

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

VIRGIE ARTHUR,

Plaintiff,

v.

HOWARD K. STERN, and CBS STUDIOS  
INC.

Defendants.

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CIVIL ACTION NO.: 4:07-cv-03742  
Judge Lee Rosenthal

**PLAINTIFF’S RESPONSE IN OPPOSITION  
TO DEFENDANT HOWARD K. STERN’S  
MOTION FOR ATTORNEYS’ FEES PURSUANT TO 28 U.S.C. § 1927**

Plaintiff Virgie Arthur files this her Response in Opposition to Defendant Howard K. Stern's Motion for Attorney's Fees Pursuant to 28 U.S.C. §1927, and would show as follows.

Stern’s claim that he is entitled to attorneys’ fees rests on two sworn statements. Stern claims that (1) Virgie Arthur testified in her deposition in such a way as to show that she did not have at her command “any factual basis for the claims she asserted in her Petition;” and that (2) Nelda Turner stated in an *ex parte* sworn statement that undersigned counsel for Arthur told Turner that the case was “frivolous” and was brought only to make Stern “spend money on attorneys’ fees.” The first problem with Stern’s claim is that Arthur’s deposition was designated as confidential, and counsel for Stern has violated this Court’s Protective Order by his description of her deposition in the Motion filed in the public record. The second problem for Stern is that Virgie Arthur’s lack of

command of her attorneys' extensive file in the case, and the evidence contained therein, does not show that the case was frivolous or that it was pursued for improper motives. Ms. Arthur's lawyers are under an obligation to keep her reasonably apprised of the status of her case, but they are not required to make sure that a retired grandmother, who has suffered memory loss from a brain aneurism, has mastered the volumes of evidence in the case. Stern's conclusion that, because Virgie Arthur was vague on the facts, then her lawyers must have been proceeding without any foundation, is a non sequitur, false, and silly.

A much larger problem with Stern's claim is that it relies on the sworn statement of Nelda Turner, which counsel for Stern elicited in the absence of counsel for Arthur, and which is characterized by leading questions and non-responsive answers, all of which would have drawn well-founded objections. More important, Lin Wood, counsel for Stern, knows that Turner's statement is perjurious, and Wood suborned that perjury. Wood asked Turner the following leading question: "You've never worked for any of Mr. Stern's lawyers, have you?" Turner answered, "No." The truth is that extensive email exchanges show that Turner worked for several of Stern's lawyers, *i.e.* Lin Wood, Krista Barth, and Ben Erwin. Turner even held herself out as head of the "Legal liaison team for Mr. Stern's attorneys."

As for Stern's allegation that undersigned counsel for Arthur "acknowledged the frivolity of this case" and "coerced" a *pro se* defendant into filing a "fraudulent pleading designating CBS as a 'responsible third party,'" Stern and his counsel know that allegation to be false, and prior court filings by Plaintiff have demonstrated that falsity.

The grounds for this Response are set forth in detail in the accompanying Memorandum of Law in Support of Plaintiff's Response in Opposition.

Plaintiff respectfully requests that this Court deny the Motion and take any other action it sees fit to deal with the contemptuous actions of Mr. Stern and his counsel.

Respectfully submitted,

By: *s/ Neil C. McCabe*

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**ATTORNEYS FOR PLAINTIFF  
VIRGIE ARTHUR**

**CERTIFICATE OF SERVICE**

This is to certify that on the 13th day of April 2009, a true and correct copy of the foregoing was served upon the following as indicated below:

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*s/ Neil C. McCabe*

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