

ROBERT BURNS

VERSUS

SANDY EDMONDS

NUMBER 602,922 SECTION 25

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

**EXCEPTION OF NO CAUSE OR RIGHT OF ACTION,
SPECIAL MOTION TO STRIKE AND MOTION TO STAY DISCOVERY**

NOW INTO COURT, through undersigned counsel, appearing herein solely for the purpose of the present exception and motion, comes defendant, Sandy Edmonds, who excepts to the Petition for Damages for Malicious Prosecution filed by plaintiff, Robert Burns, and moves the court to strike plaintiff's claims on the following grounds:

1.

That the said Petition fails to set forth a cause of action for malicious prosecution against defendant. There was no commencement of any criminal proceedings against claimant, as admitted by Mr. Burns in paragraph 22 of the Petition for Damages. Moreover, plaintiff fails to allege any facts to establish that Ms. Edmonds in any way acted with malice towards Mr. Burns.

2.

That the said Petition fails to state a cause or right of action against defendant on the basis that the complaint filed with the East Baton Rouge Parish Sheriff's Office and the Office of State Police was based on information provided by Ms. Karen Kennedy and Ms. Caroline Messenger, employees of the Arthritis Association of Louisiana. (The affidavit of Ms. Kennedy is attached hereto and made a part hereof as Exhibit "A".) Their statements to law enforcement officers were made voluntarily and without coercion by any person. Mr. Burns' repeated unauthorized visits to the business office, wherein the Arthritis Association was a tenant, to allegedly conduct some "filming" caused them to feel concern for their own

safety and the safety of other tenants located in the building. Contrary to Mr. Burns' allegations, Mr. Burns never advised affiants why he was in the building "filming". Their concern about their personal safety was further increased by Mr. Burns' failure to allow them to enter the conference room of their office building, wherein he was allegedly "filming". Mr. Burns chose to arrive at the subject office building at a late hour, when he knew, or suspected, the building would soon be vacated by Ms. Kennedy and Ms. Messenger. Their statements were made in good faith and established sufficient probable cause to at least initiate an investigation.

3.

That the said Petition further fails to state a cause or right of action against defendant, as Ms. Edmonds was acting upon orders of her supervisor, James Kenneth Comer, Jr., the former chairman of the Louisiana Auctioneers Licensing Board ("LALB"). Ms. Edmonds and her employer acted in good faith at all relevant times, with probable cause, and within the course and scope of their duties as public officials, and they are entitled to and protected by the qualified immunity afforded public officials under LSA-R.S. 9:2798.1. (The affidavit of Anna Dow, legal counsel to the LALB, is attached hereto and made a part hereon as Exhibit "B".) Ms. Dow concurred with the LALB chairman to report the incident to law enforcement officials, and Mr. Comer instructed defendant to make the phone calls, pursuant to her duties as Executive Assistant to the LALB.

4.

Defendant moves the court to strike the malicious prosecution claim, and all other claims set forth by Mr. Burns in his Petition, on the grounds that Ms. Edmonds acted as per instructions from her supervisor and public board members in furtherance of their right of petition and free speech in the United States and/or Louisiana Constitution in connection with a public issue. In accordance with the provisions of Art. 971 of the La. Code of Civil Procedure, Mr. Burns' cause of action against defendant arising from such facts is subject to protection and to a special motion to strike, unless the court determines that the plaintiff has

established a probability of success on the claim.

5.

A reading of La. C.C.P. art. 971(F)(1)(a)(b) shows that the actions of Ms. Edmonds and the LALB board members fall within the scope of the Code article, in that the subject complaints made to police officials were oral statements made during the course of a judicial proceeding, and/or other official proceedings authorized by law, and were also oral statements in connection with an issue under consideration by a judicial body or other official body authorized by law.¹

6.

In accordance with Article 971(D) of the La. C.C.P., mover requests that all discovery proceedings in this action be stayed pending the resolution of the Exception of No Cause or Right of Action and Special Motion to Strike.

7.

Defendant is entitled to, and hereby requests, reasonable attorney fees for costs incurred in defending the present action, as provided for in Art. 971(B) of the La. C.C.P.

WHEREFORE, defendant, Sandy Edmonds, prays that the Exception of No Cause or Right of Action be maintained and, accordingly, that there be judgment herein in favor of defendant, Sandy Edmonds, against plaintiff, Robert Burns, rejecting and dismissing plaintiff's demands against Ms. Edmonds, with prejudice and at his cost.

Defendant further prays that the Motion to Strike filed on her behalf be granted, and that the claim for malicious prosecution set forth in the Petition be stricken, along with all other claims set forth by plaintiff. In accordance with Article 971(B) of the La. C.C.P., defendant further seeks attorney fees and all costs incurred in defending the present action

¹ Art. 971. Special motion to strike. . . . F. As used in this Article, the following terms shall have 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 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. . . .

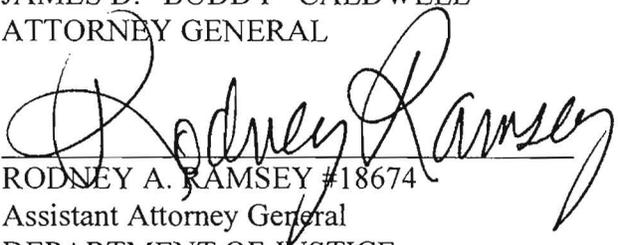
against her by plaintiff.

Additionally, defendant prays that the court issue an Order, in accordance with Article 971(D) of the La. C.C.P., staying all discovery proceedings in this action until there is a final judgment of the Exception of No Cause or Right of Action and Special Motion to Strike.

Respectfully submitted:

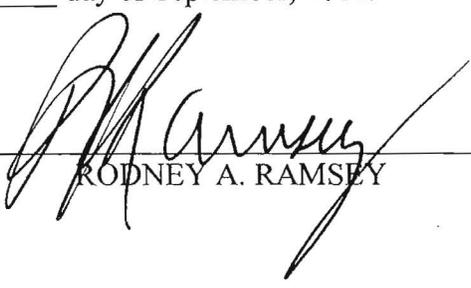
JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY:


RODNEY A. RAMSEY #18674
Assistant Attorney General
DEPARTMENT OF JUSTICE
LITIGATION DIVISION
Post Office Box 94005
Baton Rouge, LA 70804-9005
1885 North Third Street, 3rd Floor, 70802
Telephone: (225) 326-6386
Facsimile: (225) 326-6494

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Exception of No Cause or Right of Action and Special Motion to Strike and the Memorandum in Support thereof has been served upon opposing counsel, Robert Burns, who appears herein in proper person, by placing same in the U. S. Mail, Certified Mail Receipt No. 7003 1010 0002 1686 7602 postage prepaid, this 8th day of September, 2011.


RODNEY A. RAMSEY

ROBERT BURNS

NUMBER 602,922 SECTIONS 25

VERSUS

19TH JUDICIAL DISTRICT COURT

SANDY EDMONDS

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

ORDER

Considering the foregoing Exception of No Cause or Right of Action and Special Motion to Strike:

IT IS ORDERED that plaintiff, Robert Burns, show cause, if any he has, on the on the _____ day of _____, 2011 at _____ a.m., why the Exception of No Cause or Right of Action and Special Motion to Strike filed on behalf of defendant, Sandy Edmonds, should not be sustained and granted.

IT IS FURTHER ORDERED that all discovery proceedings in this action be stayed, and that the stay of discovery shall remain in effect until notice of the entry of the order ruling on defendant's Exception of No Cause or Right of Action and Special Motion to Strike.

Baton Rouge, Louisiana, this ____ day of _____, 2011.

HONORABLE WILSON FIELDS
JUDGE, 19TH JUDICIAL DISTRICT COURT

PLEASE SERVE PLAINTIFF AS FOLLOWS:

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

**PLEASE PROVIDE NOTICE TO COUNSEL
FOR MOVER, SANDY EDMONDS
VIA FACSIMILE AND U.S. MAIL AS FOLLOWS:**

Rodney A. Ramsey, Assistant Attorney General
Department Of Justice, Litigation Division
Post Office Box 94005, Baton Rouge, LA 70804-9005
1885 North Third Street, 3rd Floor, 70802
Telephone: (225) 326-6386; Facsimile: (225) 326-6494

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PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned Notary Public, personally came and appeared:

KAREN L. KENNEDY

who, after being duly sworn, did depose and state based on her personal knowledge the following:

I.

Affiant is of the age of majority and is a resident of East Baton Rouge Parish.

II.

At all relevant times pertinent to this litigation, Affiant was employed by the Arthritis Association of Louisiana ("Arthritis Association"), in the capacity of president and chief executive officer. She has been employed by the Arthritis Association for approximately eight (8) years.

III.

The Arthritis Association provides support and education for arthritis sufferers and their families. Their offices are located in suites 301, 302, and 334 located at 5222 Summa Court, Baton Rouge, LA. The office building occupied by the Arthritis Association is the same office wherein the Louisiana Auctioneers Licensing Board ("LALB") held its meetings.

IV.

On or about April 6, 2011, at approximately 4:00 o'clock p.m., claimant, Robert Burns, appeared at the Summa Court Office Building and obtained permission from Ms. Kennedy to enter the building to do "filming". There were no other people on the premises at that time other than Ms. Kennedy and Ms. Caroline Messenger, the office manager for the Arthritis Association. Ms. Kennedy allowed Mr. Burns to enter the building as she was under the impression Mr. Burns was on the premises in an official capacity for the building owner and/or Mr. Beau Box, the owner's real estate agent. Mr. Burns immediately walked to the vacant section of the office building, opposite



from the offices occupied by the Arthritis Association.

V.

Affiant recalls that she and Caroline Messenger left the premises at or about 4:30 p.m. Mr. Burns remained alone on the premises. There were no board meetings taking place at the time he entered the premises or thereafter. It is unknown how late Mr. Burns remained on the premises after affiant left the building.

VI.

The subject office building contains approximately 135 offices and is approximately 26,157 sq. feet inside. The only other leased offices in the building on April 8, 2011 were occupied by the Jewish Federation, Valet Grocers, the Electrolysis Board and the office occupied by defendant, Sandy Edmonds. Ms. Edmonds is an Executive Assistant for the Louisiana Auctioneers Licensing Board ("LALB") and holds a similar position with the Interior Design Board. The LALB and the Interior Design Board used the same conference room of the Summa Court office building for Board meetings at the time of the subject incidents.

VII.

Affiant recalls that Mr. Burns returned to the office building on Friday, April 8, 2011 between 2:30 and 3:00 p.m. Mr. Burns advised affiant that he was in the neighborhood and needed to do more filming in the building. Within seconds of hanging up with Mr. Burns, Ms. Kennedy heard the front buzzer of the building announcing Mr. Burns' arrival.

VIII.

Affiant walked to the locked front door of the building and spoke with Mr. Burns, who advised he had more filming to do. As on April 6, 2011, Mr. Burns did not explain the nature or purpose behind the filming. Mr. Burns also chose not to disclose on whose authority he was entering the building. Again, Mr. Burns was admitted into the building because affiant knew Mr. Burns when he was a board member and serving on the LALB. Also, she believed Mr. Burns was acting in an official business capacity on behalf of the building owner and/or his real estate agent. The Summa Court office building has been for sale and the remaining tenants have been asked to relocate. Affiant informed Ms. Messenger of Mr. Burns' presence in the building.

IX.

At approximately 4:00 p.m. on the same date, Caroline Messenger informed affiant that Mr. Burns had entered and occupied Suite 108 of the building, the Board Conference Room. The door was closed and the blinds located on the windows inside of the board room were pulled up by Mr. Burns. Sheets of paper were taped all over the windows, blocking the view into the board room. Ms. Messenger was not allowed in the room, although she attempted to enter the conference room to determine the nature of Mr. Burns' activity and to determine the nature of the documents spread all over the room. Mr. Burns merely stuck his head out of the conference room and requested that he be left in the building alone to complete his "work".

X.

Affiant walked to the board room to perform her own investigation. Upon announcing herself to Mr. Burns, he quickly exited the room, closed the conference room door, and did not allow affiant to enter the room. Affiant then advised Mr. Burns that she was leaving the building and that he had to immediately leave the premises as he was not a tenant. Affiant also informed Mr Burns that she had no authority to allow Mr. Burns to remain alone in the building. Affiant observed Mr. Burns' conduct and became worried for her safety because of Mr. Burns' extremely suspicious and secretive conduct, and his refusal to allow Affiant, or Ms. Messenger, into the conference room. Mr. Burns reentered the room and gathered his papers. Affiant attempted to enter the conference room, as did Ms. Messenger; however, Mr. Burns prevented her from entering, until such time as he had collected all of his materials and exited the room.

XI.

Affiant contacted Ms. Edmonds later that evening to advise her that she believed Mr. Burns was faking a board meeting and that Mr. Burns was perceived to be acting in a very suspicious and secretive nature.

XII.

Shortly thereafter, Mr. Burns sent a threatening email to Affiant. (This email is dated July 20, 2011 and is attached hereto as *Exhibit "A"*). Mr. Burns implies in the attached email that Ms. Edmonds coerced Affiant to provide a statement to the East Baton Rouge Sheriff's Office. Affiant contends that this is not an accurate statement of fact. Affiant offered her statement to the investigating police officers voluntarily and without any coercion or pressure from Ms. Edmonds, or

any other person.

XIII.

Affiant spoke with Corporal S. Hayward on or about April 11, 2011. Affiant advised Officer Hayward that Mr. Burns was entering the premises on a regular basis, without any apparent authority from the building owner or any other tenants, to “fake board meetings”; that Mr. Burns was using video equipment for some unknown purpose, and that his behavior alarmed the remaining office building tenants. Mr. Burns is not a tenant of the building nor was he employed by any tenants at the time of the subject incidents.


KAREN L. KENNEDY

SWORN TO AND SUBSCRIBED
BEFORE ME, NOTARY PUBLIC
THIS 2nd DAY OF September 2011.

(SIGNED):

(PRINT NAME):


Rodney A. Ramsey

NOTARY PUBLIC

Notary I.D. or Bar Roll Number: 18674

From: Robert Burns [<mailto:Robert@AuctionSellsFast.com>]
Sent: Wednesday, July 20, 2011 10:56 AM
To: kkennedy@aola.org
Subject: Burns v. Edmonds

Karen:

I would have preferred we speak by phone regarding this matter, but since you're not returning my phone calls, I will merely relay that, as I'm sure you're no doubt aware, I have filed suit against Ms. Edmonds regarding the incident of early April. You may view it here: www.bwwrealty.com/RBvSE.pdf.

At present, I do not feel I have a need to depose you, Mr. Winkler, or Ms. Messenger during discovery; however, whomever ends up serving as defense counsel for Ms. Edmonds may likely opt to do so, in which case I will be clearly cross-examining you and/or Ms. Messenger and/or Mr. Winkler during any such depositions.

I believe you and I and the Arthritis Association to have enjoyed a long-standing good relationship as evidenced by your repeated requests to have me conduct your benefit auctions. It's my sincere hope that I don't end up uncovering anything during a deposition that would change that fact but if so, I'll deal with that when and if it transpires.

Again, I would have preferred to discuss this matter over the phone and regret that you have chosen not return my repeated phone calls to you.

Sincerely,



Robert Edwin Burns
Real Estate Broker / Certified Real Estate Auctioneer
Auction Sells Fast / BWW Realty
4155 Essen Lane, Ste 223
Baton Rouge, LA 70809-2152
(225) 201-0390 (225) 235-4346
LA Lic. #: 1536
www.AuctionSellsFast.com

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SANDY EDMONDS

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned Notary Public, personally came and appeared:

ANNA E. DOW

who, after being duly sworn, did depose and state based on her personal knowledge the following:

I.

Affiant is of the age of majority and is a resident of East Baton Rouge Parish.

II.

Affiant is an attorney at law, licensed by the State of Louisiana, with offices located at 1434 North Burnside, Suite 14, Gonzales, Louisiana.

III.

Affiant is an attorney for the Louisiana Auctioneers Licensing Board ("LALB") and the Interior Design Board. Affiant attends all the board meetings and provides legal counsel to both boards.

IV.

Affiant was advised about Mr. Burns' secretive and suspicious conduct of April 6, 2011 and April 8, 2011, and discussed the matter with James Kenneth Comer, Jr., former chairman of the LALB. Ms. Dow conferred with Mr. Comer about whether or not the board wished to take any action in light of Mr. Burns' conduct. Mr. Comer suggested that the East Baton Rouge Sheriff's Office should be contacted to investigate the incident. Affiant agreed with the recommendation.

V.

After the decision was made by Mr. Comer to report the incident to the Sheriff's office, Mr. Comer instructed Sandy Edmonds to notify the Sheriff's office. Ms. Edmonds is the Executive Assistant for the LALB. Ms. Edmonds is an employee of the board and is not authorized to act on



behalf of the board, unless authorization is specifically granted to her by the chairman and/or other members of the LALB. Ms. Edmonds is not a member of either board and serves as an employee subject to dismissal by members of the boards she serves. Moreover, Ms. Edmonds does not have a vote on either Board, nor does she have the right to add an agenda to any Board meeting.

VI.

On April 11, 2011, Affiant advised the Louisiana Attorney General's Office Civil Section of Mr. Burns' actions and indicated she thought Mr. Burns was exhibiting "stalking behavior" toward Board employees and herself and was a possible security risk. An attorney in the civil section to whom Affiant reports advised that the board may want to file a report with the Office of State Police since it is a state Board and Mr. Burns was left alone in the conference room of the building. Ms. Dow concurred with the suggestion and then discussed this course of action with Mr. Comer, who also concurred with the suggestion. Mr. Comer then instructed Ms. Edmonds to place a call to the Office of State Police.

VII.

Affiant further states that, on or about August 1, 2011, Mr. Robert Burns mailed the attached threatening letter to all Interior Design Board members, wherein he implies that punitive action will be taken by him against any Board member who concurs in Ms. Edmonds' characterization and position in regard to Mr. Burns' actions before the Interior Design Board and the LALB and Ms. Edmonds' comments about the decision of the LALB to retain a security guard because of safety concerns noted by Board members.

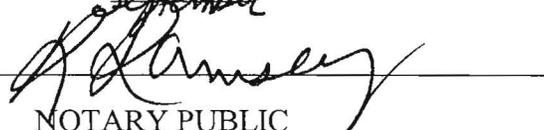


ANNA DOW

SWORN TO AND SUBSCRIBED
BEFORE ME, NOTARY PUBLIC
THIS 8th DAY OF September 2011.

(SIGNED):

(PRINT NAME):


NOTARY PUBLIC

Notary I.D. or Bar Roll Number:

Rodney A. Ramsey
Bar No. 18674



August 1, 2011

MS CAROLYN SAWYER
2522 MILITARY HWY
PINEVILLE LA 71360-4361

Dear Ms. Sawyer:

At the Louisiana Auctioneer's Licensing Board (LALB) meeting of Monday, July 18, 2011, Ms. Sandy Edmonds, Executive Director of the State Board of Examiners of Interior Designers (IDB) on which you serve, stated that EBRP Deputy Landry had been retained specifically as a result of the presence of myself and Rev. Freddie Phillips. There was also considerable other commentary regarding how Rev. Phillips and myself pose major inconveniences to you in that you no longer have the luxury of meeting in public restaurants to conduct meetings due to "Mr. Phillips' presence combined with Mr. Burns showing up with his video camera."

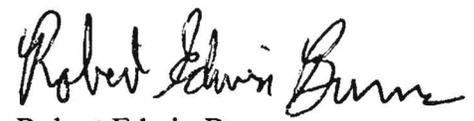
As you will recall at the IDB meeting of Thursday, April 14, 2011, I made mention at the end of the meeting, which Rev. Phillips has recorded on DVD, that I felt each member of the Board had been most gracious to us, and I stated that I hoped each member felt the same graciousness had been extended back to you on our parts. Everyone stated or nodded clear agreement.

With that being the case, I do not feel that Ms. Edmonds properly represented your position regarding her statements at that LALB meeting. I welcome you to call me, and I will be happy to send you a You Tube video link via email to where you can view Ms. Edmonds commentary in the comfort of your own home or office. Alternatively, I will bring a small DVD player and DVD to the next meeting on Thursday, August 11, 2011 in order than anyone who wishes may view Ms. Edmonds comments.

As I said above, I personally do not feel Ms. Edmonds' commentary reflects your sentiments; however, I will respectfully request that you either confirm or repudiate Ms. Edmonds' commentary in order that the matter may be cleared up since we've not gotten conflicting signals regarding our presence.

The IDB is welcome to hire as many security officers as it deems appropriate for its meetings; however, when you state publicly that you are doing so as a result of my presence, such a statement is likely to have consequences to the IDB which I don't think either of us would care to see transpire (I know I don't), and I have every confidence that you will "clear the air" on this issue at the August 11, 2011 meeting.

Sincerely,


Robert Edwin Burns