

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

TODD C. BANK,

Petitioner-Appellant,

v.

AL JOHNSON'S SWEDISH
RESTAURANT & BUTIK, INC.,

Registrant-Appellee.

Docket No. 19-1880

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SEP 21 2020

United States Court of Appeals
For The Federal Circuit

**APPELLANT'S MOTION FOR RECONSIDERATION
OF ORDER GRANTING ATTORNEY FEES TO APPELLEE**

TODD C. BANK,
ATTORNEY AT LAW, P.C.
119-40 Union Turnpike
Fourth Floor
Kew Gardens, New York 11415
(718) 520-7125
tbank@toddbanklaw.com
By: Todd C. Bank

Counsel to Petitioner-Appellant

INTRODUCTION

Appellant, Todd C. Bank (“Bank”), moves for an order reconsidering the order dated September 10, 2020 (the “Fee Order”; Doc. 55), which granted, in full, the request for attorney fees by Appellee, Al Johnson’s Swedish Restaurant & Butik, Inc. (the “Restaurant”).

ARGUMENT

POINT I

THIS COURT IGNORED, INSTEAD OF ADDRESSING AS IT WAS REQUIRED TO DO, APPELLANT’S RESPONSE TO APPELLEE’S APPLICATION FOR ATTORNEY FEES

Bank, in his response (“Bank Resp.”; Doc. 50) to the Restaurant’s application for attorney fees (“Fee App.”; Doc. 44), made numerous points, and raised numerous questions, regarding the alleged qualifications of the Restaurant’s counsel, *see* Bank Resp. at 2-8, and presented numerous arguments based on well-settled principles, *see id.* at 8-14, including principles that were articulated in binding precedents of this Court. *See id.* at 8, citing *Monolithic Power Systems, Inc. v. O2 Micro Int’l, Ltd.*, 726 F.3d 1359 (Fed. Cir. 2013); *id.* at 13, citing *McEnery v. Merit Systems Protection Bd.*, 963 F.2d 1512 (Fed. Cir. 1992). Nevertheless, this Court awarded the full amount of attorney fees that the Restaurant had requested, and did so without acknowledging a single one of the many aspects of Bank’s response, much less addressing any of them. Given that this Court’s imposition of sanctions (*see* Opinion dated Dec. 9, 2019 (Doc.

42)) was obviously not warranted in the first place (indeed, the appeal should have been decided in favor of Bank), the only plausible explanation for the Fee Order's obvious disregard of the facts and the law is that this Court simply disliked the case and therefore wished to punish Bank.

As if more evidence were needed that this Court abused its power by abdicating its duty of impartiality in order to reach its desired result, the Restaurant's counsel's billing records were rife with improprieties and suspect entries, *see* Bank Resp. at 14-31, which, perhaps, explains why Katrina G. Hull, who had "acted as lead counsel . . . on this appeal," Fee App., Declaration of Katrina G. Hull, ¶ 13, attempted, in violation of this Court's rules and of principles that are so well settled as to constitute common knowledge among attorneys, to bypass the judges of this Court and instead have her firm's purported fees approved by the Clerk, thereby forcing Bank to submit a motion (Doc. 48) for an order: (i) directing the Clerk not to act upon the request, in the Restaurant's application for costs and attorney fees (Doc. 44), that the Clerk determine the amount of attorney fees to be awarded to the Restaurant; and (ii) confirming that Bank's time to respond to the application for attorney fees shall be determined by the Court pursuant to Federal Circuit Rule 47.7(a)(3). Indeed, this Court issued an order (Doc. 49) that precisely corresponded to the relief that Bank sought.

As stated by Richard H. Fallon, Jr., in *A Theory of Judicial Candor*, 117

Colum. L. Rev. 2265 (2017), “[o]pinions must be *minimally informative* in order to satisfy the concerns that lead us to want *reasoned* judicial decisions in the first place,” *id.* at 2287 (emphases added); *see also* Wade McCree, *Bureaucratic Justice: An Early Warning*, 129 U. Pa. L. Rev. 777 (1981):

When we read a judicial opinion, we may be swayed in some small measure by whether the writer shares our views or prejudices and concludes with the words ‘AFFIRMED’ as we ourselves would. But *it is what comes before—how the issues are stated and how they are resolve[d]*—that leads us to conclude whether this is a judge that we are glad to have. Thus, we expect the *judge*, like *no other public official*, to justify his decisions with reason.”

Id. at 780 (emphases added; footnote omitted); *In re Coordinated Pretrial Proceedings in Petroleum Products Antitrust Litig.*, 101 F.R.D. 34, 42 (C.D. Calif. 1984) (“courts have an *obligation to explain their decisions* and therefore to allow the *public* an opportunity to *assess the correctness* of those rulings” (emphases added)).

Here, this Court did not “explain [its] decision[,],” *i.e.*, did not “justify [its] decision[] with reason,” and “therefore [did not] allow the public an opportunity to assess the correctness of [its] ruling[.]” In short, this Court rendered a ruling that was obviously not even “minimally informative.” Instead, this Court ruled by fiat on the Restaurant’s strongly contested fee application, showing that this Court’s “Theory of Judicial Candor” is that it need not provide any, whereas the oaths of office that the panel judges took require far more than that.

CONCLUSION

Appellant requests that the Court issue an order: (i) vacating the Order dated September 10, 2020 (Doc. 55); and (ii) issuing a new order that addresses Appellant's response to Appellee's application for attorney fees.

STATEMENT OF OPPOSITION

On September 15, 2020, Bank sent an email to Katrina G. Hull, counsel to the Restaurant, in order to arrange a telephone call in accordance with Local Rule 27(a)(5). Ms. Hull refused to schedule a telephone call, but stated that the Restaurant did not consent to, and would oppose, the motion.

Dated: September 18, 2020



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By: Todd C. Bank

Counsel to Petitioner-Appellant

FORM 9. Certificate of Interest

Form 9
Rev. 10/17

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Bank v. Al Johnson's Swedish Rest.

Case No. 19-1880

CERTIFICATE OF INTEREST

Counsel for the:

(petitioner) (appellant) (respondent) (appellee) (amicus) (name of party)

Todd C. Bank

certifies the following (use "None" if applicable; use extra sheets if necessary):

1. Full Name of Party Represented by me	2. Name of Real Party in interest (Please only include any real party in interest NOT identified in Question 3) represented by me is:	3. Parent corporations and publicly held companies that own 10% or more of stock in the party
Todd C. Bank	Todd C. Bank	N/A

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court (and who have not or will not enter an appearance in this case) are:

Todd C. Bank
Todd C. Bank, Attorney at Law, P.C.

FORM 9. Certificate of Interest

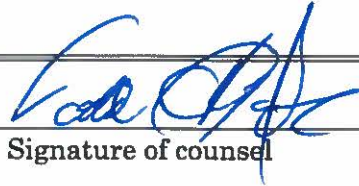
**Form 9
Rev. 10/17**

5. The title and number of any case known to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. See Fed. Cir. R. 47. 4(a)(5) and 47.5(b). (The parties should attach continuation pages as necessary).

N/A

September 18, 2020

Date



Signature of counsel

Please Note: All questions must be answered

Todd C. Bank

Printed name of counsel


cc: _____

Reset Fields

DECLARATION OF TODD C. BANK

1. Attached as Exhibit "A" hereto is the email correspondence to which the Statement of Opposition refers.

Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury that the foregoing is true and correct.



Todd C. Bank
Executed on September 18, 2020

EXHIBIT “A”

**Email Correspondence Between
Todd C. Bank and Katrina G. Hull**

September 15, 2020

Subject: RE: Bank v. Al Johnson's
From: Katrina Hull <katrinahull@markerylaw.com>
Date: 9/15/2020, 2:08 PM
To: Tbank <tbank@toddbanklaw.com>

Attorney Bank,

If you are referring to Federal Circuit Rule 27(a), our position is the email response below fulfills the discussion requirement. You have our statement that we object to and do not consent to the filing of the motion for reconsideration.

Regards,

Katrina

Katrina G. Hull, Esq.
Markery Law, LLC
t: 202-888-2047 (Direct)
KatrinaHull@MarkeryLaw.com

From: Tbank <tbank@toddbanklaw.com>
Sent: Tuesday, September 15, 2020 12:40 PM
To: Katrina Hull <katrinahull@markerylaw.com>
Subject: Re: Bank v. Al Johnson's

Are you refusing to participate in a telephone conference as required by the rules of the court?

Todd Bank

On Sep 15, 2020 at 1:38 PM, <Katrina_Hull> wrote:

Todd,

We do not consent to the filing of a motion for reconsideration and do not believe a conversation would advance either party's interests in this matter. The positions of my client are all on record in its filings in this case, and we have nothing else to add.

Regards,

Katrina

Katrina G. Hull, Esq.
Markery Law, LLC
t: 202-888-2047 (Direct)
KatrinaHull@MarkeryLaw.com

From: Todd Bank <tbank@toddbanklaw.com>
Sent: Tuesday, September 15, 2020 11:52 AM
To: Katrina Hull <katrinahull@markerylaw.com>
Subject: Bank v. Al Johnson's

Ms. Hull:

I anticipate moving for reconsideration of the court's order dated September 10. Please let me know if you will available this afternoon for a telephone call pursuant to the court's requirements. If not, please propose other times of availability for this week.

Sincerely,

Todd C. Bank
Attorney at Law
119-40 Union Turnpike
Fourth Floor
Kew Gardens, New York 11415
Telephone: (718) 520-7125
Facsimile: (856) 997-9193
tbank@toddbanklaw.com

CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2020, a true and accurate copy of the foregoing was served, by the overnight delivery service of Federal Express, on the following:

Katrina. G. Hull
Markery Law, LLC
1200 G St, N.W., Suite 800
Washington, D.C. 20005

Dated: September 18, 2020



Todd C. Bank

ORIGIN ID:HTOA (718) 520-7125
TODD C. BANK, ATTORNEY AT LAW, P.C.

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WASHINGTON DC 20439

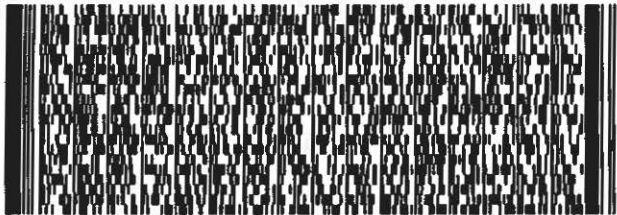
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