

United States Court of Appeals For the First Circuit

No. 21-1245

FRIEDRICH LU,

Plaintiff - Appellant,

v.

JAMES R. CLARKE; MARY REGAN; MAURA A. HENNIGAN; ROBERT L. SHEKETOFF;
JAMES L. SULTAN; CHARLES W. RANKIN; MATTHEW DIVRIS; THOMAS A. TURCO,
III; CAROL A. MICI; JOSEPH STANTON,

Defendants - Appellees.

Before

Barron, Chief Judge,
Lynch and Kayatta, Circuit Judges.

CORRECTED ORDER OF COURT*

Entered: May 16, 2023

We are in receipt of appellant's February 9, 2022, filing in this case. We treat the filing as a petition for panel rehearing. The petition is denied. The motion for recusal is denied.

In this court's Judgment in this matter, we directed the appellant, Friedrich Lu ("Lu"), to show cause why he should not be sanctioned for the filing of a frivolous appeal. We noted that Lu's challenge to the district court's dismissal in this case relied upon arguments that this court already had rejected in at least four prior appeals by Lu. Lu's February 9, 2022, filing fails to demonstrate any reason why sanctions should not be imposed in this case.

Federal Rule of Appellate Procedure 38 "affords the court of appeals discretion to 'award just damages and single or double costs to the appellee' if the court 'determines that an appeal is frivolous.'" In re Efron, 746 F.3d 30, 37 (1st Cir. 2014) (quoting Fed. R. App. P. 38). "An appeal is frivolous if the arguments in support of it are wholly insubstantial and the outcome is obvious from the start." Id. "Put another way, an appeal is frivolous 'when the appellant's legal position is

* Corrected order is hereby entered to correct the text of the order.

doomed to failure -- and an objectively reasonable litigant should have realized as much from the outset." Id. (quoting Toscano v. Chandris, S.A., 934 F.2d 383, 387 (1st Cir. 1991)). 1st Circuit Rule 38.0 provides that "[w]hen any party to a proceeding before this court . . . files a motion, brief, or other document that is frivolous or interposed for an improper purpose, such as to harass or to cause unnecessary delay . . . the court may, on its own motion, . . . impose appropriate sanctions on the offending party."

After careful consideration, we find that sanctions are in order. We conclude that "a further round of filings to refine the amount precisely will lead only to more expense." Roger Edwards, LLC v. Fiddes & Son Ltd., 437 F.3d 140, 145 (1st Cir. 2006). Accordingly, the appellant is ordered to pay sanctions as follows: no later than May 30, 2023, the appellant shall pay to the Massachusetts Attorney General's Office the flat sum of \$500 in attorney's fees, and no later than May 30, 2023, the appellant shall pay to the law firm of Rankin & Sultan the flat sum of \$500 in attorney's fees.

No later than June 6, 2023, the appellees' attorneys shall notify this court in writing as to whether the above sanctions have been paid.

The appellant is admonished that should he fail to pay the sanctions as directed, this court may impose additional sanctions on him, including filing restrictions. See Cok v. Family Court of Rhode Island, 985 F.2d 32, 34 (1st Cir. 1993).

So ordered.

By the Court:

Maria R. Hamilton, Clerk

cc:

Friedrich Lu
Joseph Patrick Lucia
Erica Morin
Charles W. Rankin
James L. Sultan