entered an order enjoining Abbas from "making any future filings in this Court in this case or in any action involving the allegations set forth in the related Midamines Action" without leave. *Id.* When Abbas sought leave to file the declaratory judgment asserting possession of the disputed bank funds in his original action, the district court denied the request: "Plaintiff Abbas's

² Abbas devotes the majority of his brief to revisiting already-resolved questions in prior litigation, including whether sanctions were proper and the dismissal of his underlying claims. These issues are not properly before the court on appeal, and we decline to respond to them.

contemplated declaratory judgment action is clearly an attempt to relitigate the same issues raised in the Complaint in this action relating to the alleged improperly stopped payments on Plaintiff Abbas's checks." Supp. App. at 42.

The district court did not abuse its discretion in enforcing its own injunction. See *Truskoski v. ESPN, Inc.*, 60 F.3d 74, 77 (2d Cir. 1995)(per curiam). It is the duty and power of district courts to enforce filing injunctions against plaintiffs that "abuse the process of the Courts to harass and annoy others with meritless, frivolous, vexatious or repetitive" litigation. *In re Martin-Trigona*, 737 F.2d 1254, 1262 (2d Cir. 1984). Abbas seeks a judgment that he is entitled to bank funds allegedly held by KBC, which is, in effect, an evasion of this court's previous rulings that he must pursue these claims in Belgium. See *Midamines SPRL Ltd.*, 601 F. App'x at 43, 45-46. The motion is squarely within the prohibition of the district court's filing injunction, and would be immediately dismissed for forum non conveniens if allowed to proceed. Beyond preserving judicial resources and preventing harassment of the appellees and their counsel, the purpose of the injunction is precisely to avoid deliberating further on matters that we have already deemed unsuitable and unresolvable in this forum.

The majority of the appellants' brief seems to be a collateral attack on the injunction itself, rather than an appeal of the district court's ruling on the leave to file an additional action. To the extent the appellants seek here to challenge the propriety of the filing injunction, we lack jurisdiction to review it, and

we reject any effort to litigate or resolve additional issues not properly before this court. See *United States v. Martinez-Carcano*, 557 F.2d 966, 969 (2d Cir. 1977); *Epstein v. Goldstein*, 110 F.2d 747, 748 (2d Cir. 1940)(per curiam).

For the foregoing reasons, and finding no merit in Abbas' other arguments, we hereby AFFIRM the judgment of the district court.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

APPENDIX C

April 24, 2017

U.S. Court of Appeals
For the Second Circuit
Thurgood Marshall Courthouse,
40 Foley Square
New York, NY 10007

Re: Midamines Sprl Ltd., et al. v. KBC Bank N.V.
Case No. 16-1048 | FED. R. APP. P. Rule 28(j) Letter

Dear Clerk of Court:

Plaintiffs-Appellants, Midamines Sprl Ltd. and Hassan A. Abbas, respectfully submit this Rule 28(j) letter for the Court's consideration of supplemental authority. On April 18, 2017, the U.S. Supreme Court decided the case of *Goodyear Tire & Rubber Co. v. Haeger, et al.*, Case No. 15-1406, and Held that: "When a federal court exercises its inherent authority to sanction bad-faith conduct by ordering a litigant to pay the other side's legal fees, the award is limited to the fees the innocent party incurred solely because of the misconduct—or put another way, to the fees that party would not have incurred but for the bad faith."

The Supreme Court requires a specific determination of bad faith before the imposition of sanctions of attorney's fees and a but for the bad faith causation must be established. In this case, there was no finding of any bad faith by Appellants in the Second Circuit's initial order imposing

sanctions of reasonable attorneys' fees. Appellants acted in good faith and did not multiply proceedings unreasonably and did not cause delay nor harass, and there were colorable claims, and a proper factual and legal basis for the motion to disqualify based on an email sent by KBC's own lawyers to Plaintiffs' counsel. The District court imposed unreasonable fees of \$75,722.50 against Appellants, and failed to reduce the excessive, redundant, and unnecessary fees as required by law due to overstaffing and overbilling. *Hensley v. Eckerhart*, 461 U.S. at 434. The District court failed to take into account Appellants' straitened financial circumstances and inability to pay. The District court did not provide a hearing nor unredacted statements even though the Second Circuit ordered that Appellants have the right to challenge Orrick/KBC's unreasonable fees.

The *Goodyear Tire & Rubber Co. v. Haeger, et al.*, case is respectfully submitted for the Court to consider whether Appellants' lack of bad faith warrants the Court's reversal of the sanctions order imposing attorney's fees, which Appellants have respectfully requested be reversed. These issues are properly before the Court (See Doc. 55, Pages 32-38, 2d. Cir., Appeal 16-1048) and were included in Appellants' Brief.

Respectfully submitted,

Hassan A. Abbas

APPENDIX D

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

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 16th day of July, two thousand fourteen.

Present:

Reena Raggi, Denny Chin, Raymond J. Lohier, Jr.,
Circuit Judges.

No. 14-862

Midamines SPRL Ltd., Hassan A. Abbas,
Plaintiffs-Appellants,

v.

KBC Bank NV, Antwerp Diamantse Bank NV,
Defendants-Appellees.

Appellants move for disqualification of Richard A. Martin, Esq., and the law firm of Orrick, Herrington & Sutcliffe LLP, counsel to Defendant-Appellee KBC Bank NV (“KBC”), arguing that KBC may intend to raise a frivolous argument on appeal, based upon an e-mail containing discussions of KBC’s appellate strategy that was inadvertently forwarded to Appellant Abbas. Upon due consideration, it is hereby ORDERED that

Appellants' motion to disqualify is DENIED as unwarranted under the present circumstances. See *Board of Ed. of City of New York v. Nyquist*, 590 F.2d 1241, 1246 (2d Cir. 1979). Appellants have not shown that this case presents any of the limited circumstances under which this Court will disqualify a party's chosen counsel. See *id.*

KBC moves to seal Appellants' filings before this Court, as well as their own opposition to the disqualification, which reference or quote from the e-mail over which KBC has asserted privilege. Appellants oppose the motion, KBC has filed a reply, and Appellants move for leave to file a sur-reply. As a preliminary matter, it is ORDERED that Appellants' motion for leave to file a sur-reply is DENIED, because Appellants seek to raise only factual contentions they have previously raised, see, e.g., U.S.C.A. No. 14-862, doc. 74 at 9 (addressing a prior instance in which an e-mail was mis-directed from KBC's counsel), and because their argument that citations to precedent other than those cited in KBC's motion requires a sur-reply lacks merit.

Upon due consideration, it is hereby ORDERED that KBC's motion is GRANTED. The e-mail in question discusses material protected by the attorney work-product doctrine. *In re Grand Jury Subpoenas Dated Mar. 19, 2002 & Aug. 2, 2002*, 318 F.3d 379, 383 (2d Cir. 2003); Fed R. Evid. 502(b); *In re Sealed Case*, 676 F.2d 793, 817 (D.C. Cir. 1982) (internal quotations omitted) (cited favorably by *In re Steinhardt Partners, L.P.*, 9 F.3d 230 (2d Cir. 1993)) (stating that "a party waives its work product protection in civil litigation if it discloses the

privileged material to anyone without common interests in developing legal theories and analyses of documents.” (emphasis added) (internal citation omitted)). The Clerk of Court is instructed to remove the following documents from the public docket, and place them under seal: documents 53, 61, 64, 74, 77, 92, 108, and 114. The parties are directed to file, within seven (7) days of the entry of this Order, appropriately redacted copies of these documents, pursuant to Local Rule 25.1(j)(2), and to file any further documents referencing the e-mail under seal in accordance with this Court’s Local Rules.

Next, both KBC and Appellants have made cross-requests for sanctions, in the form of costs and attorneys fees, each arguing that the other has engaged in frivolous or vexatious conduct. Upon due consideration, it is hereby ORDERED that Appellants shall pay the costs and reasonable attorneys fees incurred by KBC as a result of the motion to disqualify and motion to seal the documents, which was necessitated by the motion to disqualify. See *Ransmeier v. Mariani*, 718 F.3d 64, 68 (2d Cir. 2013). It is further ORDERED that Appellants’ cross-request for sanctions is DENIED.

Finally, Appellee Antwerp Diamantse Bank NV (“ADB”) moves to be dismissed from the appeal, based upon Appellants’ professed intention, in its brief and elsewhere, not to pursue any arguments against ADB on appeal. It is ordered that Appellee ADB’s motion is GRANTED and the appeal as against ADB is DISMISSED. See *LoSacco v. City of Middleton*, 71 F.3d 88, 92 (2d Cir. 1995) (stating that issues not raised in party’s opening brief are deemed

abandoned); see also *Assoc. Gen. Contractors v. City of New Haven*, 41 F.3d 62, 65 (2d Cir. 1994) (“[T]he mootness doctrine prevents federal courts from hearing matters that no longer present an actual dispute between parties.”).

FOR THE COURT:

Catherine O’Hagan Wolfe, Clerk of Court