IN THE DISTRICT COURT OF APPEAL FOR THE STATE OF FLORIDA
FIFTH DISTRICT

ANNEEN NINA GLORIA BAUM,

Appellant/Petitioner/Plaintiff,

v.

Case #: 5D14-1652
Case #: 5D14-1683

DAVID A. BAUM, et al.,

Appellees/Respondents/Defendants

APPELLANT ANNEEN NINA GLORIA BAUM'S OPPOSITION TO APPELLEE DAVID BAUM'S MOTION FOR RECONSIDERATION OF THIS COURT'S AUGUST 22, 2014 ORDER RELINQUISHING JURISDICTION

I, Anneen Nina Gloria Baum, being duly sworn, deposes and says:

1. I am the appellant in the consolidated appeals herein and submit this opposition to the motion of appellee David Baum, by his counsel, William Hennessey, Esq., for reconsideration of this Court's August 22, 2014 order, relinquishing jurisdiction for 30 days to enable the trial court to hear my Amended Motion for Relief from the April 2, 2014 orders that are the subject of the appeals. The Amended Motion for Relief, filed on August 13, 2014, by my trial counsel, Hoffman & Hoffman, P.A., seeks vacatur relief for "misrepresentation and misconduct" of an adverse party, which is Florida Rule of Civil Procedure 1.540(b)(3).

2. As hereinafter shown, Mr. Hennessey's reconsideration motion rests on a succession of willful and deliberate falsehoods and inapplicable law, repeating the pattern of misconduct that enabled him to procure the April 2, 2014 orders (Exhibits C-1, C-2) and the prior orders on which they rest, none more foundational than the November 15,

2013 "Order[s] Compelling Service" (Exhibits A-1, A-2), which Mr. Hennessey wrote. The consequence has been, *inter alia*, to deprive me of the opportunity to contest the purported will of my elderly father that I contend to be the product of undue influence, if not forgery.

3. Due to conflicts and conflicts of interests that have arisen between myself and my trial counsel, whose selected appellate counsel, Kimberly Boldt, Esq., made the August 13, 2014 motion that resulted in this Court's August 22, 2014 order relinquishing jurisdiction, I am submitting these papers to ensure that the Court has a timely-response. They were prepared for me by the same independent reviewer of the trial court record whose discovery of Mr. Hennessey's fraud, misrepresentation, and other misconduct, embodied in a meticulous, record-based "Procedural History" (Exhibit #1), gave rise to the August 13, 2014 Amended Motion for Relief.

4. More than a week ago, I furnished my trial and appellate counsel a draft of these opposing papers so that they could review it for factual and legal accuracy. They have not contested it in any respect. Based upon this and what I now know from my own examination of the record and applicable law, I am confident in swearing to the truth and accuracy of this opposition submission, which I believe to be dispositive.

5. For the convenience of the Court, a Table of Contents follows:

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* * *

The Legal Standard Governing this Court's Granting of Motions to Relinquish Jurisdiction – and Vacatur Relief Pursuant to 1.540(b)(3)

6. Notwithstanding Mr. Hennessey's reconsideration motion contains a section entitled "Legal Standard for Granting a Motion to Relinquish on the Basis of Rule 1.540" (at p. 3), it does not identify the provision pursuant to which motions to relinquish jurisdiction are made and which my appellate counsel expressly invoked in making her August 13, 2014 motion. It is Florida Rule of Appellate Procedure 9.600(b) – and it reads as follows:

> "Further Proceedings. If the jurisdiction of the lower tribunal has been divested by an appeal from a final order, the court by order may permit the lower tribunal to proceed with specifically stated matters during the pendency of the appeal."

7. According to the Committee Notes for Fla. Rule App. P. 9.600(b), "This rule is intended to prevent unnecessary delays in the resolution of disputes." In other words, the rule recognizes that disputes may be more expeditiously resolved by this Court's relinquishing jurisdiction to allow for the trial court "to proceed with specifically stated matters".

8. Such is the case at bar where a report on the "specifically stated matters" will result in vacatur of the appealed-from April 2, 2014 orders (Exhibits C-1, C-2), obviating the appeals.

9. Tellingly, notwithstanding Mr. Hennessey acknowledges (at his ¶12) that my Amended Motion for Relief is pursuant to Fla. R. Civ. P. 1.540(b)(3), for "misrepresentation and misconduct", he does not recite the standard governing determination of such motions. Such is the standard this Court would have applied in recognizing that my Amended Motion for Relief, embodying the "specifically stated matters", presents a *prima facie* case of fraud, misrepresentation, and misconduct by him – for which an evidentiary hearing and vacatur of the appealed-from orders are warranted.

10. In *Robinson v. Weiland*, 936 So. 2d 777, 781-782 (Fla. 5th DCA 2006), this Court reversed the Circuit Court for Brevard County and remanded for an evidentiary hearing on a 1.540(b)(3) motion, stating:

> "This court and others have held that if a party files a motion pursuant to rule 1.540(b)(3), pleads fraud or misrepresentation with particularity, and shows how that fraud or misrepresentation affected the judgment, the trial court is required to conduct an evidentiary hearing to determine whether the motion should be granted[fn] *See Seal v. Brown*, 801 So. 2d 993, 994-95 (Fla. 1st DCA 2001); *St. Surin v. St. Surin*, 684 So. 2d 243, 244 (Fla. 2d DCA 1996); *Estate of Willis v. Gaffney*, 677 So. 2d 949 (Fla. 2d DCA 1996); *Dynasty Exp. Corp. v. Weiss*, 675 So. 2d 235, 239 (Fla. 4th DCA 1996); *Townsend v. Lane*, 659 So. 2d 720 (Fla. 5th DCA 1995); *S. Bell Tel. & Tel. Co. v. Welden*, 483 So. 2d 487, 489 (Fla. 1st DCA 1986) ('[W]here the moving party's allegations raise a colorable entitlement to rule 1.540(b)(3) relief, a formal evidentiary hearing on the motion, as well as permissible discovery prior to the hearing, is required.'); *Kidder v. Hess*, 481 So. 2d 984, 986 (Fla. 5th DCA 1986); *Stella v. Stella*, 418 So. 2d 1029 (Fla. 4th DCA 1982)" (underlining added).

11. At bar, the particularized allegations of my Amended Motion for Relief amply "raise a colorable entitlement to rule 1.540(b)(3) relief". Indeed, the allegations reveal that "misrepresentation and misconduct" is a euphemism for what is far more serious. Clear from the language of my Amended Motion for Relief,[1] which speaks of "actual knowledge" (¶4); "blatant misrepresentations to the Court" (¶6); "intentionally omitted" (¶8); "***blatant misrepresentation*** of the Court's findings" (¶11, bold & italics in the original); "intentional omissions" (¶13); and "***blatantly false***" (¶17, bold & italics in the original) – is that at issue is "fraud on the court", as that term is defined.

12. In *Dean v. Bentley*, 848 So. 2d 487, 489 (Fla. 5th DCA 2003), this Court stated:

> "the Florida Supreme Court defines 'fraud on the court' as:
>
> > [The] prevention of an unsuccessful party [from] presenting his case, by fraud or deception practiced by his adversary; keeping the opponent away from the court…
>
> *DeClaire v. Yohanan, 453 So. 2d 375, 377 (Fla. 1984), superseded by rule on other grounds, see Lefler v. Lefler, 776 So. 2d 319, n. 1 (Fla. 4th DCA 2001).*"

13. This Court's subsequent decision in *Robinson v. Weiland*, 988 So. 2d 1110, 1112 (Fla. 5th DCA 2008) furnishes a further definition of fraud on the court:

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[1] As stated in *In Re: Estate of Willis v. Gaffney*, 677 So. 2d 949, 951 (Fla. 2d DCA 1996), wherein the Second District Court of Appeal, reversed and remanded for an evidentiary hearing a motion that it deemed pursuant to Fla. R. Civ. Procedure 1.540(b)(3):

> "We begin our analysis by restating the well-settled law of Florida that '[a] pleading will be considered what it is in substance, even though mislabelled.' *Sodikoff v. Allen Parker Co., 202 So. 2d 4, 6 (Fla. 3d DCA 1967), cert. denied, 210 So. 2d 226 (Fla. 1968). Accord Balboa Ins. Co. v. W. G. Mills, Inc., 403 So. 2d 1149, 1150-1151 (Fla. 2d DCA 1981)* (citing *Sodikoff*). Thus, 'the character of a motion will depend upon its grounds or contents, and not on its title.' *Jones v. Denmark, 259 So. 2d 198, 200 n.1 (Fla. 3d DCA 1972). Accord Concept, L. C. v. Gesten, 662 So. 2d 970, 973 n.3 (Fla. 4th DCA 1995)* ('Courts now sanction less preciseness in the labeling of motions, looking more to their substance.')…"

> "Fraud on the court occurs where 'it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense.' *Cox v. Burke*, 706 So. 2d 43, 46 (Fla. 5th DCA 1998)."

14. Fraud on the court is precisely what my Amended Motion for Relief presents – and such are the "exceptional circumstances" that Mr. Hennessey purports must be presented for the Court "to overcome the presumption against relinquishing jurisdiction to the lower court" (at his ¶13, ¶¶8-9, citing two inapt cases, *McNulty v. Bank United*, 140 So. 3d 1041 (Fla 3d DCA 2014), and *Abifraj v. Florida Birth Related Neurological Injury Compensation Assoc.*, 844 So. 2d 751 (Fla 1st DCA 2003), the latter not involving Fla. R. Civ. P. 1.540(b)(3) and the former seemingly not.

15. The seriousness of fraud on the court is clear from *Dean v. Bentley*, 848 So. 2d 487 (Fla. 5th DCA 2003) where this Court stated with respect to factual misstatements by an attorney who was also the personal representative:

> "misstatement of fact are not only violations of the duties of a personal representative, they violate that part of the attorney's oath which provides: 'I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law.'[fn5]".

In addition to citing to the "Oath of Admission to The Florida Bar" in its annotating footnote 5, this Court not only affirmed the trial court's reopening of the closed estate, but stated:

> "**We also direct the trial court's attention to Canon 3D(2), Florida Code of Judicial Conduct, which requires a judge to take appropriate action 'when a judge receives information or has actual knowledge that substantial likelihood exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar . . . .'**" (at 490-491, bold and underlining added).

16. Little wonder then that of the seven cases that Mr. Hennessey's reconsideration motion cites, none from this Court, only two involve fraud, *In re Estate of Clibbon*, 735 So. 2d 487 (Fla. 4th DCA 1998) (at his ¶21), *Freemon v. Deutsche Bank Trust Company Americas*, 46 So. 3d 1202, 1204 (Fla. 4th DCA 2010) (at his ¶23) – and these he expurgates in quoting to omit the salient principles relating to fraud and relief pursuant to Fla. Civ. R. P. 1.540(b)(3). Thus, in *Freemon*, the full context of what the Fourth District Court of Appeal stated was:

> "To entitle a movant to an evidentiary hearing on a motion for relief from judgment, a rule 1.540(b)(3) motion must specify the fraud with particularity and explain why the fraud, if it exists, would entitle the movant to have the judgment set aside. *Flemenbaum v. Flemenbaum*, 636 So. 2d 579, 580 (Fla. 4th DCA 1994). 'If a motion does not set forth a basis for relief on its face, then an evidentiary hearing is unnecessary, the time and expense of needless litigation is avoided, and the policy of preserving the finality of judgments is enhanced.' *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co.*, 20 So. 3d 952, 955 (Fla. 4th DCA 2009). The matter alleged must affect the outcome of the case and not merely be '*de minimis*.' *Id.* Thus, to obtain a hearing on a rule 1.540(b)(3) motion, the law requires a movant 'to demonstrate a *prima facie* case of fraud, not just nibble at the edges of the concept.' *Hembd v. Dauria*, 859 So. 2d 1238, 1240 (Fla. 4th DCA 2003)." (at 1204).

The only part of *Freemon* Mr. Hennessey quotes (in his ¶23) is the above underlined portion.

The Amended Motion for Relief Pursuant to 1.540(b)(3) Amply Meets The Standard for an Evidentiary Hearing and Vacatur

17. As the most cursory examination of my Amended Motion for Relief establishes, it presents "a *prima facie* case of fraud" by its cited law, cited case law, and by its annexed transcript and affidavit evidence. Therein recited are the following:

(a) that at a November 12, 2013 case management conference before the trial court (Exhibit G), Mr. Hennessey knowingly misrepresented the law as to service of pleadings in probate proceedings and purported, in his October 15,

2013 dismissal motion, that the parties had not been served "[a]s a result of Nina's delay", concealing that my former attorney had repeatedly endeavored, through a process server, to effect service, which his client, David Baum, the personal representative, was actively evading and that he himself was not accepting service (Amended Motion for Relief: ¶¶3, 6-8, 13);

(b) that Mr. Hennessey wrote orders for the trial court to sign – and which the trial court did sign on November 15, 2013 (Exhibits A-1, A-2) – in which Mr. Hennessey brazenly misrepresented the trial court's oral rulings at the November 12, 2013 case management conference pertaining to service (Exhibit G: pp. 12-15), as well as applicable law, so as to transform the trial court's flexible target date for service into an inflexible deadline that would result in unserved parties being dropped (Amended Motion for Relief: ¶¶4, 5, 9-12);

(c) that at the December 17, 2013 hearing before the trial court (Exhibit J), Mr. Hennessey both affirmatively misrepresented what the trial court had orally ruled on November 12, 2013 and that its November 15, 2013 "Order[s] Compelling Service" were consistent with that oral ruling (Amended Motion for Relief: ¶¶16-17);

(d) that at the March 18, 2013 hearing before the trial court (Exhibit L: p. 20), Mr. Hennessey falsely asserted that "Nina Baum, because of all the – the uncooperative (sic) with her lawyers, this case was never served" and that David Baum was "not ducking or dodging service" and that he himself, as resident agent, "ha[d] to accept service" – following which the process server and my former counsel, who had been permitted to withdraw at the November 12, 2013 case management conference (Exhibit G), swore respective affidavits that "on at least 15 different occasions" the process server had attempted service on the personal representative and believed that he was intentionally, and with deceit, evading service, and that former counsel had informed Mr. Hennessey of the difficulties, but that he had refused, "on multiple occasions", to accept service for the personal representative (Amended Motion for Relief: ¶¶8, 18-24).

18. Mr. Hennessey's recognition of the seriousness of these particularized allegations – and the correctness of this Court's August 22, 2014 order relinquishing jurisdiction to enable the trial court to hold an evidentiary hearing and report thereon – is reflected by his concealment of virtually ALL the particularized allegations. Indeed, the only portion he reveals (at his ¶¶16, 18, 24) are the allegations that David Baum was "actively avoiding service" and that service also could not be made on Mr. Hennessey,

and that affidavits from the process server and my former attorney supported the motion. Entirely omitted are the allegations pertaining to Mr. Hennessey's "misrepresentations", *to wit*, his "fraud on the court" on which the greatest portion of my Amended Motion for Relief rests.

19. It must be noted that Mr. Hennessey's omission of the allegations of his fraud is not only with respect to my Amended Motion for Relief, but the original Motion for Relief, whose content he does not identify, other than to inferentially purport that it is the same as the Amended Motion for Relief. This he accomplishes by dubbing the Amended Motion for Relief as "hereafter Motion for Relief" (at his ¶5) – as if the two are identical, when they are not. Indeed, his entire "Argument" (at his ¶¶13-25) is built on the deceit that they are substantively the same, beginning with his first section entitled "The Motion for Relief Contains Nothing Which Was Not Already Addressed by the Trial Court", which, apart from being misleading with respect to the original Motion for Relief, is outrightly false with respect to the Amended Motion for Relief. This deceit is carried through by Mr. Hennessey's second section "Relinquishment Should be Denied Due to Appellant's Undue Delay", purporting "All of the facts alleged in the Motion for Relief occurred prior to November of 2013" (at his ¶20, underlining added) – which could not be more flagrantly and facially false.

20. The true facts are that none of the allegations of the Amended Motion for Relief were "already addressed" by the trial court. This includes the fraction of allegations from the original Motion for Relief, *to wit*, Mr. Hennessey's misrepresentation that "[a]s a result of Nina's delay", the pleadings had not been served, when he knew his client was actively evading service and he himself had refused to

accept service. Indeed, even as to the allegations of the original Motion for Relief that David Baum and Mr. Hennessey had been thwarting service, having nothing to do with Mr. Hennessey's heaping the blame on me, the trial court also did NOT "address" them.

21. The context of the trial court having supposedly "addressed" the allegations of the original Motion for Relief is that they had been "raised in [my] Motions for Rehearing, which were denied and which are currently on appeal" (at his ¶14). This is false in three respects – as Mr. Hennessey well knows in failing to furnish the Court with relevant "Procedural Background":[2]

> Firstly, the Motions for Rehearing did not allege that Mr. Hennessey had misrepresented that "[A]s a result of Nina's delay", service had not been made. Rather, they furnished the affidavit-supported allegations of the process server and of my former attorney that David Baum had been actively evading service and that Mr. Hennessey, on repeated occasions, had refused to accept service.
>
> Secondly, in opposing the Motions for Rehearing, Mr. Hennessey had argued that my affidavit-supported allegations regarding service, which he denied, were not properly raised on a Motion for Rehearing.
>
> Thirdly, the trial court denied the Motions for Rehearing without a hearing and by orders, proposed by Mr. Hennessey, which gave no reasons (Exhibits D-1, D-2).

22. Consequently, it is false for Mr. Hennessey to purport:

> "Appellant has simply recast and repackaged her Motion for Rehearing as a Motion for Relief under Rule 1.540 by claiming that the Personal Representative's factual and legal positions, about which she disagrees are 'misrepresentations and misconduct'. The trial court already rejected these arguments." (at his ¶15).

Also false is Mr. Hennessey's purporting:

> "In this case, all of the grounds raised by the Appellant in the Motion for Relief not only *could* have been raised in the trial court, they *were* raised in the trial court." (at his ¶19, italics in the original).

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[2] My "Procedural History", attached hereto as Exhibit #1 – and discussed at ¶¶3-4, 24-27 herein – contains the relevant particulars at pp. 22-32.

Again false is Mr. Hennessey's purporting:

> "The Motion for Relief from Order will ultimately be denied because the arguments were already rejected by the trial court as false." (at his ¶25).

23. Likewise multitudinously false are Mr. Hennessey's attempts to make it appear that the Amended Motion for Relief is based on "new or newly discovered" evidence (at his ¶14), that the standards for motions based on newly-discovered evidence apply, and to cite and quote inapplicable case law pertaining thereto, *Brown v. McMillian*, 737 So. 2d 570, 571 (Fla. 1st DCA 1999); *King v. Harrington*, 411 So. 2d 912, 915 (Fla. 2d DCA 1982) (at his ¶¶17, 23, 24) for the proposition that "Relinquishment Should Be Denied Because the Motion is Futile" (at p. 6), reprising, at times *verbatim*, his May 2, 2014 opposition to the original Motion for Relief, notwithstanding my attorneys filed a May 5, 2014 motion to strike, objecting to its pretense that my motion was based on "newly discovered evidence", which Mr. Hennessey here repeats.[3]

The Record-Based "Procedural History" Underlying the Amended Motion For Vacatur Relief Pursuant to 1.540(b)(3)

24. As hereinabove shown, Mr. Hennessey's reconsideration motion is fashioned on flagrant falsification of the content of the Amended Motion for Relief, the

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[3] On August 14, 2014, in making his motion to the lower court to strike the August 28, 2014 evidentiary hearing, Mr. Hennessey also pretended that the Amended Motion for Relief was based on "newly discovered evidence", annexing a copy of his May 2, 2014 opposition to the original Motion for Relief.

As for Mr. Hennessey's assertion that such hearing was "improperly scheduled", this was not the basis upon which the trial court struck it from the docket, as Mr. Hennessey deceitfully makes it appear (at his ¶5), while nonetheless identifying that it was stricken "on [the] basis that 'the trial court] lacked jurisdiction" – which is the basis upon which Mr. Hennessey sought to have it stricken.

law applicable thereto, and the course of the proceedings before the trial court. He has also furnished a "Procedural Background" designed to materially mislead by its ¶11:

> "The trial court in this action dismissed Appellant's will contest filed in connection with pending probate proceedings and dropped parties in a separate independent action filed by Appellant after Appellant failed to serve her pleadings for over ten months and failed to comply with multiple court orders and warnings from the trial court requiring her to complete service. (DB App. 9, 18, 138, 140, 146, 150). The trial court specifically found that the Appellant wholly failed to show any good cause for her failure to comply with the trial court's previous orders and that the Appellant was intentionally engaging in dilatory behavior and stall tactics. (DB App. 9, 18)",

with an appendix of trial court documents selected to further confuse.

25. To further ensure that this Court is not mislead, annexed is the record-based, fact-specific "Procedural History" (Exhibit #1), referred to at ¶3, *infra*, chronicling Mr. Hennessey's fraud on the trial court, culminating in the appealed-from orders.

26. This "Procedural History" (Exhibit #1) was prepared, at my direction. Until it was furnished to me, as part of an independent review of the record, I was unaware of what had occurred. I incorporate this "Procedural History" (Exhibit #1) by reference, as if more fully set forth, swearing to its truth and accuracy to the best of my knowledge, information, and belief.

27. The "Procedural History" (Exhibit #1) shows how Mr. Hennessey manipulated the lower court – misrepresenting the law as to service, the facts about the status of the case and my conduct herein, and furnishing the trial court with orders that were materially false, both as to facts and law. Again and again, Mr. Hennessey inflamed and prejudiced the trial court with assertions, innuendos, and aspersions that I had been "uncooperative" and "uncommunicative" with my attorneys and had masterminded a "game plan" of delay – for which he had NO evidence. The result was the trial court's

April 2, 2014 orders (Exhibits C-1, C-2) – with its handwritten addition that it had "previously noted" my "dilatory and stall tactics", when the record shows NOTHING of the sort.

The Further Documentary Evidence
Establishing Entitlement to an Evidentiary Hearing and Vacatur Relief
Pursuant to 1.540(b)(3)

28. Inasmuch as Mr. Hennessey purports that "Relinquishment Should be Denied Due to Appellant's Undue Delay" and that my "prior and continued delay tactics are also relevant" (at his ¶20), the "Procedural History" (Exhibit #1) is additionally germane. So, too, is the documentary proof that rebuts Mr. Hennessey's outrageous falsehood that I sought delay and failed to comply with court directives: chains of e-mails with my first attorneys, Kenneth Manney, Esq. and Patrick Roche, Esq., (Exhibit #2) and with the attorney purporting to represent me thereafter, Mark Guralnick, Esq. (Exhibit #3).[4]

29. My e-mails with Mr. Manney (Exhibit #2) establish my constant requests to him for status updates, including as to service. These include the following:

- My July 13, 2013 e-mail: "Please advise asap…that you served the amended petition – as we agreed you were to serve the petition immediately and not delay or wait at all or use any cushion time …"
- My July 17, 2013 e-mail: "i have ny (sic) gotten a response from my 7/13 email below - please respond
- My July 19, 2013 e-mail: "i sent you 2 emails that you have not yet responded…Also confirm the papers have been served"

[4] The e-mails, redacted to remove sensitive and irrelevant materials, are what I presently have available. My cellphone, from which I sent text messages and e-mails, is not immediately accessible and other e-mails from my computer have been lost due to computer hacking. At the evidentiary hearing of the Amended Motion for Relief, Messrs. Manney, Roche, and Guralnick can be subpoenaed to testify as to these and other e-mails and text messages, including by originals in their possession. I, myself, am eager to testify, under oath, subject to cross-examination.

- My July 20, 2013 e-mail: "this is the forth email I am sending and I have also left you a message on your answering machine – but have not heard back from you
please provide me the stays (sic) of the case…"

- My July 22, 2013 e-mail: "also, just give me confirmation that the parties were served and we are moving forward full speed ahead…"

- My July 31, 2013 e-mail: "…just want to follow up – 2) make sure papers were served"

- My September 5, 2013 e-mail: "Subject: fyi - service of process -- poease advise status"

- My September 10, 2013 e-mail: "…1) please advise of the status of service of the papers…"

- My September 12, 2013 e-mail: "…did you serve the papers?"

- My September 26, 2013 e-mail: "Subject: tell me status – it has been over 2 months –"

- My September 27, 2013 e-mail: "you didn't answer any of my questions not even the basic one - did you serve my mother? bruce? david?"

- My November 4, 2013 e-mail: "i phoned you back kenneth - and left a few messages but you did not pick up and you did not call back
maybe you should get a land line - as you clearly are having way too many issues with your telephone
in addition - as you remember i tried so hard to reach you i even made a trip up to your place and waited hrs until you surfaced (that was after we were disconnected the prior thursday from talking with the accountant and you never did call back) and never did return the many calls i placed (remember - when you told me that you were putting an umbrella out on your terrace for your elderly mother - and you had me wait in that building in the back of your house that you are renovating) and you had NOTHING to tell me except you did not get to any discovery and you did not have the petition served yet - and you told me that you still could not find the PR (david Baum)"

30. Indeed, established by the e-mails is that I was not only communicative and cooperative, but that I did everything in my power to expedite the litigation, not the least reason because I desperately required the monies from a successful litigation to

support myself – including to pay for essential medical care. Thus, I stated to Mr. Manney, on May 30, 2013, at the very outset of the retention:

> "IF you need help of another lawyer – lets get them on board!!!" (capitalization in the original)

31. Nor did I ever fail or refuse to cooperate with Messrs. Manny and Roche either in furnishing documents in response to Mr. Hennessey's September 25, 2013 notice for document production, due on October 30, 2013, or in scheduling my deposition. As for my attorneys' October 2, 2013 motion for a continuance of the hearing on David Baum's petition to strike my creditor claims, I was unaware of it – and showed up for the October 3, 2013 hearing, the only one to do so!

32. Suffice to note that Messrs. Manny and Roche never claimed I was "uncommunicative" or "uncooperative", including in their November 6, 2013 motion to withdraw after I terminated their services. This, however, did not prevent Mr. Hennessey from purporting the contrary. Thus, for example, at the outset of the November 12, 2013 case management conference (Exhibit G), which was also a hearing on Messrs. Manney and Roche's withdrawal motion, Mr. Hennessey falsely stated:

> "And through no fault of Mr. Manney or Mr. Roche, <u>their client has been uncommunicative with them in terms of scheduling things before the Court</u>..." (Exhibit G: pp 4-5, underlining added).

And, at the March 18, 2014 hearing (Exhibit L), Mr. Hennessey also falsely stated:

> "...the purpose of [the November 12, 2013] hearing was to facilitate scheduling of discovery <u>to require Ms. Baum to participate in scheduling of things, because we hadn't been able to get that accomplished</u>" (Exhibit L: p. 8, underlining added);
>
> "her two lawyers again were permitted to withdraw. Mr. Guralnick comes into that case and he files the motions to

> withdraw and the motions for extension in that case as well, two weeks later, alleging the exact same issues." (Exhibit L: p. 15, underlining added);
>
> "But Nina Baum, because of all the – the uncooperative with her lawyers, this case was never served…" (Exhibit L: p. 20, underlining added);
>
> "….we have a serial litigant who abuses process. And I have stood before you, Your Honor, flabbergasted over the fact that I can't schedule simple hearings with her counsel…You set deadlines in this case because we are dealing with a litigant who is being incredibly uncooperative." (Exhibit L: p. 41, underlining added).

33. This is utterly false. Messrs. Manney and Roche had never alleged anything of the sort – and the e-mails establish the true facts of my cooperation at every turn.

34. As for Mr. Guralnick, whose November 26, November 29, and December 16, 2013 motions to withdraw and extend deadlines Mr. Hennessey distorted to say what they did not, my e-mails with Mr. Guralick (Exhibit #3) expose those distortions and malicious innuendos. The e-mails show that I pressed Mr. Guralick to effectuate service – and to comply with the trial court's November 15, 2013 orders for my production of documents and deposition. They also show that it was Mr. Guralnick – not I – who terminated his representation of me (November 25, 2013), doing so in the context of my entreaties for his cooperation in furnishing an appropriate production of documents, pursuant to the trial court's order, which, in the absence of his assistance, I then furnished myself.

35. It must be stated that just as Mr. Hennessey sought, again and again, to discredit me in the Court's eyes by injecting prejudicial decisions against me in other cases because he had NO evidence of misconduct by me in this case, so he used those

same decisions to foster doubt and distrust of me by my attorneys, which he then ratcheted up by motions for attorneys' fees and costs, timed to cause maximum damage to my relationship with them. Thus, on the same day as Mr. Guralnick filed his notice of appearance, November 12, 2013, and attended the case management conference (Exhibit G), Mr. Hennessey not only filed a motion seeking attorneys' fees and costs against Messrs. Manney and Roche pursuant to Florida Statutes §57.105 for my allegedly "frivolous and completely without merit" amended petition in my will contest case, which he had sent them, but not filed, on October 15, 2013, but sent to Mr. Guralnick a motion pertaining to my allegedly "frivolous and completely without merit" amended complaint in my adversary proceeding, emblazoned with the title:

> "Defendant's Second Motion for Attorneys' Fees and Costs Pursuant to Florida Statutes §57.105 (to Include Attorney Mark S. Guralnick and Mark S. Guralnick Professional Corporation)".

This, Mr. Hennessy filed on January 28, 2014, four days after Hoffman and Hoffman, P.A. had filed its notice of appearance, simultaneously serving these new attorneys with a "Third Motion for Attorneys' Fees and Costs Pursuant to Florida Statutes §57.105" against them for my allegedly "frivolous and completely without merit" amended petition – which he filed on February 25, 2014.

36. These are the kind of tactics employed by Mr. Hennessey to which I referred on December 17, 2013, when I stated to the trial court:

> "The other thing is, the last few lawyers I contacted, somehow – after I spoke to them, they wanted my case. One, I even signed a retainer with, but then all of a sudden they got bombarded by Mr. Hennessey with all these awful things about me.
>
> Like, horrible, horrible things, and I wouldn't want a client like that either, and told them about motions that I'm unfamiliar with, about sanctions. And one said that it would be – what did he say? It looks like

not only are they taking all your money – he said something about going after the jugular.

It was really awful, So, he said –" (Exhibit J: pp. 131-132).

37. Over and beyond the particulars set forth by my annexed "Procedural History" (Exhibit #1), there is much more to be presented as to the stratagem of misconduct by Mr. Hennessey and his client, David Baum, which was intended to, and did, sabotage my ability to undertake my important will contest. I will embrace the opportunity to set it forth at the evidentiary hearing on my Amended Motion for Relief.

38. This Court's adherence to its August 22, 2014 order, directing a report within 30 days on the Amended Motion for Relief, is, by far, the most expeditious way for the parties to resolve the issues – as Mr. Hennessey well knows.

39. To avoid delay occasioned by Mr. Hennessey's deceitful reconsideration motion, a copy of this affidavit is being deposited with the trial court so that, as contemplated by this Court's August 22, 2014 order, it can hold the evidentiary hearing to which my Amended Motion for Relief shows a *prima facie* entitlement and then report its findings to this Court.

WHEREFORE, it is respectfully prayed that the Court deny Mr. Hennessey's reconsideration motion in all respects and grant such other and further relief as is just and proper.

ANNEEN NINA GLORIA BAUM

Sworn to before me this
8th day of September 2014

Notary Public

MAJDA ALI
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Jan. 23, 2018