

APPENDIX A

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 17-1387

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Sep 29, 2017
DEBORAH S. HUNT, Clerk

EDGAR JULIAN DIETRICH,

Plaintiff-Appellant,

v.

CITY OF GROSSE POINTE PARK; DALE
KRAJNIAK, in his personal and in his official
capacity as City Manager,

Defendants-Appellees.

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)
) ON APPEAL FROM THE UNITED
) STATES DISTRICT COURT FOR
) THE EASTERN DISTRICT OF
) MICHIGAN
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)

ORDER

Before: ROGERS, GRIFFIN, and KETHLEDGE, Circuit Judges.

Edgar Julian Dietrich, a pro se Michigan resident, appeals the judgment of the district court granting the defendants' motion to dismiss, granting the defendants' motion for sanctions, and denying Dietrich's motion for summary judgment. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

Dietrich filed suit against the City of Grosse Pointe Park, Michigan ("city"), and its City Manager, Dale Krajniak (collectively "defendants"). The allegations in the complaint stemmed from a lease that was entered into between Krajniak and the Dietrich Family Trust in 2006 for a building in Grosse Pointe Park. The property became the location for Le Chateau Art Gallery and Custom Framing ("gallery"); Dietrich managed the gallery. The gallery was subsequently placed in receivership upon a motion by Peter Tiernan, who had obtained a multi-million dollar

legal malpractice judgment against Dietrich (a former attorney), and who alleged that it was being used to transfer and hide property that could be used to satisfy the judgment. In August 2013, Basil Simon was appointed by the Wayne County Michigan Circuit Court as the receiver of the gallery with full powers over the business, assets, and property. Five days prior to the entry of the Wayne County Circuit Court's order, Dietrich filed a Chapter 7 bankruptcy petition in federal court on behalf of himself, the Dietrich Family Trust, and the gallery, seeking to halt the receivership. The bankruptcy court determined that the appointment of the receiver did not violate the automatic bankruptcy stay and held the appointment in full force; Simon was also appointed the Chapter 7 trustee of Dietrich's bankruptcy case. Pursuant to the power allocated to him by the state court order, Simon liquidated the gallery's assets.

In 2014, the city initiated eviction proceedings against the Dietrich Family Trust, and the Municipal Court ordered that the lease be terminated and the property be vacated. The Trust appealed, and the parties subsequently entered into a release agreement on August 22, 2014, wherein "the Dietrich Parties" released all causes of action "arising from the claims which are the subject matter of the Lease, Eviction, and Appeal against the City and its past and present employees, agents, and/or representatives."

On March 18, 2016, Dietrich filed this complaint, raising the following claims against the defendants: (1) violation of Dietrich's Fifth Amendment right to not be deprived of property without due process, based on allowing Simon access to the gallery; (2) tortious interference with a business relationship, based on the fact that defendants prohibited Dietrich from entering the gallery, which prevented him from honoring contracts with consignors; (3) breach of contract for breaching the lease agreement by preventing Dietrich access and allowing Simon access; and (4) conversion, for allowing Simon to enter the gallery and sell its assets. Dietrich requested damages in excess of \$75,000. Before the complaint was served, however, the defendants' counsel reminded Dietrich of the terms of his release, asked him to dismiss the complaint, and warned they would seek Rule 11 sanctions if he persisted.

The defendants thereafter filed a motion to dismiss, arguing that the district court lacked subject-matter jurisdiction under the *Rooker-Feldman* doctrine, which prevents federal district

courts from providing appellate review of state court judgments. *See D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983); *Rooker v. Fid. Trust Co.*, 263 U.S. 413, 416 (1923). The defendants also argued that Dietrich failed to state a claim for which relief could be granted. Dietrich filed a response, arguing that *Rooker-Feldman* did not prohibit an action for the violation of his constitutional rights and that he had stated valid claims.

The defendants also filed a motion for sanctions under Rule 11, asserting again that the court lacked jurisdiction and that Dietrich failed to state a claim for relief due to the release agreement with the city. Dietrich filed a response, asserting that the release did not bar his action because the defendants' actions resulted in liabilities to himself, the gallery's consignors, clients and the Internal Revenue Service, none of which were included or contemplated by the release. He also claimed that he signed the release under duress. Dietrich also filed a motion for summary judgment, which the defendants opposed.

A magistrate judge concluded that the source of Dietrich's claimed injuries was the Wayne County Circuit Court's order granting the appointment of Simon as the receiver. Accordingly, his claims were barred by *Rooker-Feldman*. The magistrate judge also concluded that Dietrich failed to state a claim for relief because he released all claims against the defendants pursuant to the release agreement executed in August 2014, and Dietrich's claim of duress was not sufficiently pled. Finally, the magistrate judge concluded that sanctions were warranted. The magistrate judge therefore recommended that the defendants' motion to dismiss be granted, that the defendants' motions for sanctions be granted, and that Dietrich's motion for summary judgment be denied.

Over Dietrich's objections, the district court found that Dietrich's claims were both barred by the *Rooker-Feldman* doctrine and by the release that Dietrich executed in 2014. The district court also concluded that sanctions were proper and referred the matter to the magistrate judge to conduct a hearing and recommend an appropriate award. The district court therefore granted defendants' motion to dismiss and dismissed the case with prejudice, denied Dietrich's motion for summary judgment, and granted defendants' motion for sanctions, retaining jurisdiction over the matter to determine an appropriate sanction award.

On appeal, Dietrich argues that the district court erred in concluding that the underlying matter was a state-court issue, pointing out that Simon was appointed in federal bankruptcy court and the decision to allow the trust to be part of the bankruptcy estate was a federal court decision. He claims that the district court erroneously applied the *Rooker-Feldman* doctrine to his constitutional claims and tort claims, which are collateral to the underlying issues, and that the court erred in imposing sanctions. Dietrich moves to proceed in forma pauperis on appeal, see Fed. R. App. P. 24(a)(5), and to have counsel appointed.

We review de novo a district court's ruling that the *Rooker-Feldman* doctrine deprives the district court of jurisdiction. *McCormick v. Braverman*, 451 F.3d 382, 389 (6th Cir. 2006). The *Rooker-Feldman* doctrine bars lower federal courts from conducting appellate review of final state-court judgments because 28 U.S.C. § 1257 vests sole jurisdiction to review such claims in the Supreme Court. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 291 (2005). The doctrine applies only where the party who lost in state court initiates an action in federal district court, that party complains of injury caused by the state court judgment, and seeks review or an overturning of that judgment. *In re Cook*, 551 F.3d 542, 548 (6th Cir. 2009).

Dietrich's primary assertions are that Simon did not have authority to seize or dispose of the gallery's assets, and the defendants herein consequently acted wrongfully by allowing him access to those assets. Although Dietrich complains of the actions of Simon and the city defendants, those third-parties' actions are products of the state court judgments and challenges to their actions are considered challenges to the judgments themselves. *McCormick*, 451 F.3d at 394 (citing *Hoblock v. Albany Cty. Bd. of Elections*, 422 F.3d 77, 88 (2d Cir. 2005)). Accordingly, Dietrich is asserting that the source of his injuries are the order of the Wayne County Circuit Court establishing a receivership for the gallery, and the order of the municipal court terminating the gallery's lease. Further, the fact that Dietrich has also initiated an action in the federal bankruptcy court does not convert his action into a case appropriate for federal jurisdiction when his claims stem from the actions of the state courts. As a result, his claims are barred by *Rooker-Feldman*.

The district court also concluded that Dietrich failed to state a claim for relief because the allegations raised in his complaint were barred by the release he executed in August 2014. We review de novo a district court's dismissal for failure to state a claim. *See Top Flight Entm't, Ltd. v. Schuette*, 729 F.3d 623, 630 (6th Cir. 2013). To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

Under Michigan law, "[a] contract is ambiguous only if its language is reasonably susceptible to more than one interpretation." *See Cole v. Ladbroke Racing Mich., Inc.*, 614 N.W.2d 169, 176 (Mich. Ct. App. 2000). "The fact that the parties dispute the meaning of a release does not, in itself, establish an ambiguity." *Id.* (citing *Gortney v. Norfolk & W. Ry. Co.*, 549 N.W.2d 612, 615 (Mich. Ct. App. 1996)). "When a release is challenged, the party seeking to avoid the release must prove by a preponderance of the evidence that the release should be set aside." *Binard v. Carrington*, 414 N.W.2d 900, 902 (Mich. Ct. App. 1987) (per curiam).

The release agreement stated that Dietrich was voluntarily releasing "all" causes of actions "arising from the claims which are the subject matter of the Lease, Eviction, and Appeal against the City" and its employees or agents. The release prohibited both past and future claims, as well as known and unknown claims. This language is unambiguous and, more importantly, Michigan courts have held that this type of all-encompassing language fully releases any claims between the parties. *See Cole*, 614 N.W.2d at 176 (noting that "there is no broader classification than the word 'all'").

Nor has Dietrich established that the release should be set aside. He claimed in the district court that he executed the release agreement under duress because the city had threatened him with immediate eviction and, if he signed the agreement, he was allowed thirty days to vacate the premises. However, the release also contained a provision noting that "the Dietrich parties" had discussed all aspects of the agreement with its attorney and "it has voluntarily and of its own free will and without any duress entered into this Agreement." Dietrich's bare assertion

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that he was actually under duress does not establish, by a preponderance of the evidence, that the release should be set aside.

Finally, Dietrich argues that the district court erred by granting the defendants' motion for sanctions. However, this issue is not yet ripe for appeal. "It is well established that a federal court may consider collateral issues after an action is no longer pending. For example, district courts may award costs after an action is dismissed for want of jurisdiction." *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990). Because the district court retained ancillary jurisdiction to fashion an appropriate sanction award and referred the matter to the magistrate judge for a hearing—which has not yet occurred—the sanction award may not yet be considered on appeal.

We **AFFIRM** the judgment of the district court dismissing Dietrich's complaint with prejudice. Because Dietrich's in forma pauperis status was never revoked by the district court, we **DENY** as moot his motion to proceed in forma pauperis on appeal. We also **DENY** his motion for the appointment of counsel.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", is written over a horizontal line.

Deborah S. Hunt, Clerk

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EDGAR J. DIETRICH,

Petitioner,

v.

Case No. 16-11049

HON. TERRENCE G. BERG

HON. STEPHANIE DAWKINS DAVIS

GROSSE POINTE PARK, et al.

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION (DKT. 35),
GRANTING DEFENDANTS' MOTION TO DISMISS (DKT. 20), GRANTING
DEFENDANTS' MOTION FOR SANCTIONS (DKT. 24), AND DENYING
AS MOOT PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (DKT. 31)**

Plaintiff Edgar J. Dietrich ("Plaintiff"), acting in pro per, filed suit against Defendants City of Grosse Pointe Park, and its City Manager, Dale Krajniak (collectively "Defendants") (Dkt. 1). The Complaint alleges that Defendants violated Plaintiff's Fifth Amendment right to due process. Plaintiff also alleges various state claims, including tortuous interference with business relationships, conversion, and breach of contract. *Id.* As described in greater detail below, Plaintiff alleges that these wrongs occurred during eviction and collection proceedings relating to a state court judgment.

This matter is before the Court on Magistrate Judge Stephanie Dawkins Davis's Report and Recommendation dated January 12, 2017 (Dkt. 35), recommending that Defendant's motion to dismiss (Dkt. 20) be granted, that

Defendant's motion for sanctions (Dkt. 24) be granted, and that Plaintiff's motion for summary judgment (Dkt. 31) be denied as moot.

The law provides that either party may serve and file written objections "[w]ithin fourteen days after being served with a copy" of the Report and Recommendation. 28 U.S.C. § 636(b)(1). Plaintiff filed timely objections (Dkt. 36) to the Report and Recommendation. A district court must conduct a de novo review of the parts of a Report and Recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1). "A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." *Id.*

The Court has reviewed Magistrate Judge Davis's Report and Recommendation, and Plaintiff's objections thereto. For the reasons set forth below, Plaintiff's objections are **OVERRULED**, and the Report and Recommendation is **ACCEPTED** and **ADOPTED** as the opinion of the Court. Accordingly, Defendants' motion to dismiss (Dkt. 20) is **GRANTED**, Defendants' motion for sanctions (Dkt. 24) is **GRANTED**, and Plaintiff's motion for summary judgment (Dkt. 31) is **DENIED AS MOOT**. This matter is hereby re-referred to Magistrate Judge Davis to conduct a hearing, and then recommend an appropriate sanction for Plaintiff's Rule 11 violations.

BACKGROUND

Plaintiff alleges that on January 1, 2006, Defendant Dale Krajniak, in his capacity as manager of the City of Grosse Pointe Park, entered into a lease with the Dietrich Family Trust (the “Trust”) for a building located at 15001 Charlevoix, Grosse Pointe Park, Michigan (Dkt. 1, Pg ID 3). This property became the location for La Chateau Art Gallery & Custom Framing (the “Gallery”) and all business transactions relating to the Gallery were transacted with Mr. Krajniak (*Id.*). Plaintiff worked as the manager of the Gallery.

In his Complaint, Plaintiff acknowledges that, in 2005, Peter Tiernan, M.D. (“Tiernan”) obtained an \$11 million legal malpractice judgment against him (*Id.* at ¶ 8). After winning this judgment against Plaintiff, Tiernan successfully petitioned Wayne County Circuit Court Judge Jeanne Stempien to put the Gallery – owned by the Trust and managed by Plaintiff – into receivership because the Gallery was being “utilized as a vehicle for transferring and hiding property which could be used to satisfy the Judgment” (Dkt. 20, Ex. A, Pg ID 97). On August 26, 2013, Judge Stempien entered an order appointing Basil Simon as the receiver of the Gallery to serve as “the agent of [the] Court ... with full powers as Receiver over [the Gallery] and all of [its] businesses, assets and property....” (*Id.*).

In an effort to halt the receivership and preserve his assets, Plaintiff filed a Chapter 7 bankruptcy petition on August 21, 2013. *See* E.D. Mich. Bankr. Case No. 13-57297. On October 29, 2013, the Bankruptcy Court entered an order denying Plaintiff’s motion to enforce a mandatory stay under 11 U.S.C. § 362,

holding that the appointment of Mr. Simon as a receiver over the Gallery remained in full force and effect (*Id.*, Dkt. 87). Mr. Simon also is the duly acting and qualified Chapter 7 trustee of Plaintiff's bankruptcy case. That bankruptcy case has been extensively litigated, and is ongoing. During the receivership, and pursuant to the Wayne County Circuit Court's orders, Mr. Simon¹ apparently liquidated the Gallery's assets and accounted for the receipt of the proceeds of such sales to the Wayne County Circuit Court.

Turning back to the Defendants in this case, on November 15, 2013, Plaintiff (through his son) filed a lawsuit in the Grosse Point Park Municipal Court. This suit requested to allow Plaintiff to enter the Gallery, and sought injunctive relief ordering Grosse Pointe's Department of Public Safety to stop "purposefully violating the lease between Plaintiff and the City of Grosse Pointe Park" (Dkt. 20, Ex. F). The Municipal Court dismissed that case with prejudice for lack of jurisdiction. (*Id.*, Ex. G).

Then, in January 2014, Plaintiff sued Defendants in this Court, claiming that he had been wrongfully deprived access to the Gallery. *See* E.D. Mich. Case No. 14-10264. Plaintiff was initially represented by an attorney in that case. Plaintiff's attorney voluntarily dismissed that case without prejudice. Plaintiff, then acting in pro per, filed a motion to reopen that case. In essence, Plaintiff argued that his

¹ Plaintiff also filed a civil action against Mr. Simon in this Court. That case was dismissed for lack of subject matter jurisdiction on October 18, 2016. *See Dietrich v. Simon*, No. 16-11071, 2016 WL 6106742 (E.D. Mich. Sept. 14, 2016), *report and recommendation adopted*, No. 16-11071, 2016 WL 6083752 (E.D. Mich. Oct. 18, 2016).

prior counsel dismissed the case without first informing him of her intent to do so, and without his express permission, and that the dismissal should be vacated. This Court denied Plaintiff's motion to reopen the case, and noted that Plaintiff could simply re-file a new case if he wanted to reanimate that litigation. In so doing, however, this Court expressly cautioned Plaintiff to "to carefully review the arguments raised [by] Defendants ..., particularly those related to the *Rooker-Feldman* doctrine" (*Id.* Dkt. 18, FN 1). The Court also reminded Plaintiff of his Rule 11 obligation to not file frivolous litigation.

Grosse Pointe Park then initiated eviction proceedings against the Trust (the lessor of the Gallery) in 2014. On July 9, 2014, the Grosse Pointe Woods Municipal Court² entered an order terminating the lease and ordering the Trust to vacate the Gallery. After the Trust filed a claim of appeal, the parties entered into a release agreement on August 22, 2014. Plaintiff signed the release agreement individually, and on behalf of the Trust (Dkt. 20, Ex. M). The release provides:

The Dietrich Parties³, including its predecessors, agents, successors, assigns, joint venturers, partners, current and former employees, servants, representatives, officials, attorneys, associates, and trustees of the foregoing persons, and any other party who may claim under or through them hereby knowingly and voluntarily release, forgive, absolve and discharge all rights, claims, demands, damages, actions, and causes of action, which The Dietrich Parties and its above-mentioned others now have or may have in the future, known or unknown, foreseen or unforeseen, arising from the claims which are the subject matter of the Lease, Eviction, and Appeal against the City and its past and present employees, agents, and/or representatives, and any and all

² The eviction action was handled by the Grosse Pointe Woods Municipal Court, as the Grosse Pointe Park Municipal Judge had recused himself.

³ The "Dietrich Parties" are defined in the release as Edgar Dietrich, that is, the Plaintiff in this case, and The Dietrich Trust (Pd ID 268).

claims which were, or could have been, or can be asserted against its past and present employees, agents, and/or representatives.

On March 18, 2016 Plaintiff filed the lawsuit that is now before the Court, suing Defendants Grosse Pointe Park and Mr. Krajniak (Dkt. 1). Plaintiff's lawsuit raises four claims: (1) alleged violations of Plaintiff's Fifth Amendment right to not be deprived of property without due process; (2) tortious interference with a business relationship, based on allegations that Defendants' prohibiting Plaintiff from entering the Gallery prevented him from honoring contracts with "consignors;" (3) breach of contract, alleging that Defendants breached the lease agreement for the Gallery; and (4) conversion, alleging that Defendants allowed Mr. Simon to enter the Gallery and sell off the items contained therein.

ANALYSIS

A. Motion To Dismiss Standard

A Rule 12(b)(6) motion to dismiss tests the legal sufficiency of the plaintiff's complaint. Accepting all factual allegations as true, the Court reviews the Complaint in the light most favorable to the plaintiff. *See Eidson v. Tennessee Dep't of Children's Servs.* 510 F.3d 631, 634 (6th Cir. 2007). To survive a motion to dismiss, the Complaint must state sufficient "facts to state a claim to relief that is plausible on its face." *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). The Complaint must demonstrate more than a sheer possibility that the defendant's conduct was unlawful. *Id.* at 556. Claims comprised of "labels and conclusions, and a formulaic recitation of the elements of a

cause of action will not do.” *Id.* at 555. Rather, “[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009).

B. Rule 11 Sanctions Standard

Under Rule 11(b)(1) a party certifies that by presenting a pleading to the court, the pleading is “not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) the claims are warranted by existing law or by a nonfrivolous argument for extending, modifying or revising existing laws; and (3) the factual contentions have evidentiary support.” Fed. R. Civ. P. 11(b). Where a motion for sanctions is filed, “it must describe the specific conduct that allegedly violates Rule 11(b).” *General Retirement System of City of Detroit v. Snyder*, 822 F.Supp.2d 686, 698 (E.D. Mich. 2011). In imposing Rule 11 sanctions courts are to examine whether the individual attorney’s conduct was reasonable under the circumstances. *Id.* at 699.

Courts have the discretion to determine whether a party’s “conduct was unreasonable, thereby justifying an award of sanctions under Rule 11.” *Id.* Reasonableness is an objective standard. *See Knestrick v. International Business Machines Corp.*, 945 F. Supp. 1080, 1082 (E.D. Mich. 1996) (“The question is whether a competent attorney * * * after appropriate investigation would have reasonably believed the claim was grounded in fact or law”). Therefore, a party has three obligations under Rule 11. First, to conduct a reasonable inquiry to determine

the pleading is well grounded. *Jackson v. Law Firm of O'Hara, Rudberg, Osborne and Taylor*, 875 F.2d 1224, 1229 (6th Cir. 1989). Second, the party must conduct a reasonable inquiry to determine that the positions taken are warranted by existing law or as good faith arguments for extension or modification of existing law. *Id.* Third, the document must not be filed for any improper purpose. *Id.*

C. The *Rooker-Feldman* Doctrine Bars Plaintiff's Claims

The *Rooker-Feldman* doctrine provides that inferior federal courts lack jurisdiction to review the final judgments of state courts. *See Hutcherson v. Lauderdale County*, 326 F. 3d 747, 755 (6th Cir. 2003). It applies in 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). The Sixth Circuit has explained the application of *Rooker-Feldman* as follows:

The inquiry then is the source of the injury the plaintiff alleges in the federal complaint. If the source of the injury is the state court decision, then the *Rooker-Feldman* doctrine would prevent the district court from asserting jurisdiction. If there is some other source of injury, such as a third party's actions, then the plaintiff asserts an independent claim.

McCormick v. Braverman, 451 F.3d 382, 393 (6th Cir. 2006). Federal jurisdiction is proper, therefore, "if a federal plaintiff presents an independent claim, 'albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party.'" *Brown v. First Nationwide Mortgage Corp.*, 206 Fed. App'x. 436, 439 (6th Cir. 2006) (quoting *Exxon Mobil Corp.*, 544 U.S. at 293). An example of such

an independent claim is one where “there is some other source of injury, such as a third party’s actions....” *Id.* To determine the source of the injury, a court must refer to the plaintiff’s request for relief. *Berry v. Schmitt*, 688 F.3d 290, 299 (6th Cir. 2012) (quoting *Evans v. Cordray*, 424 Fed. App’x. 537, 539 (6th Cir. 2011)).

Plaintiff’s Complaint makes two central claims. First, Plaintiff claims to have been injured by the Wayne County Circuit Court’s appointment of a receiver. Second, Plaintiff claims to have been injured by the Grosse Pointe Woods Municipal Court’s order evicting the Trust from the Gallery and terminating the lease. In particular, Plaintiff alleges that Defendants: violated his due process rights by “allowing [Mr. Simon] to seize and sell” the property in the Gallery (Dkt. 1 ¶ 37), interfered with Plaintiff’s business relationships by prohibiting him from accessing the Gallery during the eviction process (Dkt. 1 ¶ 39), breached the lease agreement by allowing Mr. Simon to “pillage” the property in the Gallery (Dkt. 1 ¶ 41), and converted Plaintiff’s property by allowing Mr. Simon into the Gallery (Dkt. 1 ¶ 43). These allegations are nothing more direct frontal attacks on the orders and judgments of two state courts – the Wayne County Circuit Court, and the Grosse Pointe Woods Municipal Court.

Plaintiff argues in his objections that the source of his injury is not the state court decisions against him. Magistrate Judge Davis concluded to the contrary that the instant action was an attack on those state court judgments, and this conclusion is correct and well supported. Plaintiff’s Complaint, distilled to its essence, seeks relief from Defendants Grosse Pointe Park and its city manager for permitting the

duly appointed receiver and trustee from discharging his duties, as expressly authorized by the Wayne County Circuit Court (which appointed Mr. Simon as receiver), the Bankruptcy Court (which appointed Mr. Simon as Trustee), and the Grosse Pointe Woods Municipal Court (which evicted the Trust from the Gallery). The injuries complained of by Plaintiff flow directly from the orders of these courts and the execution of those orders by duly-appointed representatives of the court. Furthermore, Plaintiff, in his response to Defendants' motion to dismiss, argues that "[t]he *Rooker-Feldman* doctrine does not apply where a claim is brought under the Bankruptcy Code" (Dkt. 26, Pg ID 497). The proper forum to litigate alleged violations of the Bankruptcy Code is in the Bankruptcy Court, where Plaintiff's Chapter 7 case is still ongoing.

In sum, Plaintiff's claims in this case are barred by the *Rooker-Feldman* doctrine.

D. The Release Also Bars Plaintiff's Claims

The second issue presented in Defendants' motion to dismiss is whether Plaintiff's claims are barred by a release agreement. Defendants seek dismissal of the Complaint under Rule 12(b)(6) on the grounds that Plaintiff executed a settlement agreement and release of all legal claims against Defendants relating to the leasing of the Gallery and the subsequent eviction proceedings. In the motion to dismiss before the Court, Defendants have attached a copy of the release as an exhibit to a Rule 12(b)(6) motion (Dkt. 20, Ex. M). The Sixth Circuit has held that "release is an affirmative defense that must be pled by the defendant, which

includes showing that the release was fairly executed....” *Wysocki v. Int’l Bus. Mach. Corp.*, 607 F.3d 1102, 1108, FN3 (6th Cir. 2010). Once a defendant has raised release as an affirmative defense, a plaintiff may prove the “the invalidity of the release, which can be done by showing mistake, incapacity, fraud, misrepresentation, unconscionability, or duress.” *Id.*

When a party moving under Rule 12(b)(6) presents matters outside the pleadings and the court does not exclude the materials, the court must treat the Rule 12(b)(6) motion as a motion for summary judgment under Rule 56. Before converting a motion to dismiss, the Court must give the parties “a reasonable opportunity to present all the material that is pertinent to the motion.” *Id.* But notice is required only to the extent that “one party is likely to be surprised by the proceedings.” The necessity of prior notice “depends upon the facts and circumstances of each case.” *Id.* In this case, the Court finds it appropriate to convert Defendants’ motion to dismiss to a motion for summary judgment without additional notice to the parties. It should be no surprise to Plaintiff that Defendants would rely on the release as a bar to this litigation, after all, Plaintiff himself signed it. Moreover, Plaintiff had multiple opportunities to argue that the release did not bar his claims – first, in his response to Defendants’ motion to dismiss, and second, in his objections to Magistrate Judge Davis’s Report and Recommendation.

Turning to the release itself, its provisions quite clearly bar the claims that Plaintiff is bringing in this lawsuit. Plaintiff, and the Trust, released all claims

“arising from...the subject matter of the Lease, Eviction, and Appeal against the City and its past and present employees.” Plaintiff admits that he signed the release, but argues in his objections in conclusory fashion that he did so under duress. Plaintiff has not plead sufficient facts to establish duress. The only argument advanced by Plaintiff was that he was forced to sign the release under duress knowing that he was going to be evicted and his records and personal belongings were within the Gallery. The release was signed after the Municipal Court entered an order of eviction, while that order was on appeal. The release itself allowed Plaintiff a 30-day extension of time to vacate the premises. Plaintiff, an attorney himself, was represented by another attorney during the negotiation of the release. As correctly noted in the Report and Recommendation, Plaintiff has simply not plead sufficient facts to raise an argument that the release is somehow invalid due to duress.

As such, since Plaintiff’s claims are barred by the terms of the release, Defendants’ motion to dismiss is also granted on these grounds.

E. Sanctions

After filing their motion to dismiss, Defendants filed a Rule 11 motion, after complying with that Rule’s safe harbor provisions (Dkt. 24). Defendants move for sanctions under Rule 11 because the Complaint in this action was filed despite the application of the *Rooker-Feldman* doctrine and because Plaintiff’s claims are squarely barred by the release agreement.

As noted above, Plaintiff previously filed this lawsuit against Defendants. *See Dietrich v. Grosse Pointe Park, et al.*, E.D. Mich. Case No. 14-10264. He was represented by an attorney in that case. Plaintiff's attorney voluntarily dismissed that case without prejudice. Plaintiff, then acting in pro per, filed a motion to reopen the case, arguing that his prior counsel purportedly dismissed the case without first informing him of her intent to do so, and without his express permission, the dismissal should be vacated. This Court denied Plaintiff's motion to reopen the case, and noted that Plaintiff could simply re-file a new case if he wanted to reanimate that litigation. In so doing, however, this Court expressly cautioned Plaintiff to "to carefully review the arguments raised [by] Defendants ..., particularly those related to the *Rooker-Feldman* doctrine." Out of a desire to prevent Plaintiff from exposing himself to future sanctions, the Court also reminded Plaintiff of his Rule 11 obligations not to file frivolous litigation.

Despite this express warning, Plaintiff refiled this case without any good faith argument that could overcome the *Rooker-Feldman* doctrine barring his claims. What makes matters worse is that, during the time between the dismissal of the first lawsuit and the filing of the present lawsuit, Plaintiff entered into a release agreement with Defendants that expressly released any claims against Defendants relating to the eviction proceedings or the lease of the Gallery. By signing such a release, Plaintiff essentially agreed not to bring the very claims that he is bringing in this lawsuit. Under such circumstances, Plaintiff's claims are clearly not "warranted by existing law or by a nonfrivolous argument for extending,

modifying or revising existing law.” Fed. R. Civ. P. 11(b). As properly noted by Magistrate Judge Davis, in similar circumstances courts in this district have not hesitated to impose Rule 11 sanctions. *See e.g., J. Edward Kloian Found. v. Findling*, 2013 WL 6859143, *7-8 (E.D. Mich. Dec. 30, 2013); *Musilli v. Googasian*, 2006 WL 3030974, *6 (E.D. Mich. Oct. 23, 2006); *Lund v. Citibank (West) FSB*, 2007 WL 3408468, *3 (E.D. Mich. Nov. 14, 2007).

In sum, this Court agrees with Magistrate Judge Davis’s recommendation that sanctions against Plaintiff are warranted in this case. This matter is hereby re-referred to Magistrate Judge Davis to conduct a hearing and the offer a recommendation to the Court as to what an appropriate sanction should be. The Court will retain jurisdiction over this matter until an appropriate sanction award is determined. *See. e.g., Red Carpet Studios Div. of Source Advantage, Ltd. v. Sater*, 465 F.3d 642, 645 (6th Cir. 2006) (citing *Willy v. Coastal Corp.*, 503 U.S. 131, 138, 112 S.Ct. 1076, 117 L.Ed.2d 280 (1992) (holding that even where a federal court dismissed a case for lack of subject matter jurisdiction – in that case for lack of a federal question – it nonetheless had jurisdiction to impose Rule 11 sanctions for abuses of the judicial process)).

F. Plaintiff’s Motion for Summary Judgment

Finally, the Court adopts Magistrate Judge Davis’s recommendation that, since Plaintiff’s claims are barred by the *Rooker-Feldman* doctrine and by the terms of the release, then Plaintiff’s motion for summary judgment should be denied as moot. That motion is denied as moot.

CONCLUSION

For the reasons set forth above, Plaintiff's objections are **OVERRULED**, and the Report and Recommendation is **ACCEPTED** and **ADOPTED** as the opinion of the Court. Accordingly, Defendants' motion to dismiss (Dkt. 20) is **GRANTED**, Defendants' motion for sanctions (Dkt. 24) is **GRANTED**, and Plaintiff's motion for summary judgment (Dkt. 31) is **DENIED AS MOOT**. Plaintiff's Complaint is **DISMISSED WITH PREJUDICE**. This matter is hereby re-referred to Magistrate Judge Davis to conduct a hearing, and then recommend an appropriate sanction for Plaintiff's Rule 11 violations.

SO ORDERED.

s/Terrence G. Berg _____
TERRENCE G. BERG
UNITED STATES DISTRICT JUDGE

Dated: February 28, 2017

Certificate of Service

I hereby certify that this Order was electronically submitted on February 28, 2017, using the CM/ECF system, which will send notification to each party.

s/A. Chubb _____
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EDGAR J. DIETRICH,

Petitioner,

v.

Case No. 16-11049

HON. TERRENCE G. BERG

HON. STEPHANIE DAWKINS DAVIS

GROSSE POINTE PARK, et al.

Defendants.

JUDGMENT

In accordance with the opinion and order issued on this date, adopting Magistrate Judge Davis's Report and Recommendation (Dkt. 35) and dismissing this action with prejudice;

It is ORDERED AND ADJUDGED that judgment be entered in favor of Defendants and against Plaintiff. The Court retains jurisdiction over this matter to determine an appropriate sanction award.

Dated at Flint, Michigan: February 28, 2017

DAVID J. WEAVER
CLERK OF THE COURT

s/A. Chubb
Case Manager and Deputy Clerk

APPROVED:

s/Terrence G. Berg

HON. TERRENCE G. BERG
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Edgar J. Dietrich,

Case No. 16-11049

Plaintiff,

Terrence G. Berg

v.

United States District Judge

City of Grosse Pointe Park and Dale Krajniak,

Stephanie Dawkins Davis

Defendants.

United States Magistrate Judge

**REPORT AND RECOMMENDATION TO
GRANT DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S
COMPLAINT (Dkt. 20) GRANT DEFENDANTS' MOTION FOR
SANCTIONS (Dkt. 24) AND DISMISS AS MOOT PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT (DKT. 31)**

I. PROCEDURAL HISTORY

On March 18, 2016, plaintiff Edgar J. Dietrich filed an action against defendants City of Grosse Pointe Park, and City Manager, Dale Krajniak. (Dkt. 1). The complaint alleges that defendants deprived plaintiff of his civil rights based on the defendants' tortuous conduct, specifically violating plaintiff's Fifth Amendment right to due process. Plaintiff also alleges various state claims, including tortuous interference with business relationships, conversion, and breach of contract. On April 14, 2016, the matter was reassigned from District Judge David M. Lawson and Magistrate David R. Grand to District Judge Terrence G. Berg and the undersigned. (Dkt. 12). On May 2, 2016, Judge Berg referred all

pretrial matters to the undersigned. (Dkt. 14). On May 25, 2016, all defendants filed a motion to dismiss plaintiff's complaint. (Dkt. 20). Plaintiff responded to the motion to dismiss on June 17, 2016 (Dkt. 26), and plaintiff filed a reply (Dkt. 29). On June 20, 2016, all defendants filed a motion for sanctions under Fed. R. Civ. P. 11. (Dkt. 24). On July 6, 2016, plaintiff responded to defendants' motion for sanctions (Dkt. 28), and defendants replied (Dkt. 29). On November 14, 2016, plaintiff filed a counter-motion for summary judgment (Dkt. 31) to which defendants responded (Dkt. 32).

The undersigned has reviewed the pending motions and responses and is otherwise fully advised. For the following reasons, the undersigned **RECOMMENDS** that defendants' motion to dismiss (Dkt. 20) be **GRANTED**. The undersigned further **RECOMMENDS** that defendants' motion for sanctions (Dkt. 24) be **GRANTED**. The Court additionally **RECOMMENDS** that plaintiff's counter-motion for summary judgment (Dkt. 31) be **DISMISSED AS MOOT**.

II. FACTUAL BACKGROUND

Plaintiff alleges that on January 1, 2006, defendant Dale Kraniak, in his capacity as manager of the City of Grosse Pointe Park entered into a lease with the Dietrich Family Trust (the "Trust") for the premises located at 15001 Charlevoix, Grosse Pointe Park, Michigan (the "Property"). (Dkt. 1, Pg ID 3). This property

became the location for La Chateau Art Gallery & Custom Framing (the “Gallery”) and all business transactions relating to the Gallery were transacted with Mr. Kraniak. (*Id.*) On August 26, 2013, the Wayne County Circuit Court (“WCCC”) appointed a receiver over the Gallery in an attempt to collect on a judgment against plaintiff.¹ (*Id.*) While there was an \$11,000,000 judgment, plaintiff says that a sealed settlement agreement between the parties in the amount of two million dollars was paid by the insurance company of the majority defendant in that case, Marshall Folgelson. Plaintiff contends that the settlement agreement ended the entire case and there is no remaining judgment against the two defunct law offices or against plaintiff personally.

Four days following the appointment of the receiver, on August 30, 2013, the WCCC entered an order indicating that plaintiff, the Gallery, and all agents thereof were directed to cease and desist from interfering in the receiver’s exercise of his duties. (Dkt. 20-4, Pg ID 320-323). Nevertheless, on November 11, 2013, the WCCC entered a judgment of criminal contempt against plaintiff “for repeatedly violating” WCCC’s orders. (Dkt. 20-5, Pg ID 324-326). Next, plaintiff turned to the United States Bankruptcy Court; however, the Bankruptcy Court

¹ The state court action involved an effort to collect on a judgment against plaintiff that arose from a legal malpractice action. The Wayne County Circuit Court concluded that the Gallery “had been utilized as a vehicle for transferring and hiding property which would be used to satisfy the judgment.” (Dkt. 20-2, Pg ID 308).

entered an order denying plaintiff's motion to enforce a mandatory stay under 11 U.S.C. § 362 holding that the appointment of the receiver by the WCCC remained in full force and effect and "did not violate the automatic stay imposed by 11 U.S.C. § 362 of the Bankruptcy Code." (Dkt. 20-6, Pg ID 327-329). The Bankruptcy Court also concluded that the WCCC order holding plaintiff in contempt "remained in full force and effect" and was not in violation of the automatic stay imposed by 11 U.S.C. § 362. (*Id.*) Plaintiff (through his son) then brought an action in the Grosse Pointe Park Municipal Court ("GPPMC") on November 15, 2013. (Dkt. 20-7, Pg ID 330-336). In that action, plaintiff asked the GPPMC to allow him to enter the Gallery premises, and asked for injunctive relief requiring the City's Department of Public Safety to stop "purposefully violating the lease between plaintiff and the City of Grosse Pointe Park." (*Id.*) That case was dismissed with prejudice for lack of jurisdiction. (Dkt. 20-8, 337-344).

Then, in January 2014, plaintiff filed an action in the United States District Court for the Eastern District of Michigan claiming that he had been wrongfully deprived of access to his property. (Dkt. 20-9, Pg ID 134-142). Plaintiff was represented by counsel, but soon after it was filed, the case was voluntarily dismissed without prejudice. (Dkt. 20-10, Pg ID 143-145). After the voluntary dismissal, plaintiff, acting in his own behalf, filed a motion for reinstatement

asserting similar claims under federal law. (Dkt. 20-11, Pg ID 146-173).

Defendants opposed plaintiff's motion arguing that the court should not reinstate the complaint because the *Rooker-Feldman* doctrine would preclude plaintiff's claims, among other issues. (Dkt. 20-12, Pg ID 174-261). The district court denied plaintiff's motion to reinstate and cautioned plaintiff:

To the extent that Plaintiff believes he has a viable claim against any of the Defendants, the Court would nevertheless caution Plaintiff to carefully review the arguments raised in Defendants' proposed motion to dismiss, particularly those related to the *Rooker-Feldman* doctrine. *See* Dkt. 14, Ex. 1, pp. 4-6. Although Defendants' proposed motion is not properly before the Court, it raises significant questions as to subject matter jurisdiction—questions that would necessarily need to be resolved if Plaintiff were to re-file this action. Moreover, the Court would remind Plaintiff of the requirements of Federal Rule of Civil Procedure 11, stating both (1) that the filing of a complaint constitutes a certification that “the claims, defenses, and other legal contentions are warranted by existing law or by a *nonfrivolous* argument for extending, modifying, or reversing existing law or for establishing new law,” Fed. R. Civ. P. 11(b)(2) (emphasis added), and (2) the “court may impose an appropriate sanction on any...party that violated [Rule 11(b)].” Fed. R. Civ. P. 11(c).

See Dietrich v. Grosse Pointe Park, City of, et al., No. 14-cv-10264, slip op. at 18 (E.D. Mich. July 3, 2014) (Dkt. 20-13).

The City then initiated eviction proceedings against the Dietrich Trust (the lessor of the Property) in 2014. On July 9, 2014, the Grosse Pointe Woods

Municipal Court (“GPWMC”) entered an order terminating the lease and ordered the Dietrich Trust to vacate the Property. Following an appeal by the Dietrich Trust, the parties entered into a Release Agreement (the “Release”) on or about August 22, 2014 in which plaintiff signed for himself and on behalf of the Dietrich Trust. (Dkt. 20-14, Pg ID 271). The Release provides in relevant part that the Dietrich Parties (defined by the Release as plaintiff together with the Dietrich Trust) release all present and future claims “arising from claims which are the subject matter of the Lease, Eviction, and Appeal against the City and its past and present employees, agents, and/or representatives, and any and all claims which were, or could have been , or can be asserted against its past and present employees, agents, and/or representatives.” (Dkt. 20-14, Pg ID 267-271).

Plaintiff then filed this action on March 18, 2016. (Dkt. 1). Before it was served, however, defendants’ counsel reminded plaintiff of the terms in the Release and asked plaintiff to dismiss the complaint. (Dkt. 20-15, Pg ID 272-275). Defendants’ counsel also warned plaintiff that they would seek sanctions pursuant to Fed. R. Civ. P. 11. (*Id.*)

Defendants argue in their motion to dismiss that plaintiff’s complaint is barred by the *Rooker-Feldman* doctrine and also by the parties’ August 2014 Release. Defendants ask the court to dismiss plaintiff’s complaint with prejudice and ask the court to enter an order prohibiting plaintiff from filing any future

actions against these same defendants (as well as the City's officials, employees and departments) without leave of the court.²

III. LEGAL ANALYSIS

A. Standard of Review

To survive a motion to dismiss under Rule 12(b)(6), a plaintiff must first comply with Rule 8(a)(2), which requires “‘a short and plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 545 (2007), quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957). A plaintiff is also obliged “to provide the grounds of his entitlement to relief,” which “requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Ass’n of Cleveland Fire Fighters v. City of Cleveland*, 502 F.3d 545, 548 (6th Cir. 2007) (quoting *Twombly*, 550 U.S. at 555 (citations and internal quotation marks omitted)). And, while a complaint need not contain “detailed” factual allegations, its “[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are

² Defendants note that on the same day that plaintiff filed the instant action, plaintiff contemporaneously filed a separate complaint against the receiver appointed by the WCCC, Basil T. Simon. See *Dietrich v. Simon*, 16-11071 (E.D. Mich. filed Mar. 18, 2016). On October 18, 2016, District Judge Sean F. Cox adopted the report and recommendation of Magistrate Judge David R. Grand recommending the dismissal of Dietrich’s federal claim for lack of subject matter jurisdiction pursuant to the *Barton Doctrine*. (*Id.*, Pg ID 147-149).

true.” *Id.* (quoting *Twombly*, 550 U.S. at 555 (citation and internal quotation marks omitted)); *see also League of United Latin Am. Citizens v. Bredesen*, 500 F.3d 523, 527 (6th Cir. 2007) (emphasis in original) (The factual allegations in a complaint need not be detailed but they “must do more than create speculation or suspicion of a legally cognizable cause of action; they must show *entitlement* to relief.”).

B. Legal Analysis

1. *Rooker-Feldman Doctrine*

Defendants claim that the court lacks subject-matter jurisdiction over plaintiff’s claims under the *Rooker-Feldman* doctrine because plaintiff filed this action to challenge the Wayne County Circuit Court’s Order Granting Plaintiff’s Motion for the Appointment of Receiver. (Dkt. 20-2, Pg ID 95-103). Indeed, the *Rooker-Feldman* doctrine raises a jurisdictional bar that prohibits a federal district court from engaging in appellate review of state-court judgments. *See Rooker v. Fid. Trust Co.*, 263 U.S. 413 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983). More recently, the United States Supreme Court has clarified the scope of the *Rooker-Feldman* doctrine, holding that it is confined to “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). The Sixth Circuit has explained that the relevant inquiry in determining whether a claim falls within the scope of the *Rooker-Feldman* doctrine “is the source of the injury the plaintiff alleges in the federal complaint.” *McCormick v. Braverman*, 451 F.3d 382, 393 (6th Cir. 2006). “If the source of the injury is the state court decision, then the *Rooker-Feldman* doctrine would prevent the district court from asserting jurisdiction. If there is some other source of injury, such as a third party’s actions, then the plaintiff asserts an independent claim.” *Id.* An independent claim will not divest a federal district court of subject-matter jurisdiction, even if it may deny a legal conclusion of the state court. *Id.* at 392. To determine the source of the injury, a court must refer to the plaintiff’s request for relief. *Berry v. Schmitt*, 688 F.3d 290, 299 (6th Cir. 2012) (quoting *Evans v. Cordray*, 424 Fed. Appx. 537, 539 (6th Cir. 2011)).

Here, plaintiff’s complaint makes clear that the Wayne County Circuit Court’s Order Granting Motion for the Appointment of Receiver is the source of his claimed injuries, and to grant the relief that plaintiff requests would require the court to reverse a state-court decision granting the appointment of a receiver. This is precisely the type of federal district court action prohibited by the *Rooker-Feldman* doctrine. As such, to the extent that plaintiff seeks a federal reversal of the state-court Appointment of Receiver, dismissal of this matter under the

Rooker-Feldman doctrine is appropriate. *See Colbert v. Fed. Nat. Mortg. Ass'n*, No. 12-13844, 2013 WL 1629305, at *7 (E.D. Mich. Apr. 16, 2013) (quoting *Givens v. Homecomings Fin.*, 278 Fed. Appx. 607, 609 (6th Cir. 2008)).

2. *Failure to State a Claim*

Alternatively, defendants claim that the complaint should be dismissed because plaintiff has failed to state a claim upon which relief can be granted. In other words, defendants allege that plaintiff has failed to meet the Fed. R. Civ. P. 12(b)(6) standard. Specifically, defendants argue that plaintiff's complaint should be dismissed because he released all claims against defendants in August 2014. At that time, plaintiff, personally, and acting as trustee for The Dietrich Trust (collectively "Dietrich Parties"), entered into a "Release Agreement" with the City of Grosse Pointe Park in which the Dietrich Parties agreed to release all present and future claims against the defendants. (Dkt. 20-14, Pg ID 269). The Release provision states:

The Dietrich Parties, including its predecessors, agents, successors, assigns, joint venturers, partners, current and former employees, servants, representatives, officials, attorneys, associates, and trustees of the foregoing persons, and any other party who may claim under or through them hereby knowingly and voluntarily release, forgive, absolve and discharge all rights, claims, demands, damages, actions, and causes of action, which The Dietrich Parties and its above-mentioned others now have or may have in the future, known or unknown, foreseen or unforeseen, arising from the claims which are

the subject matter of the Lease, Eviction, and Appeal against the City and its past and present employees, agents, and/or representatives, and any and all claims which were, or could have been, or can be asserted against its past and present employees, agents, and/or representatives.

(*Id.* at Pg ID 269).

Ordinary contract principles govern whether a release provision is valid.

Soltis v. J.C. Penney Corp., Inc., 635 Fed. Appx. 245, 248 (6th Cir. 2015). One guiding principle is that the contract must be construed as a whole. (*Id.*)

“Moreover, the ‘cardinal rule’ in contract interpretation is to ascertain the parties’ intent.” *Id.* (citing *Omnicom Grp., Inc. v. 880 W. Long Lake Assocs.*, 504 Fed. Appx. 487, 490 (6th Cir. 2012) (quoting *McIntosh v. Groomes*, 227 Mich. 215 (1924)). “In an unambiguous contract, intent is established solely based on the plain language of the contract because in such a case, no outside evidence can better evince the intent of the parties than the writing itself.” *Id.* (citation omitted). However, if the contractual language is “reasonably susceptible to more than one interpretation,” courts deem it ambiguous and will look to extrinsic evidence to ascertain the parties’ intent. *Id.* (citing *Shay v. Aldrich*, 487 Mich. 648, 790 (2010)). “When a release is challenged, the party seeking to avoid the release must prove by a preponderance of the evidence that the release should be set aside.” *Kellogg Co. v. Sabhlok*, 471 F.3d 629, 632 (6th Cir. 2006) (quoting *Binary v. Carrington*, 163 Mich. App. 599, 603 (1987)).

Plaintiff does not argue that the Release is ambiguous. Nevertheless, the undersigned has reviewed the Release and concludes that it is unambiguous. The language releases “all rights, claims, demands, damages, actions, and causes of action, which The Dietrich Parties and its above-mentioned others now have or may have in the future, known or unknown, foreseen or unforeseen, arising from the claims which are the subject matter of the Lease, Eviction, and Appeal against the City and its past and present employees, agents, and/or representatives, and any and all claims which were, or could have been, or can be asserted against its past and present employees, agents, and/or representatives.” (Dkt. 20-14, Pg ID 269). This Sixth Circuit has upheld the similar releases of *all* claims indicating, “there is no broader classification than the word ‘all.’” *Soltis*, at 248 (citing *Cole v. Ladbroke Racing Mich., Inc.*, 241 Mich. App. 1 (2000)). The undersigned agrees with defendants that the terms of the parties’ Release unambiguously contemplate the release of all claims asserted by plaintiff in his Complaint. Further, plaintiff signed the Release in August 2014. All of defendants’ alleged acts that support the claims in the Complaint occurred prior to plaintiff signing the Release.

Plaintiff’s argument that he signed the Release under duress is likewise unavailing as plaintiff has failed to sufficiently plead that his waiver was not knowing and voluntary. Duress involves an “unlawful or wrongful act or threat that overcomes the free will of the victim.” *Bell v. Gen. Motors*, No. 11-10905,

2012 WL 2680909, at *3 (E.D. Mich. July 6, 2012) (quoting *Gascho v. Scheurer Hosp.*, 400 Fed. Appx. 978, 982 (6th Cir. 2010)); *see also Harvard Drug Group, LLC v. Linehan*, 684 F. Supp. 2d 921, 926 (E.D. Mich. 2010) (internal quotation marks omitted) (“Duress requires compulsion or coercion by which one is illegally forced to act by fear of serious injury to person, reputation or fortune.”); *Hackley v. Headley*, 45 Mich. 569 (Mich. 1881) (“Duress exists when one by the unlawful act of another is induced to make a contract or perform some act under circumstances which deprive [her] of the exercise of free will.”). Against this exacting standard, plaintiff has simply not pleaded any facts that he was required to sign the Release against his free will. The only argument advanced by plaintiff was that he was forced to sign the Release under duress knowing that he was going to be evicted and his records and personal belongings were within the Property. However, as noted by defendants, the City had already initiated eviction proceedings against the Dietrich Trust (the actual lessor of the Property) in early 2014. (Dkt. 20-14, Pg ID 268). Moreover, the Release itself allowed plaintiff a 30-day extension to vacate the premises. *Id.* Plaintiff, himself an attorney, also consulted with an attorney and represented the following with respect to signing the Release:

Legal Consultation; Voluntary Act. The Dietrich Parties represent and agree that it has thoroughly discussed all aspects of this Agreement with its attorney

and that it has carefully read, understands, and has full knowledge of the provisions of this Agreement and that it has voluntarily and of its own free will and without any duress entered into this Agreement. The Dietrich Parties further represent and agree that it is not relying on any promise, representation, or statement of the City or its agent, employees, officers, directors, accountants or attorneys or on any promises, conditions, terms, statements, or representations not expressly contained herein.

(Dkt. 20-14, at Pg ID 270) (emphasis in original). For this alternative reason, the undersigned concludes that plaintiff has not met the standard, even at the pleading stage, of sustaining a claim that the Release is ineffective due to duress.

3. *Sanctions*

Defendants also seek sanctions under Fed. R. Civ. P. 11. Federal Rule of Civil Procedure 11(b) states that, by filing a “pleading, written motion, and other paper” with the court, an attorney or an unrepresented party is certifying that “to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances ... [.] the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law.”

Michigan Division-Monument Builders of North America v. Michigan Cemetery Ass’n, 524 F.3d 726, 738-739 (6th Cir. 2008) (quoting Fed. R. Civ. P. 11(b)).

“[I]n this circuit, the test for the imposition of Rule 11 sanctions is whether the

individual attorney's conduct was reasonable under the circumstances." *Id.* at 739 (quoting *Mann v. G & G Mfg., Inc.*, 900 F.2d 953, 958 (6th Cir. 1990)). The test of reasonableness under the circumstances is an objective standard. *Century Prods., Inc. v. Sutter*, 837 F.2d 247, 253 (6th Cir. 1988). This objective standard is intended to eliminate any "empty-head pure-heart" justification for patently frivolous arguments. *Nieves v. City of Cleveland*, 153 Fed. Appx. 349, 353 (6th Cir. 2005).

Rule 11 "stresses the need for some prefiling inquiry into both the facts and the law to satisfy the affirmative duty imposed by the rule." *Albright v. Upjohn*, 788 F.2d 1217, 1221 (6th Cir. 1986). A good-faith belief in the merits of a case is insufficient to avoid Rule 11 sanctions. *Mann*, 900 F.2d at 958. Sanctions are mandatory in the event that the court determines that Rule 11 has been violated, but the court has "wide discretion" in delineating the extent of the sanctions imposed. *Albright*, 788 F.2d at 1222. "The standard for sanctioning parties is the same as that for counsel: reasonableness under the circumstances per Rule 11, or 'in bad faith, vexatiously, wantonly, or for oppressive reasons' under this Court's inherent sanctioning power." *Adams v. Penn Line Services, Inc.*, 2009 WL 1514605, *4 (N.D. Ohio 2009). Rule 11(c) provides, "[i]f, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm,

or party that violated the rule or is responsible for the violation.” Fed. R. Civ. P. 11(c)(1). *Pro se* plaintiffs are not exempt from Rule 11 sanctions simply because they are not represented by counsel. *Graham v. Liberty Mut. Ins. Co.*, 2009 WL 1034942, *4 (E.D. Tenn. 2009) (citing *Bus. Guides, Inc. v. Chromatic Communs. Enters.*, 498 U.S. 533, 564 (1991) (“Requiring *pro se* litigants to make the Rule 11 certification ensures that, in each case, at least one person has taken responsibility for inquiry into the relevant facts and law.”); *see also Kaye v. Acme Investments, Inc.*, 2008 WL 4482304, *1 (E.D. Mich. 2008) (“*Pro se* litigants must comply with Rule 11 no less than attorneys, and must make a reasonable inquiry as to whether the pleading in question is well-grounded in fact and warranted by existing law.”). The primary purpose of Rule 11 sanctions is to deter future conduct of a like nature. *Kaye*, at *1. Notably, a plaintiff’s intentional misrepresentation on the record is serious misconduct warranting dismissal as a sanction. *Amadasu v. General Revenue Corp.*, 2008 WL 207936, *5 (S.D. Ohio 2008).

The undersigned first notes that defendants represented that they complied with Rule 11’s safe harbor provision. (Dkt. 24, at Pg ID 289) (defendants’ counsel sent a copy of the motion for sanctions and accompanying brief to plaintiff).

Defendants move for sanctions under Rule 11 because the Complaint in this action was filed despite obvious application of the *Rooker-Feldman* doctrine and because plaintiff’s Complaint fails to state a claim for relief. Defendants point out that

plaintiff was cautioned regarding the application of the *Rooker-Feldman* doctrine by them and also by the District Court when plaintiff attempted to file a motion for reinstatement in 2014. (See Dkt. 24, Exs. J & K). In denying plaintiff's motion to reinstate, Judge Berg "caution[ed] Plaintiff to carefully review the arguments raised in Defendants' proposed motion to dismiss, particularly those related to the *Rooker-Feldman* doctrine." (Dkt. 24, Pg ID 297).

Despite these warnings, plaintiff persisted in maintaining his claims. In similar circumstances courts in this district have not hesitated to impose Rule 11 sanctions. See e.g., *J. Edward Kloian Found. v. Findling*, 2013 WL 6859143, *7-8 (E.D. Mich. Dec. 30, 2013); *Musilli v. Googasian*, 2006 WL 3030974, *6 (E.D. Mich. Oct. 23, 2006); *Lund v. Citibank (West) FSB*, 2007 WL 3408468, *3 (E.D. Mich. Nov. 14, 2007). And, the undersigned concludes the fact that plaintiff was cautioned by Judge Berg in 2014 regarding the application of the *Rooker-Feldman* doctrine to his claims makes sanctions that much more appropriate in this case. The undersigned therefore **RECOMMENDS** that defendants' motion for sanctions be **GRANTED** and leaves it to the district court to fashion an appropriate remedy.

4. *Plaintiff's motion for summary judgment*

Because the undersigned has recommended that defendants' motion to dismiss [Dkt. 20] be granted, the court *a fortiori* recommends that plaintiff's

motion for summary judgment [Dkt. 31] be **DISMISSED AS MOOT**.

IV. RECOMMENDATION

Based on the above, the undersigned recommends that the district court **GRANT** defendants' motion to dismiss [Dkt. 20]. The undersigned further recommends that the district court **GRANT** defendants' motion for sanctions [Dkt. 24]. The court will simultaneously recommend that plaintiff's motion for summary judgment [Dkt. 31] be **DISMISSED AS MOOT**.

The parties to this action may object to and seek review of this Report and Recommendation, but are required to file any objections within 14 days of service, as provided for in Federal Rule of Civil Procedure 72(b)(2) and E.D. Mich. Local Rule 72.1(d). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1981). Filing objections that raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health and Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987).

Any objections must be labeled as "Objection No. 1," "Objection No. 2," etc. Any objection must recite precisely the provision of this Report and Recommendation to which it pertains. Not later than 14 days after service of an

objection, the opposing party may file a concise response proportionate to the objections in length and complexity. Fed.R.Civ.P. 72(b)(2); E.D. Mich. Local Rule 72.1(d). The response must specifically address each issue raised in the objections, in the same order, and labeled as “Response to Objection No. 1,” “Response to Objection No. 2,” etc. If the Court determines that any objections are without merit, it may rule without awaiting the response.

Date: January 12, 2017

s/Stephanie Dawkins Davis
Stephanie Dawkins Davis
United States Magistrate Judge

CERTIFICATE OF SERVICE

I certify that on January 12, 2017, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send electronic notification to all counsel of record and I have mailed by United States Postal Service to the following non-ECF participant: Edgar J. Dietrich, 15832 Windmill Pointe, Grosse Pointe Park, MI 48230.

s/Tammy Hallwood
Case Manager
(810) 341-7887
tammy_hallwood@mied.uscourts.gov