

IN THE DISTRICT COURT OF OKLAHOMA COUNTY,
STATE OF OKLAHOMA

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

SUPPLEMENT TO DEFENDANT’S REPLY TO PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT, REPLY TO CLAIM FOR FEES, DEFENDANT’S MOTION TO STRIKE AND SUPPLEMENT TO DEFENDANT’S MOTION TO RECONSIDER PREVIOUS RULING BASED ON NEW EVIDENCE

COMES NOW, Bruce J Scambler, and submits this SUPPLEMENT TO DEFENDANT’S REPLY TO PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT, REPLY TO CLAIM FOR FEES, DEFENDANT’S MOTION TO STRIKE AND SUPPLEMENT TO DEFENDANT’S MOTION 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) would submit this supplement in regard to the reply to the plaintiff’s Motion For Summary Judgment, (hereinafter “MFSJ”) as an aid to the Court. Defendant draws the Court’s attention to Title 12. Civil Procedure: Chapter 39 - Oklahoma Pleading Code Section 2056 - Motion for Summary Judgment € (E) and the recent case MIDFIRST BANK v. WILSON 2013 OK CIV APP. The plaintiff did not attach “sworn or certified copies” to the affidavits referencing documents. MFSJ is not ripe or in compliance with statute Section 2056 (E) and plaintiff’s motion should be dismissed.
- 2 This matter, is set for a hearing May 1,2015. Dismissing by operation of statute plaintiff’s MFSJ, necessitates consequential motions and rulings to reset the case back to a level playing field. ¹

¹ Defendant has had no request for time extension from plaintiff and looks forward to the hearing as set.

II – REPLY TO PLAINTIFF’S CLAIM FOR FEES

- 3 Defendant was advised he was not needed at the previous motion hearing. That seems to be erroneous given the resulting order. Defendant moves to request the court strike that order. Defendant has received a claim for fees from plaintiff. Defendant replies to that motion by separate reply. The motion for fees however, relies on plaintiff having first complied with Chapter 39 - Oklahoma Pleading Code Section 2056 E. Defendant show court herein that plaintiff did not comply. The plaintiff did not attach “sworn or certified copies” to the affidavits referencing documents. Based on that, the review and test for MFSJ fails ab initio (at the start). Any subsequent motion such as plaintiff’s motion to strike and plaintiff’s motion for fees are superfluous and non-relevant as the foundation stone of compliance with Section 2056 E was not complied with.
- 4 The plaintiff would seek to put up a smoke screen like some WWII destroyer, to hide this non-compliance. Plaintiff is just sharpening cats claws to seek to show defendant was “in control” and directly caused acts in contravention of statute, for which they argue for example that “Cantex company minutes” definitively show this in some manner.
- 5 Defendant would respectfully submit plaintiff seems to admit in Claim for Fees that he/she spent many hours on legal research (ref plaintiff motion for fees filed March 26th 2015). It is not the quantity of the hours submitted, but the quality of the work product that counts.
- 2 You can do many hours of legal research, but yet still not always do what the law requires. You can get as many people as you can to attest a document, but still not qualify for summary judgment. The law is clear. Plaintiff did not have “sworn” or “certified copy” as an authenticated document(s) to comply with requirements of section 2056(E).³
- 6 Plaintiff should not be entitled to fees for a motion that should never have been heard due to plaintiff’s omissions and non-compliance.

III – DEFENDANT’S MOTION TO STRIKE (PART 1)

- 7 Defendant shows plaintiff did not comply with the requirements of section 2056(E). The

² Plaintiffs are on State salaries and have no limit to hours they can spend on research. Defendant is in private practice and is limited as this reply is non-client paying work.

³ Perhaps but five minutes of searching: Oklahoma: statute: summary judgment: gives Title 12, Civil Procedure: Chapter 39 - Oklahoma Pleading Code Section 2056 - Motion for Summary Judgment.

copy attached to its MFSJ, and any supplement filings in support should have been a "certified copy" or "sworn" as authenticated as required by that section. ⁴

To aid court the section is quoted here in part

Section 2056 (E). AFFIDAVITS AND FURTHER TESTIMONY. A supporting or opposing affidavit must be made 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. *If a paper or part of a paper is referred to in an affidavit, a sworn or certified copy must be attached to or served with the affidavit.*

- 8 Plaintiff's MFSJ includes an affidavit from T. Grenwal. He claims a letter was sent to him. That is a very critical piece of evidence. Were the letter to have been addressed to him using his correct name spelling, or signed in original ink by Scambler, or properly headed up then there could be evidence in favor of MFSJ. None of these occurred, this was sent out by Harvey Bryant. T. Grenwal, did not include *a sworn or certified copy.*
- 9 Defendant moves to strike this document, the referring part in the affidavit and sustain such as to this as a motion in limine through to end of trial. ⁴
- 10 The sworn affidavit of Mr Brearer, references a document as a stock certificate. There was no *sworn or certified copy.*
- 11 Defendant moves to strike this document, the referring part in the affidavit and sustain such as to this as a motion in limine through to end of trial. ⁵
- 12 Defendant moves to strike any other document referred to in any affidavit in the MFSJ and to sustain such as to this as a motion in limine through to end of trial.
- 13 Defendant moves the court strike the plaintiffs uncertified and unsworn documents from its motion and per section 2056(E) and MIDFIRST BANK v. WILSON 2013 OK CIV APP rule that such document is ruled upon as being '*evidentiary rulings in the context of the summary procedure shall be treated as rulings in limine*' which absent "certification" or "sworn" should be excluded hereinafter.

IV – DEFENDANT'S MOTION TO STRIKE (PART 2)

- 14 Section 2056(E) is written in wide scope language. A MFSJ is quite clear to fall in this sections ambit, but so also is a "Motion to Strike", which is an ancillary motion in favor of

⁴ 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

⁵ ⁵ MIDFIRST BANK v. WILSON 2013 OK CIV APP 15; 295 P.3d 1142

MFSJ. The Motion to Strike, looks like part of a MFSJ, reads like it, and one could say “quacks like it”. Must be a duck of part of an MFSJ by any other name. For this reason defendant argues that it is not just the striking of the MFSJ’s “unsworn, or uncertified document(s) referred to in the original MFSJ, it is also the plaintiff’s “unsworn, or uncertified document(s) attached to its motion to strike under Section 2056(E) which appears to falls under this application of law. Both motions are in favor of summary judgment. Plaintiff applies in its motion to strike to strike defendants “document”, and in doing so furthers its MFSJ and adds further affidavits of Mr Trace Maurin, and of Beau Williams again referring to document(s).

15 Beau Williams claims this is a true and correct copy, however that copy is not certified or marked as sworn to.

16 Trace Maurin refers to certain minutes but that copy is not certified or sworn to.

17 Yet again there was no "sworn" or "certified copy" attached by counsel as to what the authenticated document was that these supplemental affidavits referred to. Defendant would move the court strike the plaintiffs uncertified and unsworn documents from its motion and per section 2056(E) and MIDFIRST BANK v. WILSON 2013 OK CIV APP rule that such document is ruled upon as being ‘*evidentiary rulings in the context of the summary procedure shall be treated as rulings in limine*’ which absent "certification" or “sworn” should be excluded hereinafter. ⁶

18 Plaintiff's motion does not establish, in the manner required by Section 2056(E), that Plaintiff is entitled to rely on the document(s) as either the "Draft Minutes" or “Revised Minutes” as they were not certified or sworn copies. Consequently, the Defendants second revised reply to MFSJ should be granted. Further in light of striking affidavits that refer to unauthenticated documents to motion to reconsider, revise and vacate the judgment order “striking Defendants revised minutes” should be granted. Argument in favor of that reconsideration is detailed below.

IV CONSEQUENTIAL SUPPLEMENT TO MOTION OF DEFENDANT TO REQUEST
COURT RECONSIDER PREVIOUS RULING BASED ON NEW EVIDENCE ADDED
AS FILED AFTER ORDER 3/13/2015

19 The plaintiff is entirely responsible for getting in the “sworn copy” or a “certified copy”.

⁶ per section 2056(E) and MIDFIRST BANK v. WILSON 2013 OK CIV APP

The plaintiff had access to Harvey Bryant in 2012, yet did not obtain a “sworn copy” nor a “certified copy” of the minutes from the company secretary 8/2010 -1/2011. No application was made to Cantex company secretary 2/2011 – 4/2014 for a certified copy.

20 The status of this document is key to this case. There is not an “original” in the Cantex company file of these “draft minutes”. The existence of that document now is not known. Plaintiff had opportunity to request a copy but failed to do so, and no “sworn or certified copy” of that reference document was attached. Striking this affidavit is as per section 2056 which limits the availability of Rule 13(c) where, as here, a certified copy of the evidentiary material is not attached to the affidavit. Scambler, within the scope of the leeway for resubmission, challenges the admissibility of uncertified "Minutes" whether "Initial Draft" or "Final Version" pursuant to the procedure set forth in Rule 13(c). This challenge is as required as plaintiff have tendered evidentiary material in support of its MFSJ. Plaintiff's MFSJ, with respect to not providing certified copies its status as the "holder of the company minutes" was not "properly made" either as to the "first draft" (unauthenticated with pdf block signatures per email of company) or the "Revised Minutes" (with original in the company file with original signature initials over the pdf block signatures). Therefore, the evidentiary material submitted in support of plaintiff's motion does not establish as an undisputed fact that plaintiff is the current holder of an original or authenticated or certified copy of the prevailing minutes. The plaintiff has not been the holder since before the petition was filed, and indeed now suffers from evidence that Trace Maurin is a self-serving liar who knew little or anything of what was happening until it mattered to him to regain the company at no cost to him 4 years later to save him paying Scambler \$300,000 or more.

21 Whereas the MFSJ has affidavits referencing document “Minutes of Meeting” but no “sworn or certified copy” of that document attached. Section 2056 (E) requires “the copy attached to its MFSJ” to be “sworn” or to have been a "certified copy" as required by that section.

22 Defendant moves to strike the "Draft" Cantex Minutes and the applicable parts of affidavits of Mr Trace Maurin, and of Beau Williams as there was no "sworn or certified copy" attached by counsel as to what the authenticated document was.

23 As plaintiff failed to do get a "certified" or “sworn” copy then such document ”The Claimed Cantex Draft Minutes” should be excluded and as such by application of statute

plaintiff fails in its MFSJ. ⁷

- 24 Defendant moves to strike the entire affidavit and testimony of Mr Trace Maurin (⁸) (not a party) but as one claiming definitive PERSONAL knowledge (that is refuted herein) who is conflicted and chief "... gainant " in this action. Plaintiff have filed their motion. 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 ... shall be made on personal knowledge". The emails we have show Mr Maurin was off-shore Angola working on oil rigs for most of this time. How could his evidence be that of any direct "personal knowledge of the position in Oklahoma". The new evidence we have is that Harvey Bryant got the office staff to use "pdf signature blocks" (used with the knowledge and agreement of Mr Maurin (per Exhibit #1), but not with the agreement or knowledge of Scambler. The new evidence is of the electronic email as the confirmation email of notice and Mr Trace Maurin's permission in using pdf signature blocks as standard company agreed practice for him as to his affirmation, without it appears any direct knowledge.
- 25 The facts would show Mr Trace Maurin did not have any "personal knowledge". He was not in Oklahoma. He admits he was in Texas some of the time, and omits to say he was in fact in Angola a lot of the time. He took no direct part in the company after handing over the President's reins to new President Harvey Bryant. What is "mala fides" (bad faith) is that Mr Trace Maurin gave the OK administrator as plaintiff "information" and yet failed to inform the plaintiff that he had given Harvey Bryant his permission for electronic "pdf block" signatures to be used for any documents in his absence which was out of contact in Angola Africa. There was as such no affirmation of the "validity or not" of revised minutes and revised company understandings.
- 26 Mr Trace Maurin was not there, he had no personal knowledge and was a "signature block" affirmation. The (opposing) plaintiff's affidavit's was made by a witness who was not in Oklahoma, was not even in America so had little to no personal knowledge. Further the claimed evidence in documents is not certified or authenticated, and so the affiants are

⁷ 1 Through to Jan 2011 the minute book was in the hands of Harvey Bryant, Secretary, and thereafter with the company. No such "draft" Minutes appears in the company records. The document unsworn is a compilation as a draft with a "pdf attached signature block" as a separate third page. The lead affidavits of Mr Trace Maurin, and of Beau Williams fail to comply with the requirements of section 2056(E), wherein the copies attached to plaintiff's motion for summary judgment as "documents" are not certified or authenticated as required by that section.

⁸ He got back control of the company Cantex)

not competent to testify on the matters stated. ⁹

27 The evidentiary material submitted in support of plaintiff's motion does not establish as an undisputed fact that plaintiff has the document and that it has had certified or authenticated copies of minutes before the petition was filed. *Spirgis v. Circle K Stores, Inc.*, would show the moving party has not addressed all material facts, and that one or more of such facts is not supported by acceptable evidentiary material; consequently summary judgment is not proper.

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

V - DEFENDANT'S REPLY TO PLAINTIFF'S MFSJ NOT A MATTER FOR REFUTE AS PLAINTIFF'S MOTION FAILS AB INITIO

29 Plaintiff would have the court review the defendants initial reply. The law would suggest that the court does not need to do so if it finds that the plaintiffs MFSJ fails. Case Law was that looking at a "reply" to a motion - "the Wilsons did not respond to MidFirst's MFSJ" That is they did not make a reply, and yet because the "note was not authenticated" Rule 13(c) of the Rules for the District Courts of Oklahoma, 12 O.S.2011, ch. 2, app., applied. The Wilsons got a vacation of the Summary Judgment.

30 Defendant did try to make a reply through counsel, however, such motion by counsel failed as Counsel did not include a "certified or authenticated" version of the company documents.

VI. CONCLUSION NO EVIDENCE AS DEFINITIVE AS TO ANY BAD FAITH.

31 Defendant upon review of latest case law, actually need not have expended much in legal costs or effort in reply to plaintiff's MFSJ. *MIDFIRST BANK v. WILSON* 2013 OK CIV APP shows plaintiff's MFSJ fails due to not including sworn or certified copies of vital documents attached to affidavits.

32 Defendants did not in any way intend (had zero mens rea whether conscious or unconscious, direct or implied) any contravention of "Section 2056 - MFSJ ¹⁰. Quite

⁹ 12 O.S.2011 § 2056, E. AFFIDAVITS AND FURTHER TESTIMONY..

¹⁰ G. AFFIDAVITS SUBMITTED IN BAD FAITH. If satisfied that an affidavit under this rule is submitted in bad

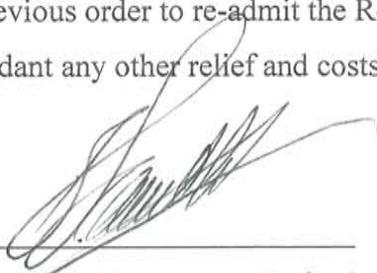
simply in the rush and short time given to make a reply to this plaintiff surprise new year motion, defendant's counsel did not have the electronic files from persons who were not parties to this action. Those files, 5 years on, were in unknown locations, Cantex had long since moved offices, and were in formats not directly readable at that time of the deadline for submission of reply to MFSJ. That the reason was due to server access, file download, password recovery issues the fact was these files were not available. Not having the files available for these reasons is not "mala fides". Had they been available we would have attached them. As for the timing, there was no intentional delay, it is just normal business operational delay waiting on files to get found. File recovery has now opened these email files of certain Plaintiff witnesses (See defendants reply to 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.

- 33 There has been no material delay, nor has there been any mala fides (bad faith), as shown. These revised documents were part of the company files and were presented as they were.
- 34 The essential matter here is that Defendant's materials are not "Evidentiary material that does not appear to be convertible to admissible evidence at trial" but are evidence that is presentable and certifiable for trial which will be conclusive that the revised minutes were made in the ordinary course of business to correct matters apparent, only after the gross lies and misrepresentations of Mr Trace Maurin came to light.

VII. PRAYER

- 35 Defendant Scambler prays the court dismiss this MFSJ, and upon the new evidence provided of "use of pdf signature blocks" reverse its previous order to re-admit the Revised Cantex Minutes, deny plaintiffs costs and grant defendant any other relief and costs the court may deem to award.

respectfully submitted,



Bruce Scambler, pro se Defendant
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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 SUPPLEMENT TO DEFENDANT'S REPLY TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, WITH DEFENDANT'S MOTION TO STRIKE AND TO RECONSIDER PREVIOUS RULING BASED ON NEW EVIDENCE was mailed with postage prepaid thereon, addressed to

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