

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

APR - 2 2015

TIM RHODES
COURT CLERK

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Oklahoma Department of Securities)
ex rel. Irving L. Faught, Administrator,)
)
Plaintiff,)
vs.)
Bruce Scambler,)
)
Defendant.)

CJ-2014-1346

**REPLY OF DEFENDANT TO PLAINTIFF'S APPLICATION FOR
ATTORNEY FEES AND DEFENDANT'S MOTION TO RECONSIDER
PREVIOUS RULING BASED ON NEW EVIDENCE**

COMES NOW, Bruce J Scambler, and submits this REPLY OF DEFENDANT TO PLAINTIFF'S APPLICATION FOR ATTORNEY FEES and MOTION OF DEFENDANT TO RECONSIDER PREVIOUS RULING BASED ON NEW EVIDENCE by and through Defendant, Bruce J Scambler pro se.

I INTRODUCTION

- 1 Defendant, Bruce Scambler (hereinafter Scambler) REPLIES to plaintiff's application ¹ that such an award is premature. The plaintiff as the party seeking the award of fees and other expenses has filed before the thirty days of "final judgment in the action" and under Section 2056(G) which is a matter under motion for reconsideration. ² Defendant, has filed entry of appearance and MOTION OF DEFENDANT TO RECONSIDER PREVIOUS RULING BASED ON NEW EVIDENCE 3/24/2015. This matter is still pending a hearing of May 1,2015.
- 2 The position is that the affidavits of plaintiff in its Motion For Summary Judgment ("MFSJ") fail to comply with the requirements of section 2056(E). That matter is set for hearing May 1,2015. As plaintiff's motion is not compliant with the requirements of section 2056(E), missing certified documents, the MFSJ fails to get out of the starting

¹ 28 U.S. Code § 2412 - Costs and fees
² 1 This order was received back from Defendants counsel on 3/13/2015. "Delivered to Judge".

blocks.

3 Upon ruling this non-compliance there is no need to “strike” defendants uncertified
minutes as that motion is not relevant and consequently the order and “work, fees,
expenses, are not applicable.

4 Defendant did not in fact “submit an uncertified affidavit in bad faith (or for delay)³ and
whether such affidavit was uncertified or not at that time it is still derived from an original
on the Cantex company file. Such consideration is moot, given plaintiff’s motion fails to
comply with the requirements of section 2056(E).³

5 The new evidence as presented by filed motion is conclusive that the minutes (as
presented by the Oklahoma DOS, plaintiff in motion to strike) was also not in compliance
with requirements of section 2056(E), as not sworn or certified. Defendant shows that
evidence of emails and company procedure allowed for “pdf block signatures”

6 Defendant filed previous reply filings through counsel. There were electronic files from
persons who were not parties to this action, where those files were not directly readable at
that time due to server password recovery issues. File recovery has now opened these
email files of certain Plaintiff witnesses (See Plaintiffs motion of 3/24/2015 Exhibits #1
and #2) which have material bearing on the reply to this motion as new evidence, offering
the opportunity for reconsideration of previous rulings on this matter.

7 Defendant was not acting mala fides or causing delay.

8 For this primary reason the plaintiff’s submission to the court on the application for fees
and other expenses does not come as showing at this time that the plaintiff in compliance
with requirements of section 2056(E).

II MOTION OF DEFENDANT TO RECONSIDER PREVIOUS RULING BASED ON NEW EVIDENCE ADDED AS FILED AFTER ORDER 3/13/2015

9 Defendant argues that plaintiff is not a “prevailing party” and/or eligible to receive an
award of fees as the amount sought, (including the itemized statement from their in house
attorney) as this is not as yet a final order.⁴ The terms of 12 O.S. 1981 § 953 define a

³ G. AFFIDAVITS SUBMITTED IN BAD FAITH. If satisfied that an affidavit under this rule is submitted in bad faith or solely for delay, the court must order the submitting party to pay the other party the reasonable expenses, including attorney fees, it incurred as a result. An offending party or attorney may also be held in contempt.

⁴ Northeast Oklahoma Elec. Co-op., Inc. v. State ex rel. Corp. Com'n, 1991 OK 28, 808 P.2d 680, 62 OBJ 938, Case

final order: "An order affecting a substantial right in an action, when such order, in effect, determines the action and prevents a judgment, and an order affecting a substantial right, made in a special proceeding or upon a summary application in an action after judgment, is a final order, which may be vacated, modified or reversed, as provided in this article."

10 Defendant is not assured that the motion to reconsider will prevail, but the motion is in play as is the reply to the first motion. It is not assured that this case will get past this summary judgment motion, however, in the event it does not then that will be filed as a final order and appealed in good time by filing a Petition in Error in the Supreme Court of the State of Oklahoma to review on appeal the final order. ⁵

11 Defendant is not in a position to fund (or justify) amounts of legal costs, and is left with no other option than to struggle along pro se, in the belief that right will out and that the final costs will be awarded in his favor

12 As stated the plaintiff's claimed "Facts" are not supported by any original Cantex documents. There are none in evidence. The affidavit was made by the person who on personal knowledge, set out facts, that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated. ⁶ Mr Trace Maurin referred to in the affidavit these first draft minutes, however there was no "sworn or certified copy" attached by counsel. To comply with requirements of section 2056(E), the copy attached to its motion for summary judgment should have been "certified or authenticated" as required by that section.

13 affidavit fails to comply with the 9 Rule 13(c) of the Rules for the District Courts of Oklahoma, 12 O.S.2011, ch. 2, app., states:

The affidavits that are filed by either party shall be made on personal knowledge, shall show that the affiant is competent to testify as to the matters stated therein, and shall set forth matters that would be admissible in evidence at trial. The admissibility of other evidentiary material filed by either party shall be governed by the rules of evidence. If

Number: 74453, Decided: 03/19/1991, Supreme Court of Oklahoma. The terms of 12 O.S. 1981 § 953 define a final order:

⁵ State ex rel. Cartwright v. Southwestern Bell Telephone Co. 1983 OK 40 662 P.2d 675 Case Number: 56728 Decided: 04/19/1983 Supreme Court of Oklahoma.

⁶ 12 O.S.2011 § 2056,

there is a dispute regarding the authenticity of a document or admissibility of any submitted evidentiary material, the court may rule on the admissibility of the challenged material before disposing of the motion for summary judgment or summary disposition. A party challenging the admissibility of any evidentiary material submitted by another party may raise the issue expressly by written objection or motion to strike such material. Evidentiary material that does not appear to be convertible to admissible evidence at trial shall be challenged by objection or motion to strike, or the objection shall be deemed waived for the purpose of the decision on the motion for summary judgment or summary disposition. If a trial of factual issues is required after proceedings on a motion for summary judgment or summary disposition, evidentiary rulings in the context of the summary procedure shall be treated as rulings in limine. ⁷

14 For these reasons the previous ruling and order should be stricken, and summary judgment should ~~not~~ be granted as a matter of law. ⁸

III. ALTERNATIVE ARGUMENT IN EVENT PRIMARY ARGUMENT IS NOT PREVAILING – NOT DEFINITIVE AS TO ANY BAD FAITH.

15 Defendant contests this claim for fees on the following grounds:

- a. The time taken to prepare this motion is excessive.
- b. The hourly rate as used is excessive for an agency employee on a state salary who is not billing hours in third party commercial basis,
- c. The costs to recover evidence is excessive as such evidence could have been provided by defendant at no cost to plaintiff upon request.
- d. The motion to strike was veiled in a motion in reply to defendants reply, which was an ordinary proceeding and not such as to be a final order proceeding.
- e. The hours billed include hours billed in other matters not related to a final order and are excessive by inclusion of excessive hours for legal research.

16 The motion to strike, shows no time at all was spent in communication with any witness or person regarding the contents of the motion to strike. The entire motion was made by

⁷ MIDFIRST BANK v. WILSON 2013 OK CIV APP 15 295 P.3d 1142 Case Number: 110950
Decided: 11/07/2012 Mandate Issued: 02/07/2013 DIVISION II THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA, DIVISION II

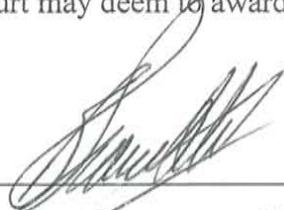
⁸ STATE ex rel. PRUITT v. NATIVE WHOLESAL SUPPLY
Database: Oklahoma Supreme Court Cases
Public Domain Citation: 2014 OK 49 *Lowery v. Echostar Satellite Corp.*, 2007 OK 38, ¶11, 160 P.3d 959, 963.
See also other State guidance ref *Nixon v. Mr. Property Mgmt.*, 690 S.W.2d 546, 548-49 (Tex. 1985).

plaintiff based on legal research and NOT HAVING TAKEN adequate research of their lead witness. As such and based on this new evidence and given the OK DOS chief “gainant” in this action, as Mr Trace Maurin (⁹) was the one claiming definitive knowledge, that is refuted. Mr Trace Maurin did not have any knowledge as he was not in Oklahoma, he was in Texas, and he was in Angola a lot of the time. Mr Trace Maurin failed to inform the plaintiff that he had given Harvey Bryant his permission for electronic “pdf block” signatures to be used for documents in his absence. There was as such no affirmation of the validity or not of revised minutes and revised company understandings and no certification of these minutes as documents. .

X. PRAYER

17 Defendant Scambler prays the court dismiss this motion for fees together with the MFSJ, and upon the new evidence provided of “use of pdf signature blocks” re-admit the Revised Cantex Minutes, and any other relief and costs the court may deem to award.

respectfully submitted,



Bruce Scambler, pro se Defendant
3555 N.W. 58th St., #1000 LMT West
Oklahoma City, OK 73112
(Tel 405 608 2700)

⁹ He got back control of the company Cantex)

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 2nd day of April 2015, a true and correct copy of the above and foregoing REPLY OF DEFENDANT TO PLAINTIFF'S APPLICATION FOR ATTORNEY FEES AND DEFENDANT'S MOTION TO RECONSIDER PREVIOUS RULING BASED ON NEW EVIDENCE was mailed with postage prepaid thereon, addressed to

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