



3. Counts I, II, V and VI of the Third Amended Complaint were directed against defendant Cunningham.

4. Prior to dismissal, Cunningham had filed a motion for summary judgment on all counts of the Third Amended Complaint, supported by affidavits and a Memorandum of law.

5. Cunningham incorporates his motion for summary judgment, and the Memorandum in support thereof into this Motion.

6. As shown by the motion for summary judgment, no count against Cunningham had any merit whatsoever. Each count is either based on allegations shown to be false by the affidavits attached thereto or contrary to the clear holdings of established precedent.

7. Of particular note is the false allegation that Cunningham published the alleged defamatory statements. As shown by the Affidavit of Cunningham attached to the Memorandum in support of summary judgment, five of the eight alleged statements forming the basis of the claim were not even published by Cunningham, and the remaining three were true.

8. Previous motions for summary judgment were made against the Amended Complaint and Second Amended Complaint. Those motions showed Plaintiff that his allegations in those pleadings were false and unfounded in the same manner

as shown by the summary judgment motion against the Third Amended Complaint. Yet Plaintiff repeated those allegations as he attempted to plead sufficient facts to establish venue in Cook County.

9. Moreover, Defendant Cunningham did not even have the opportunity to raise the statute of limitations defense apparent from the face of the complaint. Each attachment reveals that the publication (by whomever) was made more than one year prior to the filing of the original complaint.

10. Each count in each complaint filed by Plaintiff in this matter, therefore, violates the prohibition in Supreme Court Rule 137 against filing pleadings that are not "well grounded in fact" and "warranted by existing law or a good faith argument for modification... of existing law".

11. Moreover, Plaintiff's actions show a bad faith purpose to harass Cunningham through meritless lawsuits. Plaintiff failed to take any action reasonably calculated to move this case to a hearing on the merits, never identified any damages from the supposed torts, and would not even invest the venue transfer fees to preserve his claims.

12. That this case was dismissed "without prejudice" is irrelevant to this motion: a Rule 137 motion may be made without an adjudication on the merits, particularly where, as here, Plaintiff's own failure to pay court costs has prevented that very adjudication. Peterson v. Randahwa, 313 Ill.App.3d 1, 729 N.E.2d 75 (1<sup>st</sup> Dist. 2000).

13. This Court should find the entire action frivolous, but at least the Court should find that Plaintiff was put on notice of the frivolous nature of his complaint by the time of the filing of the motion for summary judgment directed at the Amended Complaint.

14. Attached hereto as an exhibit is an affidavit of counsel with detail as to hourly billing. However, billing relating to the last two hearings on the motion to dismiss for failure to pay the transfer fee have been omitted and will be provided later in a supplement.

15. This Court should assess as a sanction the entire amount of fees and costs in this case against either the party or the party's attorney, as provided by Rule 137.

WHEREFORE, Cunningham prays that the plaintiff and his attorney of record be sanctioned in an amount of at least \$5794.00, or any other or further relief this Court deems proper pursuant to Rule 137.

DON CUNNINGHAM

Defendant

by: \_\_\_\_\_  
his attorney

Gregory J. Bueche  
Attorney for Defendant Cunningham  
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Naperville, IL 60563  
630-717-2962  
Atty No. 29332



I, Gregory J. Bueche, certify pursuant to Code of Civil Procedure Section 1-109 that the statements made in this instrument are true.

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Certificate of Service

I, Gregory J. Bueche, attorney of record for defendant Don Cunningham in this matter, certify that I served the forgoing motion and exhibits by placing a copy in the U.S. Mail, postage prepaid, and addressed to:

Mr. Champ Davis  
Davis, Mannix and McGrath  
Suite 1700  
125 South Wacker Drive  
Chicago, IL 60606

on or before January 14, 2004.

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