

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10-5308

September Term 2011

1:89-cv-01854-RCL

Filed On: May 4, 2012

Securities and Exchange Commission,

Appellee

Terri L. Steffen and Puma Foundation, Ltd.,

Appellants

v.

Paul A. Bilzerian,

Appellant

Ernest B. Haire, et al.,

Appellees

## ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

**BEFORE:** Henderson, Rogers, and Tatel, Circuit Judges

### AMENDED JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). For the reasons set forth in the accompanying memorandum, it is

**ORDERED AND ADJUDGED** that the district court's order filed July 13, 2010, be vacated as moot with respect to the sanctions imposed for the failure to dismiss the lawsuit Puma Foundation, et al. v. Haire, Case No. 06-9816, in the Circuit Court for the Thirteenth Judicial Circuit of Florida; that this appeal be dismissed as moot with respect to the district court's finding of contempt based on the commencement of the lawsuit

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Puma Foundation v. Hodges, Case No. 09-CA-02180, in the Circuit Court for the Thirteenth Judicial Circuit of Florida; and that the district court's July 13, 2010 order be affirmed in all other respects.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to issue the mandate seven days after the issuance of this judgment.

**Per Curiam**

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY: /s/  
Jennifer M. Clark  
Deputy Clerk

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**M E M O R A N D U M**

Appellants have raised several claims of mootness in their appeal briefs and petition for rehearing. It is true that the dismissal by the Circuit Court for the Thirteenth Judicial Circuit of Florida of the lawsuit Puma Foundation, et al. v. Haire, Case No. 06-9816, rendered moot the issue of appellants' compliance with the district court's prior order to dismiss that suit. Accordingly, the district court lacked jurisdiction to impose sanctions for the failure to dismiss that suit. See Loughlin v. United States, 393 F.3d 155, 170-71 (D.C. Cir. 2004) ("[A]n appellate court may act sua sponte to vacate a trial court decision if it determines that the lower court lacked jurisdiction due to mootness.").

Appellant Puma Foundation ("Puma") notes that the lawsuit Puma Foundation v. Hodges, Case No. 09-CA-02180, also filed in the Circuit Court for the Thirteenth Judicial Circuit of Florida, was dismissed with prejudice by that court prior to issuance of the district court's order holding it in contempt, but because Puma filed a motion to vacate or reconsider the dismissal order, there was still a live controversy before the district court regarding this lawsuit. Following the district court's decision, however, Puma voluntarily dismissed the action. As a result, this appeal must be dismissed as moot with respect to the contempt proceeding for commencement of this suit. The district court's contempt finding based on the commencement of this suit will not be vacated. See Am. Bar Ass'n v. FTC, 636 F.3d 641, 649 (D.C. Cir. 2011) ("[V]acatur is usually inappropriate when 'the party seeking relief from the judgment below caused the mootness by voluntary action.'" (quoting U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship, 513 U.S. 18, 24 (1994))).

In addition, appellant Terri Steffen has failed to demonstrate that the dismissal without prejudice of her adversary action against Geoffrey Todd Hodges in her bankruptcy proceeding caused the contempt proceeding for commencement of this action to become moot. After the action was dismissed, Steffen filed a motion for reconsideration challenging the bankruptcy court's determination that the claim against Hodges belonged to the trustee of her estate, and she has not withdrawn this motion.

Appellants' remaining arguments are without merit. This court has already rejected the argument that the district court lacked jurisdiction to impose a civil contempt sanction on its own motion. See SEC v. Bilzerian, 410 Fed. Apex. 346, 347-48 (D.C. Cir. 2010). Puma and Steffen raise for the first time on appeal their argument that the July 19, 2001 injunction violates their constitutional right of access to the courts, and this argument is accordingly forfeited. See Breeden v. Novartis Pharm Corp., 646 F.3d 43, 56 (D.C. Cir. 2011). Moreover, Puma and Steffen have failed to show that the district court abused its discretion in applying the 2001 injunction to them, see Armstrong v. Exec. Office of the President, 1 F.3d 1274, 1289 (D.C. Cir. 1993) (district court's finding of contempt is reviewed for abuse of discretion), or that they were entitled to discovery or an evidentiary hearing, see Food Lion, Inc. v. United Food & Commercial Workers Int'l Union, 103 F.3d 1007, 1019-20 (D.C. Cir. 1997).