



BANKSTON & ASSOCIATES
A LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

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October 22, 2013

Jenna H. Linn
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Clerk of Court
19th JDC, Parish of East Baton Rouge
P.O. Box 1991
Baton Rouge, LA 70821

Via Facsimile No. 225/389-3392

ATTN: CIVIL SUITS DEPARTMENT

RE: *Robert Burns vs. LA Auctioneer's Licensing Board, et al*
Docket No.: 624,531, 19th Judicial District Court
My File No.: 1107-0005

Dear Sir/Madam:

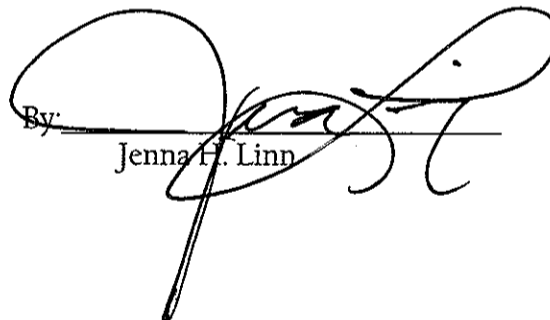
Attached for fax filing is an *Exception of No Cause of Action and Special Motion to Strike* in the above-referenced matter. Please return a receipt by return facsimile to our office.

Please note that defendant, Louisiana Auctioneer's Licensing Board, is exempt from filing fees pursuant to La. R.S. 13:4521.

Thank you for your attention to this matter and should you should have any questions or comments, please do not hesitate to contact me.

Sincerely,

BANKSTON & ASSOCIATES, L.L.C.

By: 
Jenna H. Linn

Enclosure: Exception of No Cause of Action
cc: Honorable Todd W. Hernandez
Robert Burns (via email only)

8708 Jefferson Highway, Suite A • Baton Rouge, LA 70809
Telephone (225) 766-3800 • Facsimile (225) 766-7800

ROBERT BURNS

DOCKET NUMBER 624,531 SEC. 27

VERSUS

19TH JUDICIAL DISTRICT COURT

LOUISIANA AUCTIONEER'S LICENSING
BOARD, CHARLES "HAL" McMILLIN,
JAMES M SIMS, DARLENE JACOBS-LEVY,
GREGORY L. "GREG" BORDELON,
CHARLES "CLAYTON" BRISTER,
TESSA STEINKAMP, LARRY S.
BANKSTON, BANKSTON AND
ASSOCIATES, LLC

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

EXCEPTION OF NO CAUSE OF ACTION AND SPECIAL MOTION TO STRIKE

NOW INTO COURT, through undersigned counsel come, **Larry S. Bankston and Bankston and Associates, L.L.C.**, appearing for the purpose of this exception, excepting to Plaintiff's Petition for Damages for Defamation., and moving to strike Plaintiff's Petition for Damages for Defamation pursuant to La. C.C.P. art. 971. As more fully set forth in the attached and incorporated Memorandum in Support of No Cause of Action and Special Motion to Strike, the Plaintiff has failed to state a claim against named Defendants, Larry S. Bankston and Bankston & Associates, LLC, upon which relief can be granted, and the Plaintiff's claims lack merit and would chill participation in matters of public interest.

WHEREFORE, Larry S. Bankston and Bankston & Associates, LLC pray that their exception and special motion to strike be maintained and granted, dismissing all claims against Larry S. Bankston and Bankston & Associates, LLC, awarding Larry S. Bankston and Bankston & Associates, LLC attorney's fees, and for all general and equitable relief to which Defendants are justly entitled.

Respectfully Submitted:

BANKSTON & ASSOCIATES, L.L.C.

8708 Jefferson Hwy, Suite A

Baton Rouge, LA 70809

Telephone No.: (225) 766-3800

Fax: (225) 766-7800



Jenna H. Linn, Bar Roll # 33246

ROBERT BURNS

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VERSUS

19TH JUDICIAL DISTRICT COURT

LOUISIANA AUCTIONEER'S LICENSING
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TESSA STEINKAMP, LARRY S.
BANKSTON, BANKSTON AND
ASSOCIATES, LLC

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

**MEMORANDUM IN SUPPORT OF EXCEPTION OF NO CAUSE OF ACTION AND
SPECIAL MOTION TO STRIKE**

MAY IT PLEASE THE COURT:

NOW INTO COURT, through undersigned counsel come, **Larry S. Bankston and Bankston and Associates, L.L.C.**, who file this Memorandum in Support of their Exception of No Cause of Action and Special Motion to Strike pursuant to La. C.C.P. art. 927 and La. C.C.P. art. 971.

PRELIMINARY STATEMENT

On September 11, 2013, Plaintiff, Robert Burns, brought the above captioned lawsuit against the Louisiana Auctioneer's Licensing Board (LALB), the members of the LALB, Larry S. Bankston, and his law firm, Bankston & Associates, L.L.C. Plaintiff's lawsuit alleges that he was defamed during an administrative hearing on September 17, 2012. Plaintiff claims that he is entitled to damages from all Defendants herein for the alleged defamation.

The Plaintiff, Robert Burns, was a licensee of the Louisiana Auctioneer's Licensing Board (LALB). The LALB is an executive agency of the State of Louisiana whose mission is to contribute to the health, safety, and management of the property of the people of Louisiana in the transfer of property by auction.¹ Larry S. Bankston is the managing partner of the law firm Bankston & Associates, LLC. He and his firm provide professional legal services for LALB, including, but not limited to, handling administrative proceedings.

As noted above, Plaintiff's allegations herein stem from an administrative hearing on September 17, 2012. Prior to such hearing, complaints were made against the Plaintiff regarding alleged violations of LALB licensee policies and procedures. The LALB held an administrative hearing on September 17, 2012 to hear evidence surrounding the pending complaints. Ultimately

¹ La. R.S. 37:3111, *et seq.*

at the board hearing, LALB members found that the complaints against the plaintiff had merit and issued the Plaintiff a public reprimand. No appeal of the LALB decision was filed by Burns.

LAW AND ARGUMENT

I. Legal Standard for No Cause of Action

La. C.C.P. art. 891 and the related articles require that the plaintiff's petition "contain a short, clear and concise statement of all causes of action arising out of, and other material facts of, the transaction, or occurrence that is the subject matter of the litigation."² With a peremptory exception of no cause of action, the defendant claims that the plaintiff's petition fails to state a cause of action against it, which claim challenges the legal sufficiency of the petition. The term "cause of action" when used in the context of the peremptory exception has been defined as "the operative facts which give rise to the plaintiff's right to judicially assert the action against the defendant."³

The function of the peremptory exception of no cause of action is to test the legal sufficiency of the plaintiff's petition by determining whether the law affords a remedy on the facts alleged in the pleading.⁴ Thus, the exception tests whether, as a matter of law, the plaintiff has stated a justiciable cause of action against the defendant.⁵ Generally, when a court considers a peremptory exception of no cause of action, it should confine itself to the four corners of the petition and documents attached thereto and made a part thereof.⁶ Facts may not be disputed on the trial of the exception.⁷ A peremptory exception of no cause of action is therefore triable on the face of the petition.⁸ A plaintiff is not required to plead the theory of the case; however, conclusions of law or conclusions of fact are not considered as true for purposes of the exception.⁹

Additionally, under La. C.C.P. art. 1915, relative to partial judgments, partial exceptions,

² La. C.C.P. art. 891

³ *Ramey v. DeCaire*, 869 So. 2d 114 (La. 2004); *Everything on Wheels Subaru, Inc. v. Subaru South, Inc.*, 616 So. 2d 1234, 1238 (La. 1993)

⁴ *Peters v. Allen Parish School Bd.*, 996 So. 2d 1230 (La. Ct. App. 3d Cir. 2008); *Bell v. Patterson Ins. Co.*, 999 So. 2d 117 (La. Ct. App. 2d Cir. 2008); *Poole v. Poole*, 7 So. 3d 806 (La. Ct. App. 3d Cir. 2009); *Ramey v. DeCaire*, 869 So. 2d 114 (La. 2004); *City of New Orleans v. Board of Directors of Louisiana State Museum*, 739 So. 2d 748 (La. 1999); *Roberts v. Sewerage and Water Bd. of New Orleans*, 634 So. 2d 341 (La. 1994); *Broussard v. F.A. Richard & Associates, Inc.*, 740 So. 2d 156 (La. Ct. App. 3d Cir. 1999).

⁵ *Willis v. State ex rel. Louisiana Dept. of Highways*, 212 So. 2d 555 (La. Ct. App. 1st Cir. 1968).

⁶ *Cahill v. Schultz*, 521 So. 2d 442 (La. Ct. App. 4th Cir. 1988).

⁷ *Vanguard Homes, Inc. v. Home Builders Ass'n of Greater New Orleans*, 219 So. 2d 567 (La. Ct. App. 4th Cir. 1969).

⁸ *City of New Orleans v. Board of Directors of Louisiana State Museum*, 739 So. 2d 748 (La. 1999); *McCoy v. City of Monroe*, 747 So. 2d 1234 (La. Ct. App. 2d Cir. 1999); *Darville v. Texaco, Inc.*, 447 So. 2d 473 (La. 1984); *Goodwin v. Agrilite of Louisiana*, 643 So. 2d 249 (La. Ct. App. 2d Cir. 1994); *Doe v. Entergy Services, Inc.*, 608 So. 2d 684 (La. Ct. App. 4th Cir. 1992); *Sevarg Co., Inc. v. Energy Drilling Co.*, 591 So. 2d 1278 (La. Ct. App. 3d Cir. 1991); *Ventura v. Cox Cable Jefferson Parish, Inc.*, 583 So. 2d 1237 (La. Ct. App. 5th Cir. 1991); *Johnson v. Edmonston*, 383 So. 2d 1277 (La. Ct. App. 1st Cir. 1980).

⁹ *Leatherman v. East Baton Rouge Parish*, App. 1 Cir.1972, 275 So.2d 806; *Southern Chemical & Fertilizing Co. v. Wolf*, Sup.1896, 48 La. Ann. 631, 19 So. 558; LA-C.C.P. Art. 927

and partial summary judgments, a court is allowed to "sustain ... an exception in part, as to one or more but less than all of the claims, demands, issues, theories, or parties."

II. Plaintiff's Petition for Damages for Defamation lacks factual content to support an inference that Larry S. Bankston and Bankston & Associates, LLC are liable for the conduct alleged.

Plaintiff's Petition for Damages for Defamation clearly falls short of the pleading requirements set forth in La. C.C.P. Art. 891 as its Petition fails to provide Defendants. with fair notice of the claims it is asserting. La. C.C.P. Art. 891 provides that a petition must contain "a short, clear, and concise statement of ... the material facts of, the transaction or occurrence that is the subject matter of the litigation...." To plead "material facts," the petitioner must allege more than mixed questions of law and fact, such as that the defendant breached the contract or acted unreasonably.¹⁰ Rather, "[t]he Code requires the pleader to state what act or omission he or she will establish at trial."¹¹

Fact pleading advances several goals of the petition, such as satisfying the defendant's constitutional guarantee of due process by providing the defendant with fair notice, limiting the issues before the court, and notifying the defendant of the facts upon which the plaintiff bases his claims. It is fundamental that a petition for damages must give a defendant sufficient notice of the facts sought to be proven against him so as to enable him to prepare a defense, and, additionally, by a formal pleading to identify the cause of action so as to bar its future relitigation after determination by the present suit.¹²

Plaintiff's Petition for Damages for Defamation is insufficient. In connection with Bankston & Associates, LLC, after identifying the Defendants in paragraph 2 of the Petition, Plaintiff does not mention the Defendant again until Paragraph 26 of the Petition in which he states that "Bankston & Associates are liable unto Plaintiff for his failure to properly dismiss this matter and refuse to prosecute it." Throughout Plaintiff's 14 page Petition, Plaintiff does not provide a single fact of any type of alleged wrongdoing committed by Bankston & Associates, LLC. Additionally, while Plaintiff insults Larry S. Bankston throughout his lengthily Petition and expresses his disapproval of Larry S. Bankston, Plaintiff fails to state any facts to support including Larry S. Bankston as a Defendant herein.

¹⁰Frank L. Maraist & Harry T. Lemmon, 1 *Louisiana Civil Law Treatise Civil Procedure* § 6.3 at 102 (1999); *Hargett v. Hargett* 772 So.2d 999, 1003-1004, 2000-799 (La.App. 3 Cir. 12/6/00), (La.App. 3 Cir.,2000); *Hamilton v. Baton Rouge Health Care* 52 So.3d 330, 333, 2009-0849 (La.App. 1 Cir. 12/8/10), (La.App. 1 Cir.,2010)

¹¹ *Id.*

¹² *Id.*

Plaintiff's Petition fails to place Larry S. Bankston and Bankston & Associates, LLC on notice of the alleged defamation it has committed. Without this basic information, Larry S. Bankston and Bankston & Associates, LLC are left in an untenable position. Specifically, Larry S. Bankston and Bankston & Associates, LLC are unable to determine what potential defenses they may have to the allegations. Accordingly, Larry S. Bankston and Bankston & Associates, LLC reserve the right to raise any and all defenses.

III. Plaintiff's Petition for Damages for Defamation fails to state a claim against Larry S. Bankston and Bankston & Associates, LLC for which relief can be granted.

Pursuant to La. C.C.P. Art. 927, a suit is subject to dismissal if a plaintiff fails "to state a claim upon which relief can be granted." Plaintiff has filed the above captioned matter solely to collect damages for alleged defamation; however, Plaintiff fails to state a single act of defamation committed by Larry S. Bankston or Bankston & Associates, LLC.

Defamation involves the invasion of a person's interest in his reputation and good name.¹³ In order to establish a cause of action the plaintiff must demonstrate **four required elements**. The plaintiff must prove that existence of a false and defamatory statement concerning another.¹⁴ The statement must be of a nature that is unprivileged, public, and to a third party.¹⁵ The plaintiff must demonstrate an element of fault.¹⁶ This demonstration of fault requires, at a minimum, a showing of negligence on the part of the supposed tortfeasor.¹⁷ Lastly, the plaintiff must prove that he has suffered some injury as a result of the publication of the statement.¹⁸ In other words, "plaintiff must prove that the defendant, with actual malice or other fault, published a false statement with defamatory words which caused plaintiff damages."¹⁹ If any one of the required elements is not sufficiently proven, the cause of action fails.²⁰

In a defamation lawsuit, a petitioner alleging a cause of action for defamation must set forth in the petition with reasonable specificity the defamatory statements allegedly published by the defendant.²¹ It is not necessary for a plaintiff to state verbatim the words on which the cause

¹³ LA Civil Law Treatise. Requirements for the Action. §17:4

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ LA Civil Law Treatise. Requirements for the Action. §17:4

¹⁹ *Williams v. Nexstar Broad., Inc.*, 11-887 (La. App. 5 Cir. 4/10/12), 96 So. 3d 1195, 1199-200, citing *Sassone v. Elder*, 626 So.2d 345, 350 (La.1993).

²⁰ *Williams v. Nexstar Broad., Inc.*, 11-887 (La. App. 5 Cir. 4/10/12), 96 So. 3d 1195, 1199, citing *Costello v. Hardy*, 03-1146, p. 12 (La.1/21/04), 864 So.2d 129, 140.

²¹ *Fitzgerald v. Tucker*, 98-2313 (La. 6/29/99) 737 So.2d 706, 713.

of action is based, but the petition must state facts, which would show fault under article 2315.²² This generally requires the plaintiff to name the individual offenders and allege separate acts of defamation as to each, including specific defamatory statements. The description of the statements should be specific enough as to inform the defendant of what he is alleged to have said or published so that he may prepare a defense.

In *Williams v. Nexstar Broad., Inc.*²³, the chief executive officer (CEO) of Louisiana Community Development Center filed suit against a newspaper, television news shows, and reporters for defamation arising out of articles and news shows describing alleged official misconduct by the CEO. The defendants all filed exceptions of no cause of action.

On appeal of the trial court's grant of defendants' exception of no cause of action, the appellate court cited the above reasoning regarding pleading a defamation action. The appellate court confirmed the district court's ruling, stating that the plaintiff did not set forth specific defamatory statements to support his cause of action.²⁴ Rather, the petition merely alleged that the defendants "made and published false and defamatory statements, comments and innuendo to attack and harm the reputation and character of the Plaintiff," and that the news reports "state and imply ... that Plaintiff had acted illegally, unprofessionally or incompetently with respect to his role as the Chief Executive Officer of the CDC."²⁵ The court found that "these are conclusory allegations; without support by specific defamatory statements, they cannot state a cause of action."²⁶

The appellate court also noted that the district court correctly found that the petition failed to allege facts to support the element of actual malice. The petition alleged that the statements made "were false and made with actual malice ... [and] with knowledge of their falsity or reckless disregard for the truth."²⁷ However, the court held that "that allegation merely states conclusions, not facts."²⁸

The court, having determined that at least one of the elements required to state a cause of action in defamation was missing from the petition, found that it was unnecessary to address the other elements.²⁹ Thus, the court affirmed that the petition failed to state a cause of action.

The present case presents an even more compelling case for the grant of an exception of

²² *Id.* (citing *Juneau v. Avoyelles Par. Police Jury*, 482 So.2d 1022, 1027 (La. App. 3d Cir. 1986)).

²³ 11-887 (La. App. 5 Cir. 4/10/12), 96 So. 3d 1195.

²⁴ *Id.* at 1200.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

no cause of action than in *Williams*. In the present case, the Plaintiff has not even stated conclusory allegations against Larry S. Bankston and Bankston & Associates, LLC in support of his claim for damages for defamation. As stated above, the Plaintiff makes no allegations against Bankston & Associates, LLC other than claiming that it is “liable unto Plaintiff for [Bankston’s] failure to properly dismiss this matter and refuse to prosecute it.”³⁰ In connection with Larry S. Bankston, the Plaintiff alleges that Larry S. Bankston along with the LALB members “charged headstrong with scheduling and conducting a ‘hearing’”, Larry S. Bankston “failed miserably in his duty to alert LALB members”,³¹ “Bankston and LALB members should have known...that there was no auction law violation”³², Larry S. Bankston is “liable unto Plaintiff for his failure to properly dismiss this matter and refuse to prosecute it”³³, and lastly Plaintiff alleges that Larry S. Bankston “acted in a reckless manner throughout the ‘hearing’ process and during the hearing itself”³⁴. Such allegations are not acts of defamation nor do they include any specific defamatory statements. The Plaintiff has failed to plead any of the requirements mandated for a cause of action for defamation, and as such, Plaintiff’s claims against Larry S. Bankston and Bankston & Associates, LLC should be dismissed.

IV. Special Motion to Strike

La. C.C.P. art 971, entitled special motion to strike, provides, in pertinent part, as follow:

A. (1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or Louisiana Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established a probability of success on the claim.

(2) In making its determination, the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(3) If the court determines that the plaintiff has established a probability of success on the claim, that determination shall be admissible in evidence at any later stage of the proceeding.

B. In any action subject to Paragraph A of this Article, a prevailing party on a special motion to strike shall be awarded reasonable attorney fees and costs.

C. (3) The motion shall be noticed for hearing not more than thirty days after service unless the docket conditions of the court require a later hearing.

D. All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this Article.

³⁰ Plaintiff’s Petition for Damages for Defamation, Paragraph 26.

³¹ Plaintiff’s Petition for Damages for Defamation, Paragraph 20.

³² Plaintiff’s Petition for Damages for Defamation, Paragraph 21.

³³ Plaintiff’s Petition for Damages for Defamation, Paragraph 26.

³⁴ Plaintiff’s Petition for Damages for Defamation, Paragraph 26.

F. As used in this Article, the following terms shall have the meanings ascribed to them below, unless the context clearly indicates otherwise:

(1) "Act in furtherance of a person's right of petition or free speech under the United States or Louisiana Constitution in connection with a public issue" includes but is not limited to:

(a) Any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law.

(b) Any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official body authorized by law.

(c) Any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest.

(d) Any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.³⁵

The intent and interpretation of this special statute have been discussed in many decisions. "Article 971 was enacted by the legislature as a procedural device to be used in the early stages of litigation to screen out meritless claims brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for redress of grievances."³⁶ In *Lamz v. Wells*, the court stated that "the legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, it is the intention of the legislature that the Article enacted pursuant to this Act **shall be construed broadly.**"³⁷

Accordingly, Article 971 provides that a cause of action against a person arising from any act in furtherance of the person's right of petition or free speech under the United States of Louisiana Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established a probability of success on the claim. This special motion to strike is a "specialized defense motion akin to a motion for summary judgment."

It is unquestionable that the issues in this case arise in the context of Defendants' right of petition and free speech under the United States and the Louisiana Constitutions in connection with a public issue. While Plaintiff fails to allege specific defamatory statements, his allegations

³⁵ La. Code Civ. Proc. Ann. art. 971.

³⁶ *Aymond v. Dupree*, 05-1248, p. 5 (La. App. 3 Cir. 4/12/06), 928 So. 2d 721, 727, writ denied, 06-1729 (La. 10/6/06), 938 So. 2d 85; *Gwandiku v. State Farm Mut. Auto Ins. Co.*, 2007-580 (La. App. 3 Cir. 10/31/07), 972 So. 2d 334 (2007).

³⁷ 938 So.2d 792, 796-797 (La. App. I Cir., 2006), *emphasis added*.

all concern actions and/or statements allegedly made at the LALB administrative hearing. These statements were made before an official proceeding authorized by law, in connection with an official body authorized by law, and in a place open to the public in connection with an issue of public interest. Therefore, Plaintiff's Petition for Damages for Defamation is clearly subject to this motion to strike.

In Aymond v. Dupree, the court first considered the defendants' initial burden for a special motion to strike, i.e. demonstrating that the subject matter of the suit stems from an action relating to free speech and in relation to a public issue.³⁸ The court found that reference to the plaintiff's petition alone demonstrated that the causes of action arose from acts in furtherance of the defendants' right of free speech and in connection with a public issue, "as the statements at issue in the plaintiff's suit relate to actions of the Police Jury and its individual Police Jurors; in particular, motives allegedly underlying the Police Jury's decision making process. Whether truthful or not, the statements clearly relate to a 'public issue' as defined by the examples of such an act provided under La. Code Civ. P. art. 971(F)(1)."³⁹

Plaintiff in the present case even admits in his petition that the issues in the case are related to a public issue. In Paragraph 21 of the petition, Plaintiff specifically claims "statutory immunity from the type of retaliatory action of Defendant LALB and its members through La. C.C.P. art. 971, which provides for any court action to be stricken based on the public's right to question governmental agency public issues...the LALB hearing is the equivalent of a court hearing."⁴⁰

The Petition itself; the fact that the genesis of the issues is a public administrative hearing, held by an executive agency of the State of Louisiana whose mission is to contribute to the health, safety, and management of the property of the people of Louisiana in the transfer of property by auction and the affidavit of Larry S. Bankston⁴¹, attached hereto and made a part hereof, all clearly show that Defendants have met their prima facie burden of proof and that Article 971 should be applied.

Once the moving party satisfies the burden of proving that the cause of action arises from an act in the exercise of his right of free speech regarding a public issue, the burden shifts to the

³⁸ 928 So.2d 721, 728 (La. App. 3 Cir. 2006).

³⁹ *Id.*

⁴⁰ Plaintiff's Petition for Damages for Defamation, Paragraph 21.

⁴¹ Affidavit of Larry S. Bankston, attached hereto as "Exhibit 1."

plaintiff to show a probability of success on his claim.⁴² As fully explained above, the Plaintiff cannot meet his burden of proof as he has failed to meet any of the requirements to state a cause of action against Larry S. Bankston and Bankston & Associates, LLC for a claim for defamation.

V. No Amendment Allowed Before Ruling on a Special Motion to Strike.

In the event that the Plaintiff moves to amend his petition before the hearing on the motion to strike in order to cure its apparent problems, the court has the broad discretion to deny such an amendment.⁴³ In this case, we respectfully submit that the court should hear the motion to strike before any subsequently filed motion to amend the petition to cure its defects. In *Thinkstrecun, Inc. v. Rubin*,⁴⁴ an Article 971 motion to strike was filed by the defendant. Before the hearing on the 971 motion, the plaintiff filed a motion to amend the petition. The court heard the motion to strike first and it was granted. The court then denied the motion to amend the petition. On appeal, the plaintiffs contended that the trial court erred in not allowing them to amend their petition prior to deciding the issue of the special motion to strike. However, the First Circuit held that the trial court did not abuse its discretion in its determination of the special motion to strike first. The First Circuit further explained that while the plaintiffs argued that they have a statutory right to amend their lawsuit to correct defects in the pleadings pursuant to LSA-C.C.P. arts. 932(a) and 934, these articles apply to declinatory and peremptory exceptions only, and they make no reference whatsoever to the special motion to strike.⁴⁵

WHEREFORE, LARRY S. BANKSTON AND BANKSTON & ASSOCIATES, LLC pray that their exception of no cause of action and special motion to strike be granted, that all of the claims against Larry S. Bankston and Bankston & Associates, LLC be dismissed at Plaintiff's cost and for all attorneys' fees in the matter incurred by Larry S. Bankston and Bankston & Associates, LLC.

Respectfully submitted by:

BANKSTON & ASSOCIATES, LLC
8708 Jefferson Hwy, Suite A
Baton Rouge, LA 70809
Telephone No.: (225) 766-3800
Facsimile: (225) 766-7800



Jenna H. Linn, Bar Roll No. 33246

⁴² *Thomas v. City of Monroe Louisiana*, 833 So. 2d 1282 (La. App. 2d Cir. 12/18/02); *Aymond v. Dupree*, 928 So.2d 721, 727 (La. App. 3 Cir. 2006); See also: *Hunt v. Town of New Llano*, 930 So.2d 251, 254 (La. App. 3 Cir. 2006).

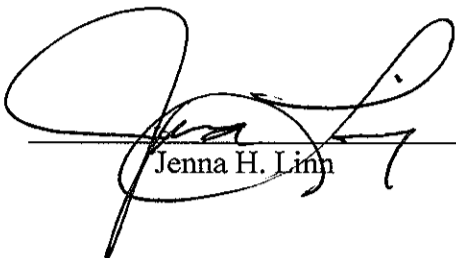
⁴³ *Darden v. Smith*, 879 So. 2d 390 (La. App. 3d Cir. 6/30/04).

⁴⁴ 971 So.2d 1092 (La. App. 1 Cir. 2007).

⁴⁵ *Id.*

CERTIFICATE

I hereby certify on this 12 day of October, 2013, a copy of the foregoing pleading was served on counsel for all parties to this proceeding, by transmitting a copy of same via electronic mail, facsimile or regular United States mail, properly addressed, and first class postage prepaid.



Jenna H. Linn

ROBERT BURNS

DOCKET NUMBER 624,531 SEC. 27

VERSUS

19TH JUDICIAL DISTRICT COURT

LOUISIANA AUCTIONEER'S LICENSING
BOARD, CHARLES "HAL" McMILLIN,
JAMES M SIMS, DARLENE JACOBS-LEVY,
GREGORY L. "GREG" BORDELON,
CHARLES "CLAYTON" BRISTER,
TESSA STEINKAMP, LARRY S.
BANKSTON, BANKSTON AND
ASSOCIATES, LLC

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

ORDER

Considering the Foregoing:

IT IS ORDERED that Plaintiff, Robert Burns, show cause on the ____ day of _____, 201__ at _____ o'clock __m. why Defendants, Larry S. Bankston and Bankston & Associates, LLC's Special Motion to Strike and Exception of No Cause of Action should not be granted and why Defendants should not be awarded attorney's fees and costs associated with filing this motion.

Baton Rouge, Louisiana, this _____ day of _____, 2013.

Judge, 19th Judicial District Court

Please Serve:

Plaintiff, Robert Burns
4155 Essen Lane, Apt. 228
Baton Rouge, LA 70809

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

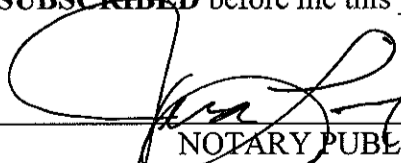
BEFORE ME, the undersigned Notary Public, duly commissioned and qualified in and for the parish and state aforesaid, personally came and appeared LARRY S. BANKSTON, who after being duly sworn did depose and say the following:

1. My name is Larry S. Bankston and I am the managing partner of Bankston & Associates, L.L.C.
2. I provide professional legal services to the Louisiana Auctioneers Licensing Board, including but not limited to the handling of administrative proceedings.
3. I am personally familiar with the activities that took place at the Louisiana Auctioneers Licensing Board's ("LALB") administrative adjudicatory hearing on September 17, 2012.
4. The aforementioned hearing was a result of a formal Auctioneer Consumer Complaint being filed against Robert Burns.
5. I was present at the LALB meeting in which the administrative hearing took place on September 17, 2012.
6. The September 17, 2012 Board Meeting and administrative hearing were open to the public.
7. During the September 17, 2012 administrative hearing, I acted as the Board's attorney by presenting evidence and questioning witnesses.
8. The subject matter of the September 17, 2012 administrative hearing concerned an issue of public interest.
9. At the conclusion of the hearing, the LALB issued a public reprimand to Robert Burns.
10. Robert Burns did not appeal the decision of the LALB.



LARRY S. BANKSTON

SWORN TO AND SUBSCRIBED before me this 22nd day of October, 2013.



NOTARY PUBLIC

<p>Jenna H. Linn Notary Public, ID Number 91116 Louisiana Bar Roll Number 33246 Parish of East Baton Rouge State of Louisiana My Commission Expires Upon Death</p>
