

ROBERT BURNS

NUMBER 602,922 SECTION 25

VERSUS

19TH JUDICIAL DISTRICT COURT

SANDY EDMONDS

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

**MEMORANDUM IN SUPPORT OF EXCEPTIONS OF NO CAUSE
OR RIGHT OF ACTION AND SPECIAL MOTION TO STRIKE**

NOW INTO COURT, through undersigned counsel, comes defendant, Sandy Edmonds, who moves this Honorable Court as follows:

I. SUMMARY OF CLAIMS

The present litigation centers around allegations made by plaintiff, in proper person, Robert Burns, that defendant, Sandy Edmonds, initiated complaints with the East Baton Rouge Parish Sheriff's Office and the Louisiana Office of State Police as a result of sudden and previously unannounced late afternoon visits to an office building located at 5222 Summa Court in Baton Rouge, Louisiana. The office building is occupied by the Louisiana Auctioneers Licensing Board ("LALB") and the Arthritis Association of Louisiana ("Arthritis Association"). These unannounced visits occurred on April 6, 2011 and April 8, 2011. Plaintiff appeared at the building and obtained entrance from Ms. Karen Kennedy, an employee of the Arthritis Association. Mr. Burns alleged that he was visiting the premises to do some "filming". The only people on the premises at the time of Mr. Burns' visit were Ms. Karen Kennedy and Ms. Carolyn Messenger, the office manager for the Arthritis Association. Mr. Burns is not a tenant of the building, nor was he serving on any board that meets in the building. Ms. Kennedy allowed Mr. Burns to enter the building, as she was under the impression he was on the premises in an official capacity for the building owner and/or his real estate agent. The attached affidavit of Karen Kennedy shows that Mr. Burns entered the conference room in the building where the boards regularly hold their meetings. Mr. Burns closed the door of the conference room and did not allow anyone to enter until such time as Ms. Kennedy ordered him to leave the building.

This suspicious conduct on the part of Mr. Burns was reported to Anna Dow, general counsel for LALB, and was also reported to Ms. Edmonds, the Executive Assistant for LALB. Ms. Kennedy reported Mr. Burns' conduct, as she was concerned about her safety and the safety

of other tenants in the building. Mr. Burns' actions, and the security concerns voiced by Ms. Kennedy, were reported to Mr. James Kenneth Comer, Jr., chairman of the LALB at the time of the subject incident. Mr. Comer made the decision to report Mr. Burn's conduct to police officials. Mr. Comer did not make the telephone calls himself; instead, he instructed Ms. Edmonds to do so, as she serves as the Executive Assistant for the LALB. Ms. Edmonds does not hold a board position. She is a hired employee of the board and does not have any authority to approve or initiate such actions, unless instructed to do so by the chairman or the board members.

Mr. Burns makes clear in paragraph 22 of his Petition for Damages that the East Baton Rouge Parish Sheriff's Office and the Louisiana State Police obtained statements from complainants and, also, from Mr. Burns. Mr. Burns was neither arrested nor ever officially charged with any crimes. In short, there were no legal or judicial proceedings that moved the matter forward beyond the stage of the initial complaint. Mr. Burns is seeking damages on the basis that the phone call to police authorities by Ms. Edmonds (on behalf of the LALB) constitutes malicious prosecution. He also is seeking to recoup the cost of the advertising he purchased with The Advocate as a result of an alleged venture with Mr. Beau Box, the owner of Beaux Box Commercial Real Estate. Mr. Burns attached a memo from Mr. Box dated April 12, 2011, wherein Mr. Box informs plaintiff to discontinue the use of the name and any logo of Beaux Box Commercial Real Estate in any of his marketing material and business communications because of "numerous complaints from clients". The attached memorandum does not disclose the identity of the clients he refers to. Certainly, Ms. Edmonds is not mentioned in the memorandum. In any event, Ms. Edmonds objects to all exhibits attached to plaintiff's Petition, including the memo from Mr. Beau Box, on the grounds that these materials are hearsay, are not certified authentic statements, and some documents, such as his phone records, are not relevant or probative as to his claim of malicious prosecution. For the reasons discussed below, the present action should be dismissed, with prejudice and at plaintiff's cost.

II. APPLICABLE LAW AND BURDEN OF PROOF FOR MALICIOUS PROSECUTION ACTIONS:

A civil cause of action for malicious prosecution is recognized by our jurisprudence and is based on fault under La. C.C. art. 2315. *Jones v. Soileau*, 448 So.2d 1268 (La. 1984). To prevail in his action for malicious prosecution, Mr. Burns must prove all of the following six elements, as set forth in *Jones*, supra:

- “1. the commencement or continuance of an original criminal or civil judicial proceeding;
2. its legal causation by the present defendant in the original proceeding;
3. its bona fide termination in favor of present plaintiffs;
4. the absence of probable cause for such proceeding;
5. the presence of malice therein; and
6. damage conforming to legal standards resulting to plaintiffs.”

Never favored in our law, a malicious prosecution action must clearly establish that the forms of justice have been perverted to the gratification of private malice and the willful oppression of the innocent. *Johnson v. Pearce*, 313 So.2d 812 (La.1975); *Terro v. Chamblee*, 95-70 (La. App. 3d Cir.07/19/95), 663 So.2d 75. If an accusation is based on probable cause, there is no liability, even if there was malicious motive. *Kenner v. Milner*, 187 So. 309, 311 (La. App. 1 Cir.1939).

Applying the above law to the claim asserted by Mr. Burns, it is apparent that there is an absence of factual support for one or more elements essential to his claim, and that Mr. Burns will be unable to produce factual and evidentiary support sufficient to justify his evidentiary burden of proof at trial. To the contrary, the affidavits attached hereto and made a part hereof establish that Mr. Burns does not even get past the first element of his action in that there never was a continuance of any criminal proceedings. The criminal complaint was instituted with the East Baton Rouge Parish Sheriff's Office and the Louisiana State Police; however, as admitted by Mr. Burns in his Petition, he was never arrested, nor was any formal charge filed against him.

Secondly, Mr. Burns fails to establish any legal causation by the present defendant in this proceeding. Ms. Edmonds, again, as admitted by Mr. Burns, was not present at the time of the subject visits by Mr. Burns. She has no personal knowledge as to what happened while he was

on the premises on April 6, 2011 and April 8, 2011. Ms. Edmonds did not file a complaint on her own behalf, but did so upon instructions of her employer. The facts giving rise to the complaint originated with employees of the Arthritis Foundation who offered their statements to the police officer.

Additionally, Mr. Burns cannot establish the requisite element of malicious conduct on the part of Ms. Edmonds. Again, Ms. Edmonds did not act on her own accord, and did not act with any malicious intent at any time. Moreover, the board and its chairman had probable cause to inform the police of Mr. Burns' actions, given the security concerns expressed by the tenants of the subject Summa Court office building. In short, his evidence is simply inadequate in this regard. Accordingly, this cause of action is subject to the Motion to Strike.

III. MS. EDMONDS IS ENTITLED TO ABSOLUTE IMMUNITY:

One of the oldest privileges recognized under the common-law is the absolute privilege for statements made in the course of judicial proceedings. In accordance with this privilege, judges, prosecutors, attorneys, jurors, and witnesses are protected against liability for statements made in the course of judicial proceedings. **Absolute immunity precludes recovery for even knowingly false statements made with malice.** Prosser & Keeton, The Law of Torts § 114 at 816-20 (5th ed. 1984); Smolla, Law of Defamation (1989) § 8.03; Restatement (Second) of Torts §587 (1977). The United States Supreme Court and various federal circuit courts have consistently held that a witness is absolutely immune from liability for damages for false statements made during the course of his testimony. Briscoe v. LaHue, 103 S.Ct. 1108 (1983); Imbler v. Pachtman, 96 S.Ct. 984, 991 n.20 (1976); Quirk v. Mustang Engineering, Inc., 143 F.3d 973, 975 (5th Cir. 1998); Moore v. McDonald, 30 F. 3d 616 (5th Cir. 1994); Freeze v. Griffith, 849 F.2d 172 (5th Cir. 1988); Austin v. Borel, 830 F.2d 1356 (5th Cir. 1987); Stem v. Ahearn, 908 F. 2d 1, 6 (5th Cir. 1990), cert. denied, 111 S. Ct. 788 (1991); House v. Belford, 956 F. 2d 711, 720-21 (7th Cir. 1992).

Section 587 of the Restatement (Second) of Torts, at 248 (1977), states the privilege for communications made in judicial proceedings:

A party to a private litigation or a private prosecutor or defendant in a criminal prosecution is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in

the institution of or during the course and as a part of, a judicial proceeding in which he participates, if the matter has some relation to the proceeding.

Comment *b* to section 587 explains that the privilege is meant to apply to communications to law enforcement agencies:

The rule stated in this Section is applicable to protect parties to any action before a judicial tribunal. . . . It applies to . . . information given and informal complaints made to a prosecuting attorney or other proper officer preliminary to a proposed criminal prosecution whether or not the information is followed by a formal complaint or affidavit.

Restatement (Second) of Torts sec. 587, comment *b*, at 249 (1977). Dean Prosser, in his treatise on torts, concurs:

Although there is some authority to the contrary, the better view seems to be that an informal complaint to a prosecuting attorney or a magistrate is to be regarded as an initial step in a judicial proceeding, and so entitled to an absolute, rather than a qualified immunity.

Prosser & Keeton, The Law of Torts § 114 at 816-20 (5th ed. 1984). Thus, under the common law, the immunity extends to complaints made to law enforcement officers and prosecuting attorneys. See Vogel v. Gruaz, 4 S.Ct. 12, 14 (1884) (verbal statements made to State's attorney alleging criminal activities); McCutcheon v. Moran, 425 N.E.2d 1130 (Ill. App. 1981) (statement to Attorney General's Office privileged); Starnes v. International Harvester Co., 539 N.E.2d 1372, 1375 (Ill. App. 4th Dist. 1989). See also Smith v. M.D., 130 Cal.Rptr.2d 315 (Cal. App. 2nd Dist. 2003) (police investigation constitutes an "official proceeding"; therefore, statements made to the police fall within absolute, witness privilege); Boykin v. Bloomsburg University of Pa., 893 F.Supp. 409, 417 (M.D. Pa. 1995); Woodard v. American Family Mut. Ins. Co., 950 F.Supp. 1382, 1392 (N.D. Ill. 1997); Shields, Libel and Slander – Immunity, 100 ALR5th 341 § 9 at 402 (2002).

Louisiana law parallels the common law with regard to the privilege afforded to witnesses. Under Louisiana law, communications made in a judicial proceeding carry an **absolute privilege**. This absolute privilege protects a witness from civil liability for his in-court statements, without reference to the witness' notion of the truth or falsity of the statement. Spellman v. Desselles, 596 So.2d 843 (La. App. 4th Cir. 1992); Goldstein v. Serio, 496 So.2d 412 (La. App. 4th Cir. 1986), *writs denied*, 501 So.2d 208, 209 (La. 1987); Lauga v. McDougall, 463 So.2d 754 (La. App. 4th Cir. 1985) (statements made in grand jury proceedings); Freeman v.

Cooper, 390 So.2d 1355 (La. App. 4th Cir. 1980); Williams v. DiVittoria, 777 F.Supp. 1332 (E.D. La. 1991) (federal court applying state law). **The privilege extends to statements made by a witness in filing criminal charges against another person. Thus, statements made to law enforcement officials regarding an alleged commission of a crime are absolutely privileged.** Williams v. DiVittoria, *supra* at 1340 (claim that deputy sheriff falsely accused plaintiff of criminal activity in the course of filing criminal charges against her summarily dismissed).

Louisiana statutory law also recognizes an absolute immunity for statements made by witnesses in the course of legal proceedings. In this regard, LSA-R.S. 14:50 provides for immunity “[w]hen a statement is made by a witness in a judicial proceeding, or in any other legal proceeding where testimony may be required by law, and such statement is reasonably believed by the witness to be relevant to the matter in controversy.”

The Supreme Court in Briscoe, *supra*, in determining that §1983 did not abrogate common law immunity, asserted that “[a] witness [at trial] who knows that he might be forced to defend a subsequent lawsuit, and perhaps to pay damages, might be inclined to shade his testimony in favor of the potential plaintiff, to magnify uncertainties, and thus to deprive the finder of fact of candid, objective, and undistorted evidence.” Briscoe, 103 S.Ct. at 1114. The result of such shaded testimony would be an obstruction of “the paths which lead to the ascertainment of truth.” Id.

The reason for granting absolute immunity to a witness against claims arising from his testimony applies with equal force in both trial and pre-trial settings, including statements made by witnesses in filing criminal charges. “Whether testifying at trial or in a pretrial proceeding, a witness who knows he may be subjected to costly and time-consuming civil litigation for offering testimony that he is unable to substantiate may consciously or otherwise shade his testimony in such a way as to limit potential liability.” Holt v. Castaneda, 832 F. 2d 123, 125 (9th Cir. 1987), *cert. denied*, 108 S.Ct. 1275 (1988). Because of such natural tendencies to shade testimony, witness immunity “is afforded to encourage complete disclosure in judicial proceedings as a means for ascertaining the truth.” Krohn v. United States, 742 F. 2d 24, 31 (1st Cir. 1984). “The thought is that witnesses should be encouraged to tell all they know without

fearing reprisal, because the tools of the judicial process--rules of evidence, cross-examination, the fact-finder, and the penalty of (criminal) perjury--will be able to uncover the truth.” Williams v. Hepting, 844 F. 2d 138, 142 (3rd Cir. 1988), cert. denied, 109 S.Ct. 135 (1988).

In the present case, plaintiff complains that Ms. Edmonds filed a complaint with the East Baton Rouge Parish Sheriff’s Office “with an improper purpose” and that she allegedly coerced complainants, Ms. Kennedy and Ms. Messenger, to give statements to the police officers. The attached affidavits of Ms. Kennedy and LABL board counsel, Anna Dow, refute these allegations. To the extent this information was shared with the Attorney General’s Office and police officials, Ms. Edmonds is entitled to absolute immunity for providing information to law enforcement officials concerning suspected stalking and harassing activity occurring in the subject office building See Williams v. Divittoria, supra at 1340.

IV. APPLICATION OF THE SPECIAL MOTION TO STRIKE TO THE PRESENT CASE

A. Defendant’s Burden of Proof

The first inquiry under La. C.C.P. art. 971 is whether Ms. Edmonds has established that the claim against Ms. Edmonds arises from an act on her part in furtherance of her right of free speech in connection with a public issue as defined by the article. Satisfaction of this burden does not require defendant to point out deficiencies in the plaintiff’s malicious prosecution claim or establish that there are no issues of fact as when a motion for summary judgment is made. Rather, Ms. Edmonds and the State must show that her actions involved the type of participation in matters of public interest which C.C.P. Article 971 is intended to protect. The granting of a special Motion to Strike presents a question of law. Thinkstream, Inc. v. Rubin, 2006-1595 (La. App. 1st Cir. 9/26/07), 971 So.2d 1092, writ denied, 2007-2113 (La. 1/7/08), 973 So.2d 730.

Four examples of such activities are set forth in Part F(1)(a-d) of Article 971. Ms. Edmonds’ conduct falls under at least three of the activities designated as acts in furtherance of a person’s constitutional right of free speech in connection with a public issue. One example of activity protected under Article 971 is “conduct in furtherance of the exercise of . . . the constitutional right of free speech in connection with a public issue or an issue of public interest.” Article 971(F)(1)(d). Any communication by Ms. Edmonds about Mr. Burns’ conduct

pertains to a matter of public interest protected by the First Amendment. Undoubtedly, the LALB is a public body. Mr. Burns was a former board member who was fired from the LALB board by Governor Jindal because of complaints from public officials pertaining to his conduct as a board member. Mr. Burns claims Ms. Edmonds has acted maliciously; however, the opposite is true. Plaintiff has filed the instant suit against Ms. Edmonds, and he has filed a similar suit against Ms. Dow. A copy of his Petition and Ms. Dow's response are attached hereto as "Exhibits C and D". Mr. Burns appears at LALB and Interior Design board meetings with a video camera, which disrupts the meetings. It is believed, on information and belief, that his actions are motivated by the fact that Ms. Dow and Ms. Edmonds attend the board meetings, as their jobs require them to do so.

Mr. Burns' conduct is a matter of public issue in that he is an auctioneer licensed by the State of Louisiana. The members of the LALB are public officials that regulate the auctioneer profession. The LALB promulgates and enforces auctioneer statutes, set forth in La. R.S. 42:3101, et seq. The LALB and Interior Design boards have incurred great cost to hire security for their meetings. Mr. Burns' conduct has caused board members concern for their safety that has had a negative impact on their ability to perform their duties. Moreover, the boards have had to incur substantial legal fees to defend this and similar lawsuits.

Under Subparts F(1)(a) and (b) of Article 971, communications "made before a legislative, executive, or judicial proceeding, or any other *official proceeding* authorized by law" or "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" are protected under the article. **"Official proceeding" includes criminal investigations, and "official body" includes law enforcement and prosecuting agencies.** "[A] communication concerning possible wrongdoing, made to an official government agency such as a local police department, and which communication is designed to prompt action by that entity, is as much a part of an 'official proceeding' as a communication made after an official investigation." Wang v. Hartunian, 2003 Cal. App. LEXIS 1313 (Aug. 26, 2003) (quoting Williams v. Taylor, 129 Cal. App. 3d 745, 753 (1982)). See also ComputerXpress, Inc. v. Jackson, 113 Cal.Rptr.2d 625, 640 (Cal. App. 4th Dist. 2001) (complaint filed with SEC alleging improper business practices on the part of a

publicly-traded company qualified as a statement before an “official proceeding,” even if complaint was never investigated or reviewed by the SEC); Craig v. Stafford Constr., 827 A.2d 793 (Conn. App. 2003) (internal affairs investigation conducted by the police department is a quasi-judicial proceeding so that statements made in the course of such a proceeding are entitled to an absolute privilege); Weinberg v. Feisel, 2 Cal.Rptr.3d 385, 390 (Cal. App. 3rd Dist. 2003) (statement accusing individual of theft not protected as a statement made before an “official proceeding” where defendant did not report wrongdoing to governmental agency); Picco v. Marmor, 2003 Cal. App. LEXIS 6733 (Cal. App. July 11, 2003) (allegations of criminal misconduct made against a neighbor not protected as statement before “official proceeding” where defendant did not report misconduct to the police). Thus, Ms. Edmonds’ communications and actions by the board members made during the course of the police investigation of Mr. Burns’ actions also fall within the ambit of Article 971(F)(1)(a) and (b).

For the reasons set forth in the preceding paragraphs, it is respectfully submitted that Ms. Edmonds has met her burden of proving this suit arises from the exercise of her right of free speech in connection with a matter of public interest and that Article 971, therefore, is applicable.

B. Plaintiff’s Burden of Proof

In order to overcome the special motion to strike, Mr. Burns must establish a probability of success on his claim. This showing is based on the elements of the alleged tort claim. Lee v. Pennington, 02-0381 (La. App. 4th Cir. 10/16/02), 830 So.2d 1037, 1041, *writ denied*, 02-2790 (La. 1/24/03), 836 So.2d 52. Mr. Burns has alleged the tort of malicious prosecution.

As discussed more fully in the next section of this Memorandum, speech on matters of public concern, or about public figures, enjoys enhanced constitutional protection. Even where a statement is false, if the statement addresses a matter of public concern, the plaintiff must prove that the statement was made with actual malice in order to recover for defamation. Mr. Burns has not and cannot meet the burden of establishing a probability of success on his claim of malicious prosecution, especially the element of culpability requiring proof of actual malice.

V. QUALIFIED IMMUNITY UNDER STATE LAW:

By statute, public employees in Louisiana are immune from liability for the performance of their discretionary acts in the course and scope of the authority of their office. LSA-R.S. 9:2798.1(B). In this regard, LSA-R.S. 9:2798.1(B) provides, “Liability shall not be imposed on public entities or their officers or employees based on the exercise or performance or the failure to exercise or perform their policymaking or discretionary acts when such acts are within the course and scope of their lawful powers and duties.” “Public entity” is defined to include “political subdivisions and the departments, offices, agencies, boards, commissions, instrumentalities, officers, officials, and employees of such political subdivisions.” LSA-R.S. 9:2798.1(A). Thus, state officials and their employees are entitled to immunity under § 2798.1 for acts committed in the performance of their official duties.

The statutory immunity afforded under § 2798.1 for public employees is in line with the qualified immunity of public employees long recognized under the case law. Historically and traditionally, the Louisiana jurisprudence has recognized a good faith defense to the award of damages when a public official acts in good faith and without malice in the furtherance of his official duties. Loe v. Whitman, 87 So.2d 217, 219 (La. App. 2nd Cir. 1956); Poole v. Whitman, 87 So.2d 219 (La. App. 2nd Cir. 1956); Monnier v. Godbold, 40 So. 604 (La. 1906); Strahan v. Fussell, 50 So.2d 805 (La. 1951); Anders v. McConnell, 31 So.2d 237 (La. App. 2nd Cir. 1947); Conques v. Fuselier, 327 So.2d 180 (La. App. 3rd Cir. 1976); Hughes v. Standidge, 219 So.2d 6 (La. App. 4th Cir. 1969); Guilbeau v. Tate, 94 So.2d 896 (La. App. 1st Cir. 1957); Vincent v. State, through DOC, 468 So.2d 1329 (La. App. 1st Cir. 1985); O’Conner v. Hammond Police Department, 439 So.2d 558 (La. App. 1st Cir. 1983); Richard v. State through Dept. of Public Safety, 436 So.2d 1265 (La. App. 1st Cir. 1983). This qualified immunity was best articulated by the Louisiana Supreme Court forty years ago as follows:

It must be recognized, of course, that there is no personal liability on the individual acting strictly pursuant to his public duties when that act is in good faith and without malice, for in such instances the action of the individual becomes merged in the official act. On the other hand when the defendant acts outside of his strict authority he breaches the condition of his immunity and is liable to a civil action for damages to persons harmed by his improper conduct.

Loe v. Whitman, *supra* at 219.

Thus, in order to state a cause of action under state law against a public officer, a plaintiff must allege malice or bad faith on the part of the officer or allege that the officer was acting outside the course and scope of his lawful powers and duties. Board of Examiners v. Neyrey, 542 So.2d 56 (La. App. 4th Cir. 1989). Accordingly, as plaintiff has failed to allege with specificity any evidence or facts that Ms. Edmonds acted in bad faith, or out of malice, or outside the scope of her lawful duties, plaintiff's claims must fail as a matter of law.

VI. DEFENDANT IS ENTITLED TO AN AWARD OF ATTORNEY'S FEES:

Article 971 of the Code of Civil Procedure mandates an award of attorney's fees to a prevailing party on a special motion to strike:

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.

The language of the statute is clear that attorney's fees must be awarded to a prevailing defendant. In Lee v. Pennington, 02-0381 (La. App. 4th Cir. 10/16/02), 830 So.2d 1037, 1041, *writ denied*, 02-2790 (La. 1/24/03), 836 So.2d 52, the trial court granted the special motion to strike but did not award attorney's fees and costs to the prevailing defendants. The Fourth Circuit reversed, holding that an award of costs and attorney's fees is mandatory under Article 971 when the special motion to strike is granted. See also Davis v. Benton, 874 So.2d 185 (La. App. 1st Cir. 2004) (\$5,000 in attorney fees awarded); Kindrick v. DeFrancesch (Oct. 7, 2004 and Nov. 14, 2004) (\$17,421.50 in attorney's fees awarded).

In accordance with Article 971(B), Ms. Edmonds is entitled to an award of reasonable attorney's fees, should she prevail in the defense of this action.

VII. PLAINTIFF FAILS TO STATE A CAUSE OF ACTION:

Mr. Burns alleges that Ms. Edmonds maliciously filed a complaint against him for "Disturbing the peace and wrongful use of public property". This complaint, initially reported to the East Baton Rouge Parish Sheriff's Department, was based on statements made by employees of the Arthritis Association, tenants of the Summa Court office building at all relevant times. Although the persons were listed as "Victims" in the report filed with the East Baton Rouge Parish Sheriff's Department, they were, in fact, the complaining parties. Ms. Edmonds merely made the telephone calls to the police officers, as ordered by her employer.

The granting of an Exception of No Cause of Action is appropriate when the allegations of the Petition show the plaintiff is not afforded a remedy under the law (i.e., no cause of action) **or when its allegations show the existence of an affirmative defense that appears clearly on the face of the pleading.** Succession of Carroll, ____ So.3d ____ 2011 WL 2857194, 46, 327 (La. App. 2nd Cir. 7/20/11).

A review of the allegations set forth in plaintiff's Petition shows it fails to allege sufficient facts to state an action for the intentional tort of malicious prosecution, as set forth in the law and argument above. Furthermore, Mr. Burns' allegations give rise to and support the affirmative defense of absolute and/or qualified immunity in that defendant's actions constituted protected speech. Although Mr. Burns erroneously alleges Ms. Edmonds filed the police complaint with the "improper purpose" of making him "uncomfortable" during his unsolicited and harassing video recording sessions of the LALB and Interior Design board meetings, such allegations are not sufficient to establish any of his claims against Ms. Edmonds. Ms. Edmonds did not act with any malice or intent to cause Mr. Burns the loss of any alleged business opportunities; claims Mr. Burns will not be able to prove at the trial of this matter. The actual complainants, Ms. Kennedy and Ms. Messenger, identified as the "victims" in the East Baton Rouge Parish Sheriff's report, had reasonable grounds for believing their statement to police officers to be true; the statements were made in good faith by the aggrieved tenants. Additionally, the tenants, including Ms. Edmonds, had an interest in the matter of which they complained; namely, their personal safety. Their actions are protected by the United States and Louisiana Constitutions and are privileged. Accordingly, the persons making the statement cannot be found to be acting with malice or ill will. Thinkstream, supra.

Defendant's Exception of No Cause of Action should be granted and plaintiff's Petition for Malicious Prosecution should be dismissed, with prejudice, and at his costs.

VII. SUMMARY AND CONCLUSION:

Mr. Burns, who appears in proper person herein, has asserted a claim for damages against Ms. Sandy Edmonds, an employee of the Louisiana Auctioneers Licensing Board and interior Design Board. Mr. Burns has also filed a suit against the Boards' attorney, Anna Dow, seeking damages for alleged defamation of character. The lawsuit against Ms. Dow is pending before

Judge Caldwell. Mr. Burns does not sufficiently allege facts on the face of his Petition to support a claim for malicious prosecution, nor any other claims for which Ms. Edmonds may be liable under the law. Ms. Edmonds cannot be sued for truthful statements made by employees of the Arthritis Association in good faith to police officials. These statements that were made out of concern for their personal safety and the safety of other tenants located in their office building. Mr. Burns admits that their statements did not result in his arrest or prosecution by the District Attorney's Office.

Mr. Burns also claims he should recoup the cost of advertising in the Advocate because a real estate agent, Mr. Beau Box, did not engage Mr. Burns to conduct auctions for his company. Defendant avers, based on information and belief, that, if called to testify at trial, Mr. Box would testify that he never entered into a formal agreement with Mr. Burns and that his decision had nothing to do with the complaint filed with the EBR Sheriff's Office, or any matters related to the Auction Board, the Arthritis Board, or the Summa Court office building in which the Boards were tenants at all relevant times herein.

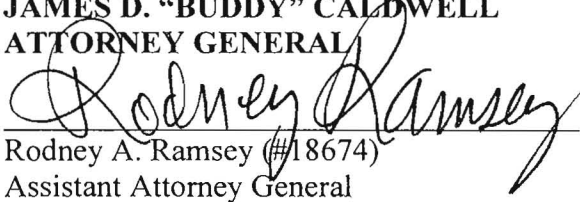
The Legislature has made a specific finding that it is concerned about the, "increase in lawsuits brought primarily to chill the valid exercise of constitutional rights of freedom of speech and petition for redress of grievance", such that the provisions of La. C.C.P. art. 971 should be "construed broadly" so as to dismiss alleged malicious prosecution and defamation actions such as those filed by plaintiff and are pending before this Honorable Court, actions which are an abuse of the judicial process. The defendant, Sandy Edmonds, has invoked the provisions of Article 971 seeking to dismiss this action, since she has shown, through the attached sworn statements and above stated legal arguments, that the complaint filed with the East Baton Rouge Parish Sheriff's office and the Office of State Police was not in any manner a legal cause of the claims asserted by Mr. Burns and that she is entitled to immunity as her actions constitute free and protected speech. The basis of the complaint filed with the police officers originated from employees of the Arthritis Association. Ms. Edmonds was listed on the East Baton Rouge Parish Sheriff's Office report because she was instructed by her employer to contact the police on behalf of the LALB. Moreover, Mr. Burns cannot establish any malice on the part of Ms. Edmonds, assuming Mr. Burns could prove the other elements of his cause of action, which he is

unable to do. Ms. Edmonds prays that the present action should be summarily stricken, pursuant to La. C.C.P. art. 971, and that a judgment issue from this Court awarding defendant and the State legal fees and court costs incurred in the preparation of her defense. In the alternative, Ms. Edmonds respectfully requests that the Court grant her Exception of No Cause of Action and dismiss all claims against her, at plaintiff's costs.

Respectfully submitted:

**JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL**

BY:

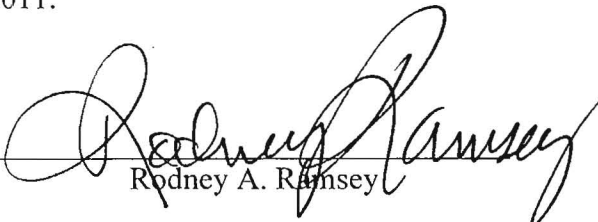

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CERTIFICATE OF SERVICE

I certify that a copy of the above and foregoing document has been served upon all counsel of record by depositing same in the United States Mail, properly addressed and postage prepaid to:

Robert Edwin Burns, In Proper Person
President, Auction Sells Fast, LLC
4155 Essen Lane, Suite 228
Baton Rouge, Louisiana 70809-2152

this 8TH day of September, 2011.


Rodney A. Ramsey