

IN THE CIRCUIT COURT OF THE 16<sup>TH</sup> JUDICIAL CIRCUIT

IN AND FOR MONROE COUNTY, FLORIDA

JONATHAN SATTELE,

Plaintiff,

V.

CASE NO.: 17-CA-457-K

AAA AUTO CLUB SOUTH, INC. d/b/a

AAA, a foreign corporation, and FSG

INVESTMENTS, INC. d/b/a RAPID

RESCUE ROADSIDE ASSISTANCE,

Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION TO STRIKE PLEADINGS FOR  
FRAUD ON THE COURT**

This cause coming before the Court on Plaintiff's motion to strike Defendant AAA Auto Club South, Inc.'s ("AAA") pleading for fraud on the court, and the Court, having considered the motion, defendant's response and argument of counsel, it is

ORDERED AND ADJUDGED:

**FACTUAL BACKGROUND**

1. This case concerns a single motor vehicle collision on April 10, 2014 which occurred when the tread on the left rear tire on Plaintiff's vehicle separated, causing the vehicle to roll over and crash. According to Plaintiff, the Firestone tire in question was over 13 years old at the time of the accident and had been placed on his vehicle in 2013 by an emergency roadside service provider sent by AAA at Plaintiff's request. In his Second Amended Complaint, Plaintiff alleged that AAA was negligent in a number of ways for permitting its agent to install an over-age and dangerous tire on his vehicle. Although other parties were named as defendants, AAA is the sole remaining active defendant.
2. In the course of discovery, Plaintiff propounded the following interrogatory:

“Please state if the Defendant, AAA AUTO CLUB SOUTH, INC. d/b/a AAA has within the five (5) years prior to the April 19, 2014 Subject Incident been involved in litigation alleging injuries as a result of a tire failure allegedly due to the age of the tire...”

On April 4, 2022, AAA served its answer, under oath, to the above-quoted interrogatory:

“No lawsuits as described were filed against this Defendant within the time period requested.”

3. Later in 2022, Plaintiff scheduled the deposition of AAA’s corporate representative and described the topics which would be addressed at the deposition. One of the topics was: “Other lawsuits and/or claims against AAA involving the alleged failure of a tire due to the age of tire and/or due to the tire being subject to a recall and/or replacement campaign.” At the deposition of the corporate representative (Terrance Walker), Plaintiff asked if the answers to interrogatories were true. Mr. Walker responded that they were. When specifically asked if there had been any similar cases involving AAA and an old or aged tire, Mr. Walker stated: “No, not that I’m aware.”
4. Contrary to the sworn statements described above, AAA was a named defendant in a remarkably similar case in Broward County, beginning in 2009 and continuing into 2014. *David Hughes v. R & R Light Service, Inc. and AAA Auto Club South, Inc.*, Case No.: 08-six1499 11. The two lawyers representing AAA in the Broward County case are the same lawyers representing AAA in the instant case. They admit assisting AAA’s corporate representative in preparing the pertinent answers to interrogatories and being aware of Mr. Walker’s testimony at his deposition. They also admit that they were aware of the Broward County case when the interrogatories were answered and when Mr. Walker testified at his deposition.
5. The record reveals a motive for concealing the existence of the Broward County case. In that lawsuit, the plaintiff retained an expert (Thomas Vadnais) whose affidavit criticizes AAA for its actions and inactions, causing the accident which severely injured the plaintiff. In the instant case, AAA has retained Mr. Vadnais to testify on behalf of AAA.

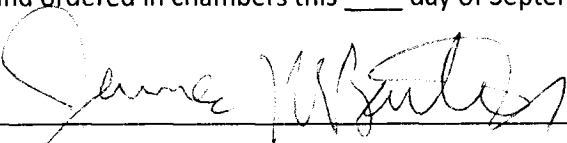
### **FRAUD ON THE COURT**

1. The authority of a court to impose sanctions upon a finding of fraud on the court stems from the duty to maintain and protect the integrity of the judicial system. Fraud on the court occurs when “...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 imposing party’s claim or defense.” *Cox v. Burke*, 706 So. 2d 43, 47 (Fla. 5<sup>th</sup> DCA 1998). Our system is not based on an adversary’s ability to uncover falsehoods. Once a false is unearthed, it should be dealt with in the strongest possible way. *Jimenez v. WSUA Broadcasting Corp.*, 870 So. 2d 873 (Fla. 3d DCA 2004).
2. Striking of pleadings is an extreme sanction, reserved for cases involving egregious misconduct. Nevertheless, a party who has been guilty of fraud or misconduct in advancing a claim or defense should not be allowed to utilize the institution it has subverted to achieve its ends. *Empire World Towers, LLC v. C.D.R. Creances, S.A.S.*, 89 So. 3d 1034 (Fla. 3d DCA 2012).

### **CONCLUSIONS OF LAW**

1. This case involves the kind of egregious conduct detailed in the above-cited cases. Much like a plaintiff who conceals his history of prior injuries and medical treatment to enhance his claim for damages, the defendant in this case withheld knowledge of a similar case in order to prevent the opposing party and the trier of fact from learning of inconsistent opinions of one of its experts. Although the attorneys admit that they were aware of the Broward County case when the interrogatories were answered and Mr. Walker testified at his deposition, they remained silent. Their assertion at the hearing on this motion that the interrogatory at issue is vague and unclear is rebutted by the unambiguous language in the interrogatory. Withholding relevant information and allowing a corporate representative to provide inaccurate information can serve as the basis for a motion to strike pleadings based on fraud on the court. *Oracle Elevator Co. v. 8660 Bldg.*, 353 So. 3d 689 (Fla. 3d DCA 2023).
2. AAA objected to consideration of the Motion to Strike Pleading because the Motion was not noticed as an evidentiary hearing. By its very nature, a motion alleging fraud on the court necessarily involves and requires evidence. *See, Unlimited Turf, LLC v. CP Glob. Consulting, Inc.*, 357 So. 3d 264 (Fla. 3d DCA 2023). At the August 22, 2023 pretrial conference, the Court and counsel discussed the pending motions and scheduled a motion hearing for September 6, 2023. The Court observed that a motion based on fraud on the court could involve live testimony and directed counsel to inform opposing counsel of any witness who would testify at the hearing. At the September 6 hearing, Plaintiff relied on testimony and other evidence contained in the record. AAA presented no evidence and attempted to justify its prior actions.
3. Based on the foregoing, Plaintiff's Motion to Strike Pleadings for Fraud on the Court is **GRANTED**. AAA's answer is stricken. At trial, the jury will be instructed that the issue to be decided is the amount of damages which were caused by the April 10, 2014 accident.

Done and ordered in chambers this 8<sup>th</sup> day of September, 2023

  
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James M. Barton II, Senior Circuit Court Judge

Copies to:

All Counsel of Record