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George Cuartero v. U.S. Attorney General et al.
United States Court of Appeals for the Second Circuit

Docket No. 07-0835

Doc 2009-1772

Decided: January 27, 2009

Cite(s): 2009-1 USTC Para. 50,187

2009 U.S. App. LEXIS 1501

GEORGE CUARTERO,

Appellant,

v.

UNITED STATES ATTORNEY GENERAL, COMMISSIONER OF IRS,

Appellee.

Judge

Judge(s): Per curiam

Summary

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Second Circuit Affirms Dismissal of Tax Protester's Suit; Imposes Sanctions

The Second Circuit has affirmed a district court's dismissal of a tax protester's suit challenging the IRS's refusal to remove a tax lien against him, finding that he only presented frivolous arguments. The court also granted the government's motion for sanctions against him for maintaining a frivolous appeal.

Opinion Text

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CORRECTED SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT HTTP://WWW.CA2.USCOURTS.GOV/). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE

CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 27th day of January, two thousand and nine.

PRESENT:

HON. JON O. NEWMAN,
HON. RALPH K. WINTER,
HON. GUIDO CALABRESI
Circuit Judges.

Submitted for Appellant:

GEORGE CUARTERO

Submitted for Appellee:

EILEEN J. O'CONNOR, Assistant Attorney General (Kevin J. O'Connor, United States Attorney, *of counsel*) Michael J. Haungs and Karen G. Gregory, Attorneys, Tax Division, Department of Justice, Washington, D.C.

UPON DUE CONSIDERATION of this appeal from a judgment entered in the United States District Court for the District of Connecticut (Chatigny, *J.*), it is hereby **ORDERED, ADJUDGED, AND DECREED** that the judgment of the district court is **AFFIRMED**, and the motion for sanctions is **GRANTED** in the amount of \$8,000.

The United States District Court for the District of Connecticut (Chatigny, *J.*) granted the Government's motion to dismiss George Cuartero's action and to affirm the Internal Revenue Service's ("IRS") determination denying George Cuartero's request for the removal of a tax lien.

The District Court also denied Cuartero's motion for summary judgment. The IRS alleges that Cuartero has repeatedly filed frivolous tax returns. Cuartero, acting *pro se*, challenges the legality of the federal taxation system and argues that as a "nonresident alien" he is not liable for any tax payments.

Cuartero's tax protestor theories have been specifically, repeatedly, and emphatically rejected by courts, and the IRS has issued a publication warning taxpayers against making them. *See, e.g., United States v. Cooper*, 170 F.3d 691, 691 (7th Cir. 1999) ("nonresident alien" argument has been rejected so often that it is "no longer merely frivolous," but "frivolous squared"); *Connor v. Comm'r*, 770 F.2d 17, 20 (2d Cir. 1985) (argument that wages are not income "has been rejected so frequently that the very raising of it justifies the imposition of sanctions"); *see also* Internal Revenue Service, *The Truth About Frivolous Tax Arguments* (2007), available at http://www.irs.gov/pub/irs-utl/friv_tax.pdf (describing frivolous arguments and warning taxpayers about the consequences of making them). We therefore affirm the District Court's dismissal of Cuartero's action and affirm the District Court's denial of Cuartero's motion for summary judgment.

The Government has also moved, pursuant to 28 U.S.C. § 1912 and Federal Rule of Appellate Procedure 38, for an order imposing sanctions of \$8,000 against Cuartero for maintaining a frivolous appeal, saying that such sanctions are necessary to deter him and to defray the attorney and other costs associated with defending against his frivolous appeal. We agree that Cuartero's arguments are so patently frivolous that his very making them is sanctionable. *See Schiff v. United States*, 919 F.2d 830, 832-35 (2d Cir. 1990).

We therefore AFFIRM 9 the judgment of the District Court and GRANT the request for sanctions in the amount of \$8,000. 10 Cuartero is ORDERED to comply with the sanction within 20 days by sending to counsel for the Government a check, payable to the United States Treasury, in the amount of \$8,000; failure to comply with this order will expose Cuartero to the risk of civil and/or criminal contempt.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of
Court

By: * * *

- End of Case -

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