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JPMorgan Asks Court To Sanction Atty For 'Frivolous' Filing

By **Kevin Penton**

Law360 (September 7, 2021, 4:31 PM EDT) -- A Florida federal court should sanction an attorney for asking that it review both matters that have already been resolved and an Ohio state court's 2008 ruling, JPMorgan has argued in a case in which it faces fraud allegations concerning a trust.

Attorney Barry Rigby filed fraud claims against JPMorgan Chase Bank in the present case that are similar to allegations made by his client, Ronald E. Scherer, in two previous actions against the financial giant in federal court that the client later voluntarily dismissed, according to Friday's filing in the Middle District of Florida.

Scherer's bid for the federal court to review a 2008 judgment in the dispute by an Ohio state probate court also runs counter to the so-called Rooker-Feldman doctrine, a civil procedure doctrine based on 1923 and 1983 rulings by the U.S. Supreme Court that generally bars lower federal courts from reviewing state court rulings, according to the motion for sanctions.

"Plaintiff's claims are objectively frivolous," JPMorgan's motion reads. "Plaintiff's attorney would have been aware of this had he conducted a reasonable inquiry."

Scherer initiated the present case in January against JPMorgan and against attorneys Steven Tigges and Stuart Parsell and their firm Zeiger Tigges & Little LLP, who represented Bank One Trust Co., a bank in an underlying proceeding involving a trust for Scherer's late father.

Scherer contends that Zeiger Tigges and JPMorgan — which acquired Bank One — made misrepresentations to the courts concerning his father's trust that led to a 2008 ruling by the Ohio court that he had misappropriated more than \$6 million in trust assets.

Scherer also alleges that later rulings against him in federal court stem from those misrepresentations, leading him to ultimately face a tax liability settlement of more than \$5 million, according to the complaint.

"But for the improper accounting by the predecessor to defendant JPMorgan Chase Bank, plaintiff would not have faced the specter of harsh sanctions by the Internal Revenue Service which led to the settlement," the complaint reads. "Thus, plaintiff is simply attempting to secure relief which due process should afford to him."

Zeiger Tigges and the two defendant attorneys also sought sanctions against Scherer, making similar arguments to JPMorgan's in their own motion for sanctions in July.

Scherer responded to the other motion for sanctions by arguing that because of the alleged fraud by Zeiger Tigges and JPMorgan, his case should present an allowable exception to the Rooker-Feldman doctrine.

"Plaintiff ... asserts that the contents in his complaint are warranted, if not by existing law, then by changing how the principle of fraud on the court and issues of collateral estoppel intersect," Scherer wrote in an opposition brief. "Given a proper hearing, plaintiff could show that but for the fraud on the court perpetrated by all defendants, he could have presented a case before courts in Ohio and been the prevailing party."

JPMorgan said Friday that Scherer's response to the other motion for sanctions does not delve into recent legal precedent that reinforces the Rooker-Feldman doctrine's bar on lower federal courts reviewing rulings by state courts, adding that it merely references an 1878 Supreme Court case.

"Scherer's claim is contrary to clearly established Eleventh Circuit law, and makes no argument, non-frivolous or otherwise, to change that law," JPMorgan's motion reads.

Counsel for the parties could not be reached for comment on Tuesday.

Scherer is represented by Barry Rigby of the Law Offices of Barry Rigby PA.

JPMorgan Chase Bank NA is represented by Derek E. Leon and Andrew B. Boese of Leon Cosgrove LLP.

Steven Tigges, Stuart Parsell and Zeiger Tigges & Little LLP are represented by Jeffrey M. Partlow of Cole Scott & Kissane PA.

The case is Scherer v. JPMorgan Chase Bank NA et al., case number 6:21-cv-00119, in the U.S. District Court for the Middle District of Florida.

--Editing by Peter Rozovsky.

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