

ROBERT BURNS

**DOCKET NUMBER 603,248
DIVISION 24**

VERSUS

**NINETEENTH JUDICIAL DISTRICT COUR
IN AND FOR THE PARISH OF EAST BATON
ROUGE**

ANNA DOW

STATE OF LOUISIANA

**SPECIAL MOTION TO STRIKE OR, IN
THE ALTERNATIVE, AN EXCEPTION OF NO CAUSE OF ACTION**

The motion of ANNA DOW, appearing herein on her own behalf, respectfully represents:

1.

Plaintiff has filed a petition, alleging, among other things, that mover authorized the dissemination of a letter from a licensed auctioneer in an open board meeting of the Louisiana Auctioneers Licensing Board.

2.

This letter, which is attached to plaintiff's petition, alleged the plaintiff, then a member of the Louisiana Auctioneers Board, had committed certain acts which included slander, harassment and stalking of the licensed auctioneer, Barbara Bonnette.

3.

The letter indicated that Bonnette's attorneys would contact the board, against which the allegations were made. The final sentence in Bonnette's letter states that her company stood ready to defend "our good name" against the Plaintiff, a representative of the licensing board and the board itself.

4.

Mover states that she was provided a copy of this letter by the Board, which appeared to be a demand against the state board which she represented.

5.

Mover advised the board that this complaint against the board needed to be discussed at the next meeting of the state board.

6.

Per the Open Meetings Law, LSA-R.S. 42:17(A)(1), Plaintiff was advised in writing that this matter would come before the Board and he would have the right to allow this matter to go to executive session because the letter discussed his character. Plaintiff responded that he wanted this matter heard in an open forum, as noted in his Exhibit 4 attached to his petition.

7.

Article 971 of the Code of Civil Procedure provides that 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.

8.

Article 971 (F)(1) indicates that the letter falls within the scope of this statute, in that the letter was brought as a written statement before a board meeting of a board which is part of the executive branch of the State of Louisiana.

9.

Mover did not author the letter, or assert any truthfulness of the letter.

10.

Mover did speak about the letter at the board meeting in open session at the request of Plaintiff, who had been provided a copy of the letter, only to advise the board of a potential claim being filed against the board by Ms. Bonnette.

11.

In the alternative, mover excepts to the petition of plaintiff, in that it fails to state a cause of action against mover, who followed the law found at LSA-R.S. 42:17(A)(1).

12.

Further, mover excepts to the petition of plaintiff in that it fails to say very much about mover, and says many things about many other people and other actions which have nothing to do with mover.

WHEREFORE, mover prays that this matter be dismissed at the cost of Plaintiff, and for any and all remedies to which mover may be entitled.

Respectfully submitted,



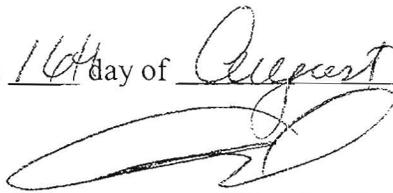
ANNA E. DOW
BAR ROLL NUMBER 5040
1434 North Burnside
Suite 14
Gonzales, Louisiana 70737
(225) 644-1865
(225) 644-1860 (Facsimile)

CERTIFICATE OF SERVICE

I certify that the above and foregoing pleading has been forwarded this date, by U.S. mail, postage prepaid, or by facsimile, to Plaintiff at the following address:

Robert Edwin Burns
4155 Essen Lane
Suite 228
Baton Rouge, Louisiana 70809

Gonzales, Louisiana, this 16th day of August, 2011.



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ORDER

Premises considered, it is hereby

ORDERED that this matter be set for hearing on the Special Motion to Strike, or in the alternative, the Exception of No Cause of Action, on the _____ day of _____, 2011.

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

JUDGE

ROBERT BURNS

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NINETEENTH JUDICIAL DISTRICT COURT
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ANNA DOW

STATE OF LOUISIANA

MEMORANDUM IN SUPPORT OF SPECIAL
MOTION TO STRIKE, OR, IN THE ALTERNATIVE,
NO CAUSE OF ACTION

Mover has filed two motions, one, a Special Motion to Strike pursuant to Article 971 of the Code of Civil Procedure, and second, an exception of No Cause of Action.

FACTS OF THE CASE

There has been no discovery to date, but a reading of plaintiff's petition indicates that very little of that petition is devoted to the actual cause of action stated against Mover. Mover is mentioned in only paragraphs 10, 11, 12, 20, 21, and 24. The remainder of the pleading has nothing to do with any actions taken by Mover. Plaintiff further alleges that Mover, who is general counsel to the Board, had the authority to make decisions for the Board and made those decisions. This is not true. A general counsel serves to provide legal advice to the Board. The attorney has no vote, nor does a counsel have the right to add an agenda item without the consent of the Chairman.

As alleged by plaintiff, mover did not author the letter, nor send it to anyone. Mover did not ask for the letter. Plaintiff alleges that she, in bad faith, authorized the dissemination of the letter with malice. In truth, a reading of that letter indicates that it is a complaint against the Board, and not against Plaintiff, as he alleges. Further, the Board, through the Chairman, advised Plaintiff that the letter had been sent to the Board and gave Plaintiff the right to discuss this in Executive Session pursuant to LSA-R.S. 42:17(a)(1). Plaintiff replied to that request by asking that the letter be read in the open meeting, not in Executive Session. Plaintiff was present at the meeting, and could have asked at any time that the board go into executive session. Plaintiff did not ask for that, and instead wanted everything out in the open. Plaintiff's Exhibit 4.

Plaintiff now asks for damages from Mover alone, without asking for damages from the author of the letter, from the representative he says had him fired by the governor, and others mentioned in the long and rambling petition filed with this court. Mover responds with these alternative requests to dismiss the suit.

LAW

Article 971 of the Code of Civil Procedure provides that 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. This suit asks for damages because a letter was read at an open meeting of the Louisiana Auctioneers Licensing Board. Mr. Burns contends that the "dissemination" of this letter harmed him in some way.

Article 971 (F)(1) indicates that the letter from mover falls within the scope of this statute, in that the letter was brought as a written statement before a board meeting of a licensing board which is part of the executive branch of the State of Louisiana. Further, it was a letter that first, was an expression of a complaint by Barbara Bonnette, who alleged that Plaintiff, who was a board member at the time, was both stalking and harassing her at auctions. Ms. Bonnette complained that his acts were the responsibility of the Board, who employed Plaintiff. This is certainly an expression of opinion and a request for redress by a governmental agency, both rights guaranteed by the First Amendment to the U. S. Constitution.

Further, Mover discussed this matter as was her obligation as counsel to the Board, since the letter threatened litigation against the Board because of Plaintiff's actions.. Mover is entitled to give counsel to the Board pursuant to her contract to the Board, which is a public agency.

Although mover did not author the letter, or agree with the letter, mover did discuss it at the board meeting in open session to advise the board of a potential claim being filed against the board by Ms. Bonnett. Plaintiff had every opportunity to have this matter discussed in Executive Session pursuant to the Open Meetings Law discussed above. Plaintiff did not.

Pursuant to Article 971, Mover seeks that this matter be stricken. In the alternative, this petition fails to state a cause of action. Further, as provided for by Article 971, there is little likelihood of success

Article 971 does apply to defamation claims. *Hebert v. Louisiana Licensed Professional Vocational Rehabilitation Counselors et al.*, 4 So.3d 1002, 2007-610 (La.App. 3 Cir. 3/4/09). In that case the defendant Sy Arceneaux filed a complaint with the Louisiana Licensed Professional Vocational Rehabilitation Counselors Board of Examiners. The Board and Mr. Arceneaux filed a special motion to strike. The court determined that because the statements of Mr. Arceneaux

were made in good faith, with there was a public interest in filing the complaint. Therefore, the special motion to strike would apply.

With regard to the probability of success in this matter, this letter was presented to the Board because of the threat of a claim against the Board, as Mr. Burns' employer. There was no assertion that the elements within the complaint were correct, but simply that it expressed a potential for litigation. Mover did not write the letter, which, because it was filed with the state board, was public record. LSA-R.S. 44:1 et seq. Mover did not "authorize" any release of the document, but was authorized to do so by the Board through its chairman.

Further, Mover did not publish this document to anyone. This letter came from a third party. Pursuant to the Open Meetings Law, Plaintiff was notified of the letter and that it would be provided to the Board. He asked that this be done in an open forum. Ms. Bonnette, who is not a defendant, sent the letter to the Board, not Moer. It is unclear how the letter would have been kept from the Board in normal proceedings.

Ms. Bonnette certainly had a right to file a complaint against the Board because of Plaintiff's alleged actions. Those actions would reflect on the Board, and could subject the Board to liability as the employer of Mr. Burns.

CONCLUSION

Therefore, Defendant urges this Court to dismiss the suit filed by Plaintiff, at Plaintiff's cost.

Respectfully submitted,



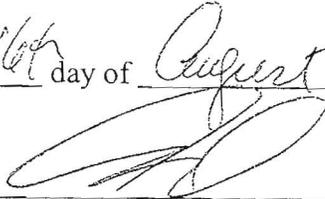
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