

IN THE DISTRICT COURT OF OKLAHOMA COUNTY,
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

APR 16 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

**DEFENDANT'S REPLY TO PLAINTIFF'S OBJECTION TO DEFENDANT'S
MOTION TO RECONSIDER**

COMES NOW, defendant, and submits this DEFENDANT'S REPLY TO PLAINTIFF'S
OBJECTION TO DEFENDANT'S MOTION TO RECONSIDER by and through Defendant,
Bruce Scambler pro se.

I INTRODUCTION

- 1 In the event PLAINTIFF'S OBJECTION TO DEFENDANT'S MOTION TO
RECONSIDER ("POTDMTR") is not stricken for Rule 37 violation, defendant would
make this reply because what plaintiff claims is neither true nor legally relevant to the
matter of a reconsideration in the courts honorable hands at this time. Defendant objects
to Plaintiff's cumulative motions to strike. Moreover defendant objects on the grounds
that the defendants requested modification or vacation of the last hearing ruling is
warranted for the reasons stated in the MOTION TO RECONSIDER, and New Evidence.
- 2 Plaintiff's reply POTDMTR appears to set out a novel district court pre-trial test; that for
defendant to succeed in this Motion to Reconsider, defendant has to make and clear an
Olympic qualifying high jump height. Plaintiff cites cases and standards regarding the

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request to correct a previous ruling which are the standards of “appealable post trial new evidence”. That bar is set a lot higher than this request. Plaintiff’s POTDMTR is also scripted in effect to be further component requests for MFSJ putting onerous, unfair and unwarranted limitations of defendants defense. Defendant resubmits that requests relating to the MFSJ are covered by MIDFIRST BANK v. WILSON 2013 OK CIV APP. which applies on these facts, as cited, and that that a MFSJ is not ripe as the MFSJ is not in compliance with statute Section 2056 (E). Defendant again requests the court deny the MFSJ and asks that the Court deny Defendant's cumulative POTDMTR all for the reasons argued below.

II ARGUMENT AND AUTHORITIES

3 What is “new evidence” in this pre-discovery stage of the trial? It is not plainly stated in statute, it has little direct state case law on the subject. It is a matter of discretion. My wife, who was an Oklahoma State high jump finalist while at Casady, would agree that there are different levels of competition and expected heights the competitors need to clear.

4 Plaintiff’s POTDMTR cites *LCR, Inc. v. Linwood Properties*, 1996 OK 73, ¶¶ 10-11 and 13-16, 918 P.2d 1388, 1392-93 and rather curtly claims:

“Defendant's motion is in substance a meritless request for reconsideration of a non-final order filed on March 18, 2015 ("Order")” ... that was submitted in support of his response was submitted in bad faith with fabricated exhibits.”

Defendant in the very brief one paragraph Motion to Reconsider, argues that this “Order” in favor of the plaintiff, was obtained at a time when defendants attorney of record at the time was “not in possession in court” of the necessary evidence to show (on a more likely than not basis) that the defendants reply was neither “*submitted in bad faith nor submitted*

with fabricated exhibits". The "not in possession in court" situation was as previously described, not that the attorney had left the exhibits in the office, but that these very relevant exhibits were "being recovered from unsorted electronic files with both protected encrypted levels of access blocks". What defendant is saying is clearly that "if this hearing would be re-heard with this evidence in the court the court would be very unlikely to issue its "non-final order". Equity should prevail, to allow defendant to be released from this collar and chain of this unfairly obtained order, to present the defense upon the evidence as will be available post discovery, at trial, in its entirety.

5 Review of *LCR, Inc. v. Linwood Properties*, as a cited, states"

"The August 6, 1993 so-called "summary judgment", which was later vacated, addressed itself to some, but not to all, issues in LCR's foreclosure suit. That decision does not rise to the level of a judgment in the 12 O.S. 1991 § 681 sense. No judgment may arise from a ruling that disposes of but a portion of an entire claim and leaves unresolved other issues joined by the pleadings. Because the August 6 memorial does not resolve all of the issues in the case, it clearly falls short of a judgment. It is hence to be treated as but an intermediate order in the case."

6 This case is often cited for "pre-assignment ruling" as in *AMS STAFF LEASING INC. v. THOMPSON* 2015 OK CIV APP 15, P.3 and that "*An order denying a motion to dismiss an appeal is a predecisional order that may be renewed in the appeal when the denial was made without prejudice to its reconsideration*". In citing *L.C.R., Inc. v. Linwood Properties*, plaintiff appears to argue that test that defendant has to meet regarding the request to correct a previous district court ruling are the standards of "appealable post trial new evidence". That is defendant should wait through the months and likely "years" based on recent four year district court (pre appeals) experience in Chandler, to go through trial with this ball and chain in place, and then include this request in the appeal, whence if there were a referral back to the District court, would see this all re-done all over again. That is akin to doing four years of Olympic high jump training, to meet the qualifying

height and do it all over four years later. That does not appear to be equitable or within the bounds of the courts discretion to set this matter right at this time.

7 Plaintiff's POTDMTR cites this one higher courts "appeal relevant case" but does not appears to cover what the lower district court can consider in "New Evidence", which is really the relevant question here. New Evidence as tested in court reviews is "evidence which has become available subsequent to the trial or hearing. New Evidence is evidence not introduced into the court record in the lower court, which is material to the issue in dispute. For example, advances in technology has led to recent appeals challenging convictions based upon new DNA testing evidence. In this case use of new password removal decryption programs and technology led to the obtaining of these 5 years old electronic files.

8 This "New Evidence" also passes a lower bar test from other jurisdictions as being "fresh evidence". Fresh evidence is evidence that existed at the time of the trial or hearing, but for various reasons could not be put before the court, and has specific applicability in the UK and Canada.

9 This New Evidence is a basis for reconsideration, and is from case law especially relevant when dealing with cases involving the state. The state does not have an unblemished record in conduct of cases against private citizens. The recent case of SALAZAR v. STATE, 2005 OK CR 24, 126 P.3d 625, Case Number: PCD-2002-984 includes such reference where the court took note of the New Evidence, and concluded "Further, we are bothered that this State's witness seemingly, intentionally, misled the trial court and the parties about the reliability of his own tests to strengthen the State of Oklahoma's case against Mr. Salazar". It is exactly those kinds of "misleading results" obtained without all the evidence, that this reply seeks to prevent. The defendant would argue in this motion

and hearing that the plaintiff's claim (as relayed from defendant's attorney, and restated in their POTDMTR, that the "signature blocks looked fabricated" and was thus a **fides mala** (bad faith) submission, falls to a zero based claim when the court is provided with emails between Mr Maurin and Ms Ball (plaintiff exhibit #1) as third person acts, agreeing exactly to that "use of pdf signature blocks. It is thence normal Cantex business use, normal conduct and neither disingenuous nor **fides mala**.

10 The "new evidence" that Defendant relies upon, (see Motion for reconsideration) is verified by plaintiff who acknowledges such an email chain was made, dated August 19, 2010, between Kaily Ball and Trace Maurin (in which Kaily Ball sent the minutes for CanTex Energy) which thereafter immediately allowed for use of signature block. It takes less than 30 seconds to set adobe or pdf convert to "select image" highlight and cut a "signature block pdf" from an existing pdf signed document in your possession, and paste it as a signature block in a new document. After that was done and filed, Mr Maurin never needed to be bothered, (if he was even then), and never need sign in person again. That is what happened. At a future date when defendant is provided with the current address and contact information of Ball and Maurin depositions can verify this. At this time this matter of fact is in dispute and hence the MFSJ should be denied. It is thus moreover, entirely relevant as to how the "Revised Cantex Minutes" were signed and left on file as to their bona fides and not being in any way fabricated or mala fides. .

11 The facts show New Evidence, and defendant would request reconsideration in a hearing. The case of Heirshberg v. Slater, 1992 OK 84, 833 P.2d 269, often cited as a case allowing an extension of time, is relevant where the Oklahoma Supreme Court pursuant to 12 O.S. 1981 § 655 , decided that a party filing a petition for new trial on grounds of newly discovered evidence is entitled to a hearing prior to dismissal of the petition.

12 Defendant has met the standards of “New Evidence” and should be allowed to proceed to a hearing to try to succeed in this Motion to Reconsider. Defendant would show that the “*intermediate order in the case*” was made back some months ago, on the basis of all of not all of the relevant evidence being available at that time. When we go on for several years of litigation, defendant would like to have the Revised Cantex Minutes in the trial exhibits.

1. Reply To Plaintiff First Argument -

13 Defendant does not agree with Plaintiff’s claims that the “New Evidence” is not relevant “because it does not prove the authenticity of the Revised Cantex Minutes”. Defendant counters that is not what the New Evidence seeks to prove. The New Evidence shows that pdf signatures were used. The Revised Cantex Minutes would thus “not be fabricated” having signature blocks printed on the signing page. Thus while Plaintiff still makes claims this is a “fabricated Statement of Unanimous Consent” or “an un-authenticated Statement of Unanimous Consent” it is not possible to do so by means of Mr Maurin’s signature. Neither is Mr Maurin’s affidavit that “he was not consulted or aware” relevant as the Cantex President/office staff just added his signature block to the document. Defendant is not advised, given the untimely death of Harvey Bryant, and given Mr Maurin was in south Texas or Africa at the time, and consented to use of a pdf block signature, exactly what would on these facts “definitively prove the authenticity”. What is key, for the MFSJ is that Mr Maurin’s affidavit does not attach a “sworn or certified copy” of the Draft Minutes or Revised Cantex Minutes and so the MFSJ should be denied.

14 As for the Motion to Reconsider, defendant would show that the plaintiff’s claim that”

“it seems unlikely that a PDF signature would have been used on this document given that it is dated August 12, 2010, whereas, the authorization to use a PDF signature was purportedly given on August 19, 2010. See Exs. 1-2.”

tries to imply that dating of documents and meetings and writing of minutes all happened on the same day. This “director” meeting never *actually* occurred as a formal meeting. It was not held **cum omnes adessent exhibenda** (with all noticed persons present). There was no notice, no “meeting per se in personam”. There was no meeting ever called by formal notice days after the 12th August 2010. The minutes were backdated. The reason given was so the draft minutes could be used for the press release and the same date was used for the Revised Cantex Minutes. The Revised Cantex Minutes were completed after the draft, after the previously described heated discussion with Harvey Bryant, and when compiled put on the ring binder file, where they reside today.

2. Reply To Plaintiff’s Second Argument

15 Defendant's "New Evidence" does not need to address the authenticity of the claimed “altered deposition transcript” because there was not such alteration. The deposition transcript is an original document and can be filed as such for trial and certified. Defendant is not aware of any reason to make a change to a deceased persons deposition transcript, and no such change was made.

16 Plaintiff in their motion claims”

“Defendant's "new evidence" also does not address the other defects in the Affidavit. Many of the exhibits to the Affidavit did not prove what Defendant claimed they proved. See Pl.'s Mot. Strike at TIT 20-40 (Jan. 30, 2015). Further, the Affidavit contained inadmissible hearsay in five different paragraphs; speculation of a "conspiracy"; and denials that were unsupported by any evidence”.

17 The "new evidence" that Defendant relies upon, (see Motion to Reconsider) verifies precisely that an email chain, dated August 19, 2010, between Kaily Ball and Trace Maurin (in which Kaily Ball sent the minutes for CanTex Energy) thereafter immediately allowed for use of signature blocks. The proof is a matter of review and conclusion, and

would only indicate material facts are in dispute by the plaintiff's admission in filing and hence MFSJ is not ripe. Whether affidavit contained "hearsay" is only a factor of not having had the opportunity to take depositions and would only indicate material facts are in dispute by the plaintiff's admission and hence MFSJ is certainly not ripe

3. Reply To Plaintiff's Third Argument

18 The "New Evidence" that Defendant relies upon, fits in to the definition of new evidence. Firstly, had discovery occurred it would/should have been produced by Mr Maurin or Ms Ball, It is only because this MFSJ is pre-discovery that we are in this position. "New" as to the new evidence test, does not mean newly created. While Maurin may have included a copy email to defendant some five (5) years ago, that does not make this evidence "immediately available and readable. Plaintiffs in using the states eternal renewing and backed up email system, possibly subject to open records requests, may be able to recall emails from 10 years ago. Defendant can not. Plaintiff may not be aware that storage on "private" emails costs private citizens money and is limited to an amount of storage capacity at a cost. As such defendant did not have on his "msn.com" privately paid for account as of 1/1/2015 emails before 11/30/2012. The Waterford office closed in 2011 and most of the furniture, and server and telephone equipment was all sold by Harvey. As a consequence defendant needed to (i) physically recover back-up disks and then (ii) find copies of company related emails, (iii) electronically recover Company Email files, (iv) release the encrypted files and (iv) get copies of these emails. This all took time and the copies of these came after the first hearing. Based on this defendant is requesting a reconsideration and should be entitled to a hearing.

VII CONCLUSION

19 Defendant has shown, in matters of 2010 beyond his control, in personal emails that "pdf"

signature use was permitted by Maurin as a director. For Cantex documents “signing blocks” were used. There was no “fabrication”. Revised Cantex Minutes were produced and filed better reflecting the agreed position in regard to the merger at that time.

20 Plaintiff obtained an intermediate order, in most part because this evidence was not capable of being produced at that hearing. Had defendant had this New Evidence, clearly neither the signature block usage, nor the Maurin affidavit “I wasn’t consulted before signing” would be relevant to prove and component of a “fabrication” claim as detailed above. The plaintiff has provided no New Evidence in the POTDMTR, and absent the signature block and Maurin affidavit, (which are not now proof ref the Maurin email), there is nothing else. The order should be reversed as requested and the Revised Cantex Minutes should be allowed to be entered as a trial exhibit as they stand. Revised Cantex Minutes, are a part of the defendants response that defendant was not in control of the company as the merger had not completed.

VIII PRAYER

21 Defendant prays the Defendant requests court re-hear the Motion to Strike, and dismiss the plaintiff’s MFSJ and, let defendant move on to commence discovery.

respectfully submitted,



Bruce Scambler, pro se Defendant
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File Note: Defendants time: defendant had expended sixty two (64) hours on this case, with an added further three (3) hours to compile this reply and added one (1) hours for trip to travel to the Court House to file responses in person (pro se litigants can not mail in replies) for a total of sixty eight (68) hours.

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 13th day of April 2015, a true and correct copy of the above and foregoing DEFENDANT'S REPLY TO PLAINTIFF'S OBJECTION TO DEFENDANT'S MOTION TO RECONSIDER was mailed with postage prepaid thereon, addressed to

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