

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

APR 21 2015
FILED
COURT CLERK

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

Case No. CJ-2014-1346

PLAINTIFF'S REPLY TO DEFENDANT'S RESPONSE TO MOTION TO STRIKE
DEFENDANT'S ADDITIONAL SUMMARY JUDGMENT RESPONSES
AND
PLAINTIFF'S OBJECTION TO DEFENDANT'S MOTION TO RESUBMIT
SUMMARY JUDGMENT RESPONSE AND FOR EXTENSION OF TIME

On April 14, 2015, Defendant filed a document in which he 1) responded to the Plaintiff's motion to strike his March 24th and April 2nd responses to Plaintiff's motion for summary judgment (MSJ), and 2) requested permission to file a fourth response to Plaintiff's MSJ and for an extension of time to file this new response. Plaintiff asks that the Court grant its motion to strike Defendant's March 24th and April 2nd MSJ responses and deny Defendant's request for permission to file another response to Plaintiff's MSJ and for an extension of time.

RELEVANT PROCEDURAL BACKGROUND

Plaintiff filed its MSJ on December 31, 2014. Defendant filed a response to the MSJ on January 20, 2015. That response was stricken by the Court in an Order filed on March 18, 2015, on the grounds that the affidavit that was submitted with it

was submitted in bad faith with fabricated evidence. The Court permitted Defendant the opportunity to file a second response to the MSJ. The Defendant filed his second response on March 24, 2015, and a supplemental response on April 2, 2015. On April 7, 2015, Plaintiff filed a motion to strike Defendant's March 24th and April 2nd responses to Plaintiff's MSJ on the grounds that they are not in compliance with the Rules for District Courts of Oklahoma or the local court rules. On April 14, 2015, Defendant filed his "Motion of Defendant to Resubmit and for Extra Time and Reply to Plaintiff's Motion to Strike Defendant's Additional Responses to Motion for Summary Judgment." Plaintiff herein replies and responds to Defendant's April 14th filing.

ARGUMENT AND AUTHORITIES

I. The noncompliance of Defendant's MSJ responses with Court Rules is detrimental to Plaintiff.

Defendant's March 24th and April 2nd MSJ Responses do not comply with Rule 13(b) of the Rules for District Courts of Oklahoma because they do not contain a concise written statement of the material facts as to which Defendant claims a genuine issue exists with specific references to evidentiary materials. Defendant leaves it up to Plaintiff, and the Court, to dissect his responses and exhibits to determine which, if any, of the submitted materials demonstrate a factual dispute. This defect in Defendant's MSJ Responses impedes Plaintiff's ability to reply to Defendant's responses and to prepare for a hearing on the MSJ.

Defendant has also failed to comply with Rule 37(B) of the Rules of the Seventh and Twenty-Sixth Judicial Districts by filing, without leave of Court, an MSJ response that exceeds the 20 page limitation and a supplemental MSJ response.

This too impedes Plaintiff's ability to reply to Defendant's responses and to prepare for a hearing on the MSJ. Because Defendant's noncompliance with these court rules is detrimental to Plaintiff, and most likely the Court, Defendant's March 24th and April 2nd MSJ responses should be stricken.

II. Defendant has been afforded a fair opportunity to respond to the MSJ.

Defendant should not be afforded another opportunity to respond to Plaintiff's MSJ. Plaintiff makes this assertion based on the facts specific to this case. Defendant is not your common pro se Defendant. Instead, Defendant is a party who, while represented by counsel, filed a MSJ response that was supported by an affidavit containing blatantly fabricated evidence. During the time period in which it was appropriate to dispute that the evidence was fabricated (before the Court's ruling on Plaintiff's initial Motion to Strike), neither Defendant nor his counsel offered any explanation for the material differences in the submitted evidence. Despite this, Defendant was afforded another opportunity to respond to Plaintiff's MSJ.

In round two of Defendant's opportunity to respond to Plaintiff's MSJ, Defendant filed two responses that failed to comply with court rules to the detriment of the Plaintiff. Fairness does not require that Defendant be afforded another opportunity to respond to Plaintiff's MSJ.

III. An extension of time to file a MSJ response is not warranted.

Citing Rule 49 of the local court rules, Defendant has requested 30 days, from the date of an order permitting the withdrawal of his lawyer, to file another MSJ response.

Rule 49 does not authorize an extension of time to file a MSJ response in this matter. Rule 49 provides, in pertinent part:

The order allowing withdrawal shall notify the unrepresented party that an entry of appearance must be filed either by the party pro se or by substitute counsel, within thirty (30) days from the date of the order permitting the withdrawal, and that a failure of the party to prosecute or defend the case may result in dismissal of the case without prejudice or the entry of a default judgment against the party.

OK R 7 DIST CT Rule 49(C). The purpose of this provision appears to be to put unrepresented parties on notice of their obligation to continue with the prosecution or defense of the action after the withdrawal of counsel and to prevent unnecessary delay by imposing a deadline for the unrepresented party to commit to proceeding pro se or finding substitute counsel.

Here, Defendant has already entered a pro se entry of appearance in this matter and stated his intention to represent himself due to his inability to pay attorney fees. Entry Appearance, March 24, 2015; Reply of Def. to Mot. Summ. J. ¶ 3, March 24, 2015. Since his pro se entry of appearance, Defendant has filed at least eight documents with the Court. Defendant is clearly aware of his obligation to continue with his defense in this action and has chosen to do so pro se. If Defendant needed additional time to prepare a proper response to the MSJ, he should have requested it before he filed his March 24th and April 2nd responses to the MSJ. Plaintiff's counsel has already had to decipher and reply to Defendant's over 30 pages of response and 14 exhibits. An extension of time for Defendant to file a new MSJ response is unwarranted and should not be granted.

CONCLUSION

Plaintiff asks that the Court grant its motion to strike Defendant's March 24th and April 2nd MSJ responses and deny Defendant's request for permission to file a fourth response to Plaintiff's MSJ and for an extension of time.

Respectfully submitted,



Amanda Cornmesser (OBA No. 20044)
Terra Bonnell (OBA No. 20838)
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, Oklahoma 73102
Telephone: (405) 280-7700
Fax: (405) 280-7742
Email: acornmesser@securities.ok.gov
tbonnell@securities.ok.gov

Jeffrey D. Black, OBA #13847
Bonham & Howard
3555 N.W. 58th St., #1000
Oklahoma City, OK 73112
Telephone: (405) 943-6650
Fax: (405) 943-6655
Attorney for Defendant

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

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 24th day of April, 2015, a true and correct copy of the above and foregoing response was mailed with postage prepaid thereon, addressed to:

Jeffrey D. Black
Bonham & Howard
3555 N.W. 58th St., #1000
Oklahoma City, OK 73112
Attorney for Defendant

Bruce Scambler
3555 N.W. 58th St., #1000 LMT West
Oklahoma City, OK 73112
Defendant pro se



Terra Bonnell