NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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LETTER OPINION

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RE: *Sisira Kumara Kumaragamage Don v. Tera International Group, Inc., et al.*
Case No. CL-2017-12663 (Sanctions)
Commonwealth of Virginia v. Sisira Kumara Kumaragamage Don
Case No. MI-2018-1645 (Criminal Contempt)

Mr. Kumara and Counsel:

This cause came before the Court on November 9, 2018, on the Motion for Sanctions of Defendants Tera International Group, Inc. ("Tera") and Mr. Asil Gezen ("Gezen") against Plaintiff Mr. Sisira Kumara Kumaragamage Don ("Plaintiff" or "Kumara"), also known as Don Gamage. The Motion raised the question whether

Plaintiff's attachment of fraudulently created documents to court filings constitutes conduct for which the Court is statutorily empowered to impose financial sanctions on the signatory to such filings, as well as criminal contempt based on Kumara's acknowledgement of knowing that at least one of his submitted documents contained entirely false information. The Court found Plaintiff attached separate forged documents containing false information to each of two court filings, namely to his response to Defendants' Plea in Bar, and most glaringly, to his response to the very Motion for Sanctions that is the object of this Letter Opinion. The Court found such filings were submitted with the intent to deceive the Court and to cause Defendants unwarranted financial and reputational distress.

For the reasons as more fully stated herein, the Court held such attachments of themselves, as well as their incorporation by reference in the named documents, made such court filings not well grounded in fact and disclosed they were interposed for the improper purpose of unlawfully harassing and harming Defendants financially. These actions are sanctionable pursuant to Virginia Code § 8.01-271.1. The Court therefore imposed a monetary sanction of $90,000.00 plus $37,452.00 in attorneys' fees related to the fraudulent conduct, in favor of Defendants and against Plaintiff. The Court found the sum just and appropriate based on the outrageous circumstances evident in this cause.

In addition, though disputing authorship, Plaintiff acknowledged knowingly submitting to the Court a transparently fake newspaper article in defense of the Motion for Sanctions falsely ascribing criminal activity to Defendant Gezen. This action was an attempt to make Defendants appear less credible before the Court in order to escape civil

sanction for use of a forged document in defense of the previous Plea in Bar hearing, wherein Plaintiff's claims against Defendants were dismissed as being devoid of merit. Plaintiff's brazen submittal of new forged evidence in defense against sanctions for his previous use of a fake email as evidence, constituted intentional interference with the administration of justice in the presence of the Court beyond a reasonable doubt, warranting Plaintiff's conviction for summary criminal contempt and imposition of the maximum punishment of ten days in jail and a $250.00 fine.[1]

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[1] On November 10, 2018, the day following this Court's ruling from the bench incorporated in this Letter Opinion, it was learned that on October 20, 2011, authorities in New South Wales, Australia, filed in the Downing Centre Local Court, an arrest warrant for Plaintiff Sisira Kumara Kumaragamage Don, also known as Don Gamage, detailing the following charges:

> Mr. Gamage is being prosecuted for one count of corruptly offering a reward pursuant to section 249(2) of the Crimes Act; two counts of knowingly give false and misleading evidence pursuant to section 87(1) of the ICAC Act; one count of hindering an officer of the ICAC pursuant to section 80(a) of the ICAC Act; seven counts of make false statement with intent to obtain advantage pursuant to section 178BB of the Crimes Act; and one count of make false statement with intent to defraud pursuant to section 192G of the Crimes Act.

Recommendations for prosecutions and updates, INDEP. COMM'N AGAINST CORRUPTION, https://www.icac.nsw.gov.au/component/investigations/article/3716?Itemid=4196.

The charges were brought pursuant to a detailed report and investigation of August 2010 by the Independent Commission Against Corruption. *See* INDEP. COMM'N AGAINST CORRUPTION, INVESTIGATION INTO ATTEMPTED CORRUPT PAYMENT AND SUBMISSION OF FALSE RESUMÉS TO PUBLIC AUTHORITIES (Aug. 2010), https://www.icac.nsw.gov.au/documents/investigations/reports/3615-investigation-into-attempted-corrupt-payment-and-submission-of-false-resumes-to-public-authorities/file.

See also Engineer lied on resume, bribed recruiter the ICAC finds, NEWS.COM.AU (Aug. 12, 2010, 5:34 PM), https://www.news.com.au/finance/work/engineer-lied-on-resume-bribed-recruiter-the-icac-finds/news-story/7564f91ff3efe990bc496b777ea02569.

This information was not considered at the time of the Court's decision nor is it a basis of this Court's Letter Opinion since the Court was not aware of the same during trial. The Organized Crime Intelligence Bureau of the Fairfax County Police Department determined in consultation with authorities in Australia that the warrants against Plaintiff remain outstanding and that Plaintiff is thus a fugitive. However, no Interpol Red Notice, i.e., the near-functional equivalent of an international arrest warrant has been lodged against Kumara, nor is there an extradition request pending at this time. Plaintiff therefore served his sentence and was thereafter released from the Fairfax County Adult Detention Center as there were no then-legal grounds for his further detention.

BACKGROUND

This case concerned a claim for breach of contract and tortious interference with a contractual relationship.[2] Plaintiff Sisira Kumara Kumaragamage Don filed this action against Tera International Group Inc. and its president Asil Gezen (collectively, "Defendants") on September 8, 2017. Plaintiff alleged breach of contract and tortious interference claims against the Defendants for alleged improper acts that occurred after the Sri Lankan Government had already decided to award the government contract in question ("the Sri Lanka Project") to a contractor other than Defendant Tera. Kumara filed two lawsuits against Tera in pursuit of such claims, the instant case and one pending in Loudoun County Circuit Court (*Kumaragamage Don v. Tera Int'l Grp., Inc.*, No. CL00107319-00, "Loudoun Action"). In the Loudoun Action, Tera filed a counterclaim on July 7, 2017, for conversion of Tera's confidential information. Kumara contended that Tera's actions in protecting its confidential information by filing its claim in the Loudoun Action constituted a wrongful action that factually supported Plaintiff's breach of contract and tortious inference claims. A month before Tera filed its counterclaim, the Sri Lankan Government omitted Tera from the pool of bidders for the Sri Lanka Project.

Kumara's breach of contract claim involved a February 27, 2017 agreement between Plaintiff and Tera, in which Plaintiff promised to win Tera the Sri Lanka Project in exchange for a success fee. The tortious interference claim involved an alleged agreement between Kumara and Jayampathi Jayasundara ("Jayampathi"), a purported representative of Sri Lanka, under which Plaintiff claimed to owe Jayampathi $500,000.00

[2] Count III, Negligence/Breach of Duty was dismissed on December 1, 2017.

for his supposed efforts in attempting to secure the contract for Tera. Like the alleged breach of contract, Kumara's tortious interference claim rested on alleged facts that occurred after the Sri Lankan Government eliminated Tera as a potential contract awardee. In order to win the contract for the Sri Lanka Project, Tera had to be "shortlisted," that is, selected by the Sri Lankan contracting agency to submit a proposal for such project. Only shortlisted companies could then proceed to submit proposals and have a chance to win the ultimate contract. On June 9, 2017, the Sri Lankan Government announced the consultants that were shortlisted; Tera was not on the list. As of June 2017, and certainly before Kumara filed the instant action against Defendants, Kumara was not in any position to win Tera the Sri Lanka Project. In fact, it is unclear from the evidence whether he engaged in any substantial efforts to win the contract beyond alleging facts that are a likely figment of his imagination.

On June 25, 2018, Defendants filed a Plea in Bar. On August 2, 2018, this Court granted the Plea in Bar and dismissed the case with prejudice, suspending the entry and effect of its order for sixty days. Defendants then filed a Motion for Sanctions on the ground that Plaintiff forged a critical email document upon which he centered his defense to the Plea in Bar, in order to deceive the Court and Defendants. The Court entered an order on September 7, 2018, further suspending the August 2, 2018 Order until after Defendants had their opportunity to be heard on their Motion for Sanctions.

Trial was conducted November 9, 2018, on Defendants' Motion for Sanctions against Plaintiff. Defendants asserted by motion and testimony from Gezen, two of his employees during the relevant periods, as well as through expert testimony, that Plaintiff

forged an email between Tera International's President Gezen and a purported employee of the Asian Infrastructure Investment Bank. The email ostensibly implicated Gezen and a Bank economist in a conspiracy to undermine Plaintiff's supposed work on a contract between the parties, and alleged an attempt to contract with a "hidden partner" in breach of Defendants' contract with Plaintiff. This email submitted during trial of the Plea in Bar pertained directly to a dispositive matter in this case. Gezen testified he did not write or send the email. When the email was supposedly sent, Gezen had the perfect alibi—he was actually being deposed by Plaintiff's counsel in the Loudoun Action. This was confirmed at trial of the Sanctions case by reference to the deposition transcript.

Defendants argued that sanctions are mandatory when a litigant violates Virginia Code § 8.01-271.1 by making a filing that is not well grounded in fact. Plaintiff, they maintained, violated this rule by creating a false email, submitting it to the Court, and using the email to support his arguments throughout this case, including during the Sanctions Motion hearing. Therefore, Defendants asserted that Plaintiff must pay at a minimum all attorneys' fees they incurred resulting from the misuse of the forged email. Defendants further argued the Court should impose additional sanctions on Plaintiff for his abusive litigation tactics. Citing but one example of such tactics, Defendants stated that Plaintiff threatened Defendants' attorneys "with a frivolous lawsuit in an effort to extort a settlement and dissuade Defendants' counsel from pursuing this Motion on their clients' behalf."[3] Defendants alleged they have spent into the six figures defending themselves

[3] Plaintiff notified opposing counsel that unless they settled with him, he intended to file a new federal lawsuit in the Eastern District of Virginia against Defendants' counsel and the Virginia State Bar, draft of which he attached to an August 23, 2018 email, for "Conspiracy Against Right to Fair Trial and Due Process," "Conspiracy and Denial of Plaintiff's Civil Rights and Rights Under Virginia Law," and "Abuse of

against fallacious litigation brought by Plaintiff, but only sought sanctions specifically for Plaintiff's use of forged evidence in the Plea in Bar and Sanctions hearings.

Plaintiff argued that Defendants' claims about the email are themselves fraudulent. Pl.'s Resp. at 1. Plaintiff stated in his defensive filing he could prove the existence of the email and proceeded to allege there were a "string of emails" between Gezen and the Asian *Development* Bank ("ADB") supposedly showing Gezen concealing dispositive facts from the Court. *Id.* at 2. Yet the email alleged to be at issue to which Plaintiff testified at trial involved an alleged employee at the Asian *Infrastructure Investment* Bank ("AIIB"), a totally different entity. The ADB is headquartered in the Philippines while the AIIB is based in China. Plaintiff's written Response to Defendants' Motion for Sanctions thus contradicted his very testimony under oath. It was further unclear how he knew of the alleged emails if he could not produce them. Plaintiff also asked the Court to compel Defendants to give him access to the imagined evidence so that he could prove his case. *Id.* at 3. Plaintiff described unspecified "circumstantial evidence" that purportedly proved the existence of the emails. Plaintiff demanded the Defendants "show convincingly" why they tactically withdrew their Plea in Bar in June 2017, for a reason other than to deceive the Court. *Id.* at 4. Plaintiff further asked the Court to vacate its judgment dismissing his claims because the Court relied on a purportedly false shortlist presented by Defendants, a bare groundless allegation this Court previously rejected. Plaintiff asked that the Court also sanction the Defendants. *Id.* at 5. Plaintiff's aggressive filings and accusations

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Privileges of Position of Virginia Attorney to Deprive Right to Fair Trial and Due Process." Kumara also asserted in his draft pleading that another judge of this Court had conspired with Defendants' counsel to deprive him of his "civil right to have documents necessary to prove his case" merely because that judge denied Plaintiff's motion to compel production of certain evidence as unwarranted. Defs.' Mem., Ex. D.

against Defendants contained no reliable evidence to show support therefor and provided no proper legal basis for the relief sought.

At the Sanctions trial, in sum, Defendants presented evidence the Court found highly compelling proof that Plaintiff forged the email he submitted to the Court at the Plea in Bar and Sanctions hearings, and also submitted a fake news article as an attachment to his filing in defense to the Sanctions motion. The evidence contained in the record need not be recounted herein in excruciating detail but some of the highlights included the following findings by the Court:

A) Plaintiff knew Gezen could not have sent the email he falsely ascribed to him as Gezen was being deposed by Plaintiff's lawyer at the very time Gezen supposedly sent such email;

B) Gezen credibly denied knowing the recipient of such email, having never dealt with such person in the one transaction he had involving the Asian Infrastructure Investment Bank;

C) Plaintiff's response to Defendants' Sanctions Motion refers to the person alleged to have conspired with Gezen via the email as working for the Asian Development Bank, a different entity from the ascribed email address domain belonging instead to the Asian Infrastructure Investment Bank;

D) The two employees of Defendants whom Kumara designated as the sources of the email and the fake news article, both of which he says were sent to him by such persons, testified credibly in denial of such allegation;

E) The subject email contained transparent indicia of forgery as delineated by Defendants' digital document examination expert, and addressed further herein-below; and

F) The fake news article submitted by Kumara, which this Court finds was done with the intention of having the Court disbelieve Defendants by ascribing to Gezen criminal conduct which never occurred, was admitted by Plaintiff to be completely false in content.

Plaintiff's conduct during both proceedings before the Court can thus best be characterized as grifting behavior calculated to misuse the Court system to extract financial gain from the Defendants by means of defrauding the Court.

ANALYSIS

I. Civil sanctions

In the context of civil sanctions, this case presents two threshold questions, namely, whether Plaintiff attached to filings with this Court one or more fake documents, and whether such conduct is sanctionable by statute.

The email alleged to be fraudulent was attached by Kumara to Plaintiff's Response to Defendants' Plea in Bar, stating, "June 22, 2017 – Betrayal continues." Added to this phrase was footnote 7 which reads, "Attachment 3 – Email from Gezen to Pajnapa dated June 23." The Plea in Bar was heard by this Court on August 2, 2018. By use of the subject email, Plaintiff sought to convince the Court Gezen improperly conspired to thwart his contract with Plaintiff by conniving with a man named Pajnapa Peamsilpakulchorn

("Pajnapa") of the Asian Infrastructure Investment Bank, having a work email address ending in "@aiib.org." It should be clear Pajnapa has no involvement in this matter other than the misappropriation of his name by Plaintiff in the forgery of an email. While Pajnapa appears to be an infrastructure economist with connection to the AIIB, Gezen credibly denied either knowing him or ever having any dealings with him. In the email attributed to Gezen, he purportedly attempts to plot with Pajnapa to prevent Kumara from "submitting second proposal" [sic], solicits Pajnapa to secure a "hidden partner" and also to send him a "draft agreement," presumably for the financing of a proposal for infrastructure work to be done in Sri Lanka.

In his Response to Defendants' Motion for Sanctions, Kumara sought to turn the tables on Defendants. Kumara asserted, "Defendants' allegations are nothing but a fraud. Defendants [sic] fraudulent claim is not only willful, it has a high degree of planning. The defendants must be sanctioned for orchestrating this drama." Pl.'s Resp. at 1. Plaintiff doubled-down in defending himself against the Sanctions Motion, on his assertion the email was valid, stating, "It was sent from Asil Gezen's business email as shown in the hard copy (see page 2 of exhibit 1, three-page document received from Ms. Gorobeth/Ms. Farrish)." *Id.* At trial, Kumara restated under oath that the two employees of Defendants had sent him the email. However, both Ms. Gorobeth and Ms. Farrish appeared under oath credibly attesting such testimony of Plaintiff was false. It is further logically unclear why employees of Defendants would provide Plaintiff with a document allegedly proving their then-employer was conspiring to deprive Kumara of a business expectancy.

Kumara also attached page 3 of his Exhibit 1, which purports to be an email reply from Pajnapa to Gezen stating, "I sent reply from yahoo." *Id.* At trial, Plaintiff was asked whether he made effort to contact Pajnapa to secure his testimony or evidence for this cause. Kumara stated that his only attempt to contact Pajnapa was by sending a single email to his official email address. Plaintiff was asked further whether he had searched the internet for Pajnapa's further contact information. Kumara stated he had done so but found nothing. A less than ten second Google search done at trial disclosed a plethora of internet mentions of Pajnapa, including by way of example and not limitation, an economic study Pajnapa had authored under the auspices of School of Public Policy, University College London, along with his personal Yahoo email address. When confronted that his statement that he could not find mention or contact information for Pajnapa in an internet search was likely a lie, Kumara retreated to the explanation that he must not have searched as carefully as he should have. The Court infers from the apparent fib of Kumara under oath and reference to a Yahoo address in the forged email exhibit, that he did search for Pajnapa on the internet and came across his easily-available personal Yahoo email address. Kumara then referenced the same in his forged email to explain why the string between the supposed conspirators ends abruptly by referencing further response was done via Yahoo. Kumara did not contact Pajnapa because that gentleman's only role is that his name has been falsely used by Plaintiff without Pajnapa's knowledge. Like is the case in most confidence schemes, a grain of truth is designed to add to the believability of a false representation. By picking an innocent person with no connection to this case, but who is an economist connected to a Bank that has done business with

Defendants on at least one project, Kumara sought to give his claim against Defendants an air of plausibility. Even there though, Kumara mixed up the names of two separate entities in his allegations, the Asian Infrastructure Investment Bank and the Asian Development Bank, another indicator he was making up fact as he went along.

At trial of the Motion for Sanctions, Defendants presented Mr. Bobby Ray Williams Jr., a well-credentialed digital forensic expert who recounted the many ways the subject email was transparently a forgery. The purported "reply" page from Pajnapa to Gezen contained several indicia the document is fake. The "from" field, while containing the return address of Pajnapa, left out the suffix ".org" which makes the return email address incomplete. An email program does not remove such suffix from the return address. The purported reply email contains no subject line, indicating it could not be in response to the previous email in the string where Gezen was supposedly conspiring with Pajnapa. The addresses in both parts of the thread of the purported email are underlined which indicates they were not printed from an email program but instead were created in a text editing program that adds such underlining upon a carriage return. The printed header in the top-level message is inconsistently narrow and not of the width common in the way email programs print the first message in a string. Page two of the email has differing pixilation among its text indicating text was added after creation of the document. The expert was further unable to recreate the email format in any of the generally used email programs. In addition, forensic analysis of Defendant Tera's computers indicated it was not the source of the emails falsely sourced to its server by Plaintiff.

Plaintiff also attached to his Response to Defendants' Motion for Sanctions a likeness of a supposed newspaper article purporting to ascribe criminal activity to Defendant Gezen. Like was the case for the forged email, as Defendants volunteered, there was a grain of truth around which Kumara constructed this false exhibit. A successful fraud often depends upon use of something truthful to convince those sought to be defrauded, in this case this Court, that if one fact in a document is true, others must also be true. Defendant Gezen volunteered to the Court that some thirty years ago he pled guilty to an offense involving the mislabeling of the certificate of origin of imported parts for which he paid a $1,000.00 fine, a fact that likely prompted Kumara to construct the entirely false article suggesting Gezen engaged in further offenses. The article Plaintiff submitted to the Court has the title "NOVA man gets caught twice for the same crime but walks free." The article likewise contains multiple indicia of falsity. The document does not identify from which supposed publication it originated or its date. The language used is not of journalistic caliber or even consistent with someone who writes proper English. The language is more reflective of a draft by someone for whom English is not their mother tongue, like Kumara. For instance, the article states, "By making the guilty plea, Gezen at that time avoided definite jail sentence of two years." Gezen is further purported to have identified himself in his criminal plea agreement as "a proud Muslim businessman of Northern Virginia" when by practice he worships in the Christian faith. The article describes impossible events such as that Gezen was detained at Dulles Airport and then "released after warning by the Defense Department." The Posse Comitatus Act prohibits military personnel from engaging in such domestic law enforcement activities.18 U.S.C.A.

§ 1385. The article is not authored by an actual journalist searchable on the internet. When queried whether he had searched for the named author, Nicole Gallagher, Kumara said he had not. He was asked why he would not search for the supposed author of an article that had derogatory information he could use against his nemesis Defendants. He had no response for his incuriosity. He said he had only included the article in his filing because it was sent to him by Gezen's employees along with the email already discussed herein-above. Gezen's employees during the relevant period, as they did with respect to the email, credibly denied under oath Kumara's assertion. An internet search of a few seconds at trial, disclosed only one potential news-linked person by that name, working as Director of News Practices for ABC News. Perhaps not coincidentally, both Pajnapa and Gallagher had identifying information appear on music-related sites from which their identities could have been lifted.

It is clear, from the fake documents themselves, from the expert testimony adduced, and from the testimony of Plaintiff, that Kumara knowingly submitted evidence he forged. "A false or evasive account is a circumstance . . . that a fact-finder may properly consider as evidence of guilty knowledge." *Covil v. Commonwealth,* 268 Va. 692, 696, 604 S.E.2d 79, 82 (2004). "Guilty knowledge must often be shown by circumstantial evidence. Circumstances tending to prove guilty knowledge include the defendant's acts, statements, and conduct." *Hawkins v. Commonwealth,* 288 Va. 482, 486, 764 S.E.2d 81, 84 (2014) (citation omitted) (guilty knowledge inferred from circumstances of possession of forged bank notes). At trial, Kumara was evasive, untruthful, and relied on demonstrably false evidence whose source the Court reasonably infers was only him.

The evidence presented by Defendants was highly credible. Kumara in contrast attempted to head off sanctions with threats of yet more litigation. That was followed by rambling, nonsensical testimony alleging facts and conspiracies which this Court finds are only figments of Kumara's imagination in nefarious pursuit of financial gain at the expense of Defendants.

Having established Plaintiff submitted forged documents filed with the Court in an attempt to defraud, both at the time of the hearing of the Plea in Bar and Motion for Sanctions, the next question arising is whether the Court has the statutory authority to sanction such conduct civilly. The threshold question is whether Kumara's attachment of documents to filings with this Court and relied upon at adjudicative hearings, may subject him to civil sanctions pursuant to Virginia Code § 8.01-271.1, which states:

> The signature of an attorney or party constitutes a certificate by him that (i) he has read the pleading, motion, or other paper, (ii) to the best of his knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

In considering whether Kumara's conduct violated this rule, the Court applies "an objective standard of reasonableness." *Nedrich v. Jones*, 245 Va. 465, 471, 429 S.E.2d 201, 204 (1993). Upon a finding of such violation, the Court "shall impose ... an appropriate sanction." *See Ford Motor Co. v. Benitez*, 273 Va. 242, 249, 639 S.E.2d 203, 206 (2007) (stating that sanctions are mandatory for a violation of this rule).

Rule 4:15 of the Supreme Court of Virginia governs motions practice procedures in the Circuit Courts. That Rule in isolation is silent as to attachments. However, Rule

1:4(i), housed in the part of the Rules of the Supreme Court of Virginia providing for "general rules applicable to all proceedings," reads, "The mention in a pleading of an accompanying exhibit shall, of itself and without more, make such exhibit a part of the pleading. Filing of such exhibits shall be governed by Rule 3:4." Under Rule 1:4(i), it is clear that mere mention of even un-attached exhibits *in pleadings* makes those documents part of the filings containing such references for purposes of sanctions. Kumara, however, did not attach the forgeries to his Complaint or to any responsive pleading to a counterclaim. Had Kumara done so, in such context, Virginia Code § 8.01-271.1 would clearly apply when read in conjunction with Rule 1:4(i). The forged documents are instead attached to court filings in response to Defendants' motions.

Although § 8.01-271.1 does not explicitly address that forged attachments to court filings are covered by its ambit, it would make little sense that forged documents would be reachable by sanction when referenced in a complaint but not when attached to a response to a motion. The General Assembly intended no such inconsistent result when it statutorily ensured that fraudulent exhibits such as Kumara's be covered by the catchall phrase "other papers" designed for just such an instance. The forgeries are not only attached but also mentioned in Kumara's court filings. This Court finds his attachment of the forged documents to his court filings constituted his representation that they are a basis therefor as further supported by his reference to such attachments in the body of his responses. It follows therefore, that such attachments are covered by the implicit certification of the filing party, Kumara, applicable to "other papers," that the *entire* filing is well grounded in fact and not interposed for improper purpose. This Court concludes

that an attachment of a document to a court filing alone, amounts to a certification by the signatory that such exhibit supports the filing as a well-grounded fact. By attaching the fake email and article to his responses to Defendants' Plea in Bar and Sanctions Motion, Plaintiff rendered his responsive filings as not being well grounded in fact.

"For the protection of the public from harassment by frivolous, oppressive, fraudulent or purely malicious litigation, the General Assembly has chosen to hold attorneys *and pro se litigants* to a high degree of accountability for the assertions they make in judicial proceedings." *Shipe v. Hunter*, 280 Va. 480, 484, 699 S.E.2d 519, 521 (2010) (emphasis added). "[A] major purpose of the sanction remedy is to spare victims of frivolous claims the time, effort, and expense suffered as a result of such vexatious litigation. Thus, the imposition of a particular sanction must be sufficient to deter such practices when they have occurred." *Switzer v. Switzer*, 273 Va. 326, 331, 641 S.E.2d 80, 83 (2007) (citations omitted). In the instant case, the Court had to assess Plaintiff's "actual knowledge, or lack thereof," to determine whether Kumara submitted the email to the Court in bad faith. *Benitez*, 273 Va. at 250, 639 S.E.2d at 206. It became crystal clear to the Court during trial that Plaintiff forged the subject email and article, and that they were interposed for a reprehensible purpose as already detailed herein, requiring the Court to impose appropriate sanctions. Va. Code § 8.01-271.1.

Beyond awarding to the Defendants the costs associated with having to prove the email was forged, imposition of additional monetary sanctions is here warranted. *See* Va. Code Ann. § 8.01-271.1. Such penalties must be sufficient to deter Plaintiff's fraudulent behavior. *See Leiser, Leiser & Hennessy, PLLC v. Leiser*, 97 Va. Cir. 130, 134 (2017)

(pet. ref'd July 16, 2018, reh'g ref'd July 30, 2018, Va. Record No. 180242) (stating the Court must "impose financial sanctions of a sufficient quantum the Court judges [the violator of § 8.01-271.1] is able to pay" to "punish and deter" the violator's behavior). Creating and filing a false email that goes directly to a dispositive issue in the case, thereby committing fraud on the Court, is egregious behavior that must be deterred.

One of the few true statements Kumara made at trial was in his opening when he asserted § 8.01-271.1 means "you should not play games," yet he ensued to serve up a course of gamesmanship throughout the proceedings. The Court's authority to impose monetary sanctions derives from Virginia Code § 8.01-271.1. Authority to impose *monetary* sanctions is governed solely by statute. *Ragland v. Soggin*, 291 Va. 282, 289, 784 S.E.2d 698, 701 (2016) ("[A] trial court may only impose a monetary sanction against an attorney if the authority to do so is granted to the trial court by a statute or rule."). When he signed his response to Defendants' Plea in Bar, with the subject email incorporated knowing that it was false, Kumara violated the § 8.01-271.1 by signing a paper not "well grounded in fact" or "formed after reasonably inquiry."

Courts apply § 8.01-271.1 in a broad array of contexts to discipline misconduct in court filings in consistent fashion. In sum, the Court has the authority to impose monetary sanctions against Plaintiff under § 8.01-271.1 for the ambit of that Section reaches the false filings in three respects. First, the forged documents constituted "other papers" which were filed and incorporated into responsive motions as exhibits. Section 8.01-271.1 polices any "pleading, *motion or other paper*" that is signed by Plaintiff. Second, the forgeries were referenced in court filings thus becoming part of the factual basis for such

filings. Third, section 8.01-271.1 also governs *oral misrepresentations* in motions such as the ones made by Kumara. *Vinson v. Vinson*, 41 Va. App. 675, 686-88, 588 S.E.2d 392, 398-99 (2003). Thus, the imposition of monetary sanctions against Plaintiff is mandatory. *See Benitez*, 273 Va. at 249, 639 S.E.2d at 206.

II. Criminal Contempt

In this case, Plaintiff made a mockery of the proceedings. Knowing that he stood accused of submitting forged evidence in response to Defendants' Plea in Bar, Kumara responded to the ensuing Motion for Sanctions by submitting *additional* forged evidence, to wit, the purported article falsely attributing criminal activity to Defendant Gezen. In closing argument, Kumara admitted as to the submitted document upon which he relied in response to the Motion for Sanctions that "he did not believe it was true," that "he did not believe there was any element of truth at all" to the same. Additionally, Kumara brazenly lied to the Court under oath that he had searched the internet for the name "Pajnapa" to no avail when the evidence revealed a search of seconds on the internet yielded the existence of such a person and even his personal email. He also continued to maintain the email exhibit he submitted was true when the overwhelming expert evidence and even plain common sense made clear such email was forged by Kumara. The Court is not blind to the fact some witnesses occasionally do not take their oath to tell the truth as seriously as they are required to do by the law. This case however is in a different category of violence to the oath. Kumara submitted forged exhibits to the Court, relied on them in false testimony under oath, and admitted only in closing that at least one of those exhibits did not contain an ounce of truth. This case is about Plaintiff

fabricating evidence, submitting it to the Court in support of his case, and demonstrably lying under oath to the Court. In sum, this case is about interference with the administration of justice via illegal means and the attempt to defraud the Court. The contempt power

> is inherent in the nature and constitution of a court. It is a power not derived from any statute, but arising from the exercise of all other powers. Without such power the administration of the law would be in continual danger of being thwarted by the lawless. The power to fine and imprison for contempt is incident to every court of record. Such courts *ex necessitate rei* have the power of protecting the administration of justice with a promptitude calculated to meet the exigency of the particular case. The right of punishing contempts by summary conviction is a necessary attribute of judicial power. *See Commonwealth v. Dandridge* (1824) 2 Va. Cas. (4 Va.) 408; 4 M.J., Contempt, § 5, pages 244-245.
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> > "That the English courts have exercised the power in question from the remotest period does not admit of doubt. Said Chief Justice Wilmot: 'The power which the courts in Westminster Hall have of vindicating their own authority is coeval with their first foundation and institution; it is a necessary incident to every court of justice, whether of record or not, to fine and imprison for a contempt acted in the face of the court; and the issuing of attachments by the Supreme Court of Justice in Westminster Hall for contempts out of court, stands on the same immemorial usage which supports the whole fabric of the common law; it is as much the *lex terrae*, and within the exception of Magna Charta, as the issuing of any other legal process whatsoever.'" *Carter v. Commonwealth*, 96 Va. 791, 806, 807, 32 S.E. 780, 45 L.R.A. 310.

Holt v. Commonwealth, 205 Va. 332, 336-337, 136 S.E.2d 809, 813 (1964).

> For more than a century, however, Virginia courts have required the element of intent in order to sustain a criminal contempt conviction. *Singleton v. Commonwealth*, 278 Va. 542, 549, 685 S.E.2d 668, 672 (2009) (citing *Carter v. Commonwealth*, 96 Va. 791, 802-03, 32 S.E. 780, 780 (1899)); *Wise v. Commonwealth*, 97 Va. 779, 781-82, 34 S.E. 453, 453-54 (1899); *Wells v. Commonwealth*, 62 Va. (21 Gratt.) 500, 509 (1871); accord *Robinson v. Commonwealth*, 41 Va. App. 137, 143, 583 S.E.2d 60, 63 (2003) (finding intent a necessary element of criminal contempt); *Carter v. Commonwealth*, 2 Va. App. 392, 397, 345 S.E.2d 5, 8 (1986) (same).

Ragland, 291 Va. at 290, 784 S.E.2d at 702.

Here Kumara's conduct was intentional, not inadvertent. It required planning and aforethought. Plaintiff's admission betrayed a consciousness of guilt and predesign to mislead the Court and unduly encumber its resources. His actions constituted both "misbehavior in the presence of the Court" and "so near thereto as to obstruct or interrupt the administration of justice." Va. Code § 18.2-456(1). The Court system cannot long endure as a fair forum for the adjudication of claims if litigants believe they have license to peddle forgeries in the midst of trial in furtherance of their claims. This case required the Court to take the rare step of exercising its criminal contempt power to deter and punish Plaintiff's interference with the administration of justice and display of contempt for the Court. The Court thus held Plaintiff in summary criminal contempt of court and after affording Plaintiff allocution, sentenced him to ten days in jail and a $250.00 fine, in order to vindicate the dignity of the Court process and make clear that no one has license to commit criminal activity in the presence of the Court or in furtherance of litigating civil claims.

CONCLUSION

The Court has considered adduced documentary and testimonial evidence, the credibility of the witnesses, the written legal arguments of the parties, respecting Defendants' Motion for Sanctions against Plaintiff. This cause came before the Court on November 9, 2018, on the Motion for Sanctions of Defendants Tera International Group, Inc. and Asil Gezen against Plaintiff Sisira Kumara Kumaragamage Don, also known as

Don Gamage. The Motion raised the question whether Plaintiff's attachment of fraudulently created documents to court filings constituted conduct for which the Court is statutorily empowered to impose financial sanctions on the signatory to such filings, as well as criminal contempt based on Kumara's acknowledgement of knowing that at least one of his submitted documents contained entirely false information. The Court finds Plaintiff attached separate forged documents containing false information to each of two court filings, namely, to his response to Defendants' Plea in Bar, and most glaringly, to his response to the very Motion for Sanctions that is the object of this Letter Opinion. The Court finds such filings were submitted with the intent to deceive the Court and to cause Defendants unwarranted financial and reputational distress.

For the reasons as more fully stated herein the Court held such attachments of themselves, as well as their incorporation by reference in the named documents, made such court filings not well grounded in fact and disclosed they were interposed for the improper purpose of unlawfully harassing and harming Defendants financially. These actions are sanctionable pursuant to Virginia Code § 8.01-271.1. The Court therefore imposed a monetary sanction of $90,000.00 plus $37,452.00 in attorneys' fees related to the fraudulent conduct, in favor of Defendants and against Plaintiff. The Court found the sum just and appropriate based on the outrageous circumstances evident in this cause.

In addition, though disputing authorship, Plaintiff acknowledged submitting to the Court a transparently fake newspaper article in defense of the Motion for Sanctions falsely ascribing criminal activity to Defendants. This action was an attempt to make Defendants appear less credible before the Court in order to escape civil sanction for use of a forged

document in defense of the previous Plea in Bar hearing, wherein Plaintiff's claims against Defendants were dismissed as being devoid of merit. Plaintiff's brazen submittal of new forged evidence in defense against sanctions for his previous use of a fake email as evidence, constituted intentional interference with the administration of justice in the presence of the Court beyond a reasonable doubt, warranting Plaintiff's conviction for summary criminal contempt and imposition of the maximum punishment of ten days in jail and a $250.00 fine.

The Court shall enter final orders incorporating the oral rulings in the trial record and in this Letter Opinion, and precluding Plaintiff from docketing for hearing any further pleadings, motions or other court filings against Defendants without the prior permission of the undersigned Judge or of the Chief Judge of this Court, and until such time, THIS CAUSE CONTINUES.

Sincerely,

David Bernhard
Judge, Fairfax Circuit Court