

LOUISIANA AUCTIONEER LICENSING BOARD

NUMBER 621426 DOCKET: 27

19TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

ROBERT EDWIN BURNS

STATE OF LOUISIANA

MEMORANDUM IN SUPPORT OF MOTION FOR SANCTIONS

MAY IT PLEASE THE COURT:

This matter arose from Plaintiff having filed **Ex Parte** with this Honorable Court a Petition for a Writ of Attachment. The Petition was filed with Plaintiff having admitted that, at the request of Ken Buhler's attorney, Joseph "Beaver" Brantley, at a March 25, 2013 hearing entitled LALB v. Ken Buhler, an on-the-fly **ORAL instantner** subpoena was issued by Louisiana Attorney General Administrative Law Judge Lindsey Hunter.

Mr. Brantley made his on-the-fly request notwithstanding having been provided with no less than sixty (60) days of time during which he could have merely issued an oral request of Plaintiff that it properly issue a formal, written subpoena. Mr. Brantley failed to do so, and Defendant contends that Ms. Hunter erred in not insisting that it is the LALB and not her who should issue subpoenas [most especially when done both #1) orally, and #2) on-the-fly]; furthermore, Ms. Hunter should have requested to see a copy of a properly-LALB-issued subpoena. Instead, Ms. Hunter either went "on faith" that such a written subpoena had been issued, or else she willingly acquiesced to Defendant being informed on-the-fly that he'd be required to testify with: #1) no advanced warning whatsoever; #2) no ability to consult with an attorney (or other potential relevant party employed by a State Agency) regarding his testimony; and #3) no ability to decide if he wanted his own counsel present for such testimony.

Defendant opted to leave the premises (based on the advice of his own attorney, whom he consulted telephonically after the episode of the on-the-fly oral subpoena transpiring). Thereafter, Plaintiff's counsel, Larry S. Bankston, in a moment of grandstanding to win favor with the membership of his LALB client, sought a Motion of the Board to seek "injunctive relief" against Defendant for his failure to honor this on-the-fly **ORAL instantner** subpoena. Defendant contends that Plaintiff had no intention of actually seeking injunctive relief, particularly under the circumstances of this oral

FILED
EAST BATON ROUGE PARISH
CLERK OF COURT
13 MAY 20 11
DEPUTY CLERK OF COURT

instantanar subpoena, because doing so makes him look utterly foolish. The blatant ignoring of protocol for properly generating an LALB-issued, written subpoena, which Plaintiff's Counsel knew full well had transpired, caused Mr. Bankston, to know he would appear foolish for any subsequent filing entailing same. Nevertheless, no doubt yielding to unrelenting pressure from certain Members of his Plaintiff client, with said Members having great disdain for Defendant due to his having filed several Open Meetings Law Violation Lawsuits against LALB Membership (including Docket # 619797 pending before this Honorable Court), he was "backed into" the present filing. He therefore had his Associate, Jenna Linn, file the subject Writ of Attachment which, as pointed out in Plaintiff's brief Memorandum in Opposition to same, is a completely improper legal mechanism for obtaining the relief Plaintiff seeks. Beyond that fact, however, is the bizarre action of Plaintiff's Counsel having filed the Petition **Ex Parte**, and it is that fact that forms the basis for Defendant's Motion for Sanctions against Mr. Bankston. Defendant now reproduces Paragraph 21 of Plaintiff's Petition verbatim:

The LALB asserts that the allegations contained within this petition, as well as the exhibits attached hereto, should be deemed satisfactory proof in order for the Court to issue the Writ of Attachment. However, should the Court determine that an initial hearing is warranted under La. R.S. 49:956(5)(C), then **such hearing should be held ex parte** and be appropriately limited to the threshold issue of whether the Writ of Attachment is warranted by the fact of defendants' noncompliance with the LALB's subpoena and **should not address the merits herein or any defenses.**

Defendant continues to assert that the LALB issued no subpoena! Furthermore, Ms. Hunter lacked the authority to issue any oral subpoena as that is the duty of the Board. Ms. Hunter did not request a vote of the LALB regarding issuing any oral subpoena, and Defendant contends her action is likely the result of her having inappropriately gone "on faith" that the LALB had adhered to its obligation and previously issued a formal, written subpoena when, in fact, it had not.

In filing the present Petition **Ex Parte**, Plaintiff's counsel has the unmitigated gall to state to this Honorable Court that only its side of the matter should be heard and that Defendant should not be permitted to disclose defenses, to wit: #1) a subsequent, properly-issued, written subpoena (Exhibit D-1) was served upon Defendant on May 7, 2013 calling for the same testimony Plaintiff sought on March 25, 2013 to transpire on May 20, 2013 with Plaintiff providing no indication whatsoever that he would dishonor that validly-issued subpoena (further, Defendant has now provided that testimony), #2)

that Defendant is scheduled for Deposition in Plaintiff's Counsel's law office on Thursday, May 23, 2013 at which time Plaintiff's attorney may pose questions pertaining to any of the subject matter of the Writ.

In short, Plaintiff's counsel has no valid reason whatsoever for filing the current Petition **Ex Parte**, much less requesting that any subsequent preliminary hearing pertaining to same be conducted **Ex Parte**. Writ of Attachments are very, very serious measures sought to be imposed (and typically only in debtor-creditor relationships for civil matters), and Judges are understandably quite reluctant to sign them due to concerns regarding due process. Plaintiff's counsel has magnified concerns the Court should have regarding the present matter by the mere act of filing the Petition **Ex Parte**. Plaintiff does not assert that an attempted delivery of a certified letter to Defendant was returned unsigned (there are none), that any attempted service by the Sheriff has ever failed (none have), that Defendant has concealed his residence (he has not), that he constitutes a "flight risk" in any way (he does not), so it is simply absurd that Plaintiff's Counsel had the unmitigated gall to both file the Petition Ex Parte as well as request that any preliminary hearing entailing same be conducted Ex Parte.

As a result of the foregoing, Defendant asserts that he is entitled to the awarding of Sanctions against Plaintiff's Legal Counsel, Larry S. Bankston, in accordance with LA CCP 863(D), which states: "If, upon motion of any party or upon its own motion, the court determines that a certification has been made in violation of the provisions of this Article, the court shall impose upon the person who made the certification or the represented party, or both, an appropriate sanction which may include an order to pay to the other party the amount of the reasonable expenses incurred because of the filing of the pleading, including reasonable attorney fees."

Specifically, Defendant asserts that Plaintiff's attorney, Larry S. Bankston, as the attorney responsible for Bankston and Associates, the law firm serving as Plaintiff's counsel, intentionally misled this Honorable Court by failing to assert the facts Defendant has relayed in this Memorandum and that he furthermore, as evidenced by Paragraph 21 of the Petition, sought to thwart any attempt by Defendant to even be afforded the opportunity to assert those Defenses by improperly requesting of this Honorable Court that any preliminary hearing this Honorable Court may deem necessary be conducted **Ex**

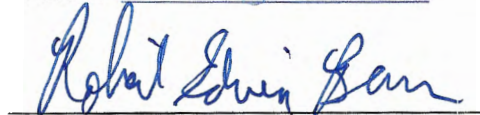
Parte. Defendant therefore contends that Plaintiff's Counsel, Larry S. Bankston, ignored LA CCP 863(B)(3), which states: "Each allegation or other factual assertion in the pleading has evidentiary support or, for a specifically identified allegation or factual assertion, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery."

In short, there is no excuse whatsoever for Plaintiff's attorney, Larry S. Bankston, having filed this Petition **Ex Parte**, and it is only through the diligent research of Court filings regularly on the part of Defendant that this Honorable Court has even been made aware of this egregious act. For his act of having filed the Petition Ex Parte, for which Defendant contends there is no valid rationale whatsoever, Defendant seeks of this Honorable Court that Sanctions be imposed against Plaintiff's attorney, Larry S. Bankston, sufficient to cover Defendants' costs of his requested hearing for the Motion for Sanctions as well as the costs of filing the Memorandum in Opposition to the Petition for Writ of Attachment filed Ex Parte on the part of Plaintiff's Counsel, Larry S. Bankston, on Monday, May 13, 2013.

WHEREFORE, Defendant, ROBERT EDWIN BURNS, prays that this Honorable Court issue an Order commanding that Plaintiff's Attorney, Larry S. Bankston, appear before this Honorable Court and show cause why Defendant's Motion for Sanctions pursuant to LA CCP 863(D) should not be granted.

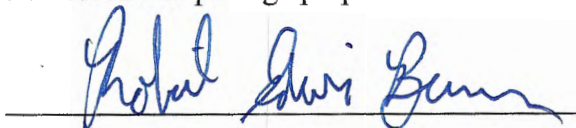
Respectfully Submitted,

Robert Edwin Burns, in proper person
4155 Essen Lane, Apt 228
Baton Rouge, LA 70809-2152
(225) 201-0390 (office) (225) 235-4346
E-mail: rburnsbtr@hotmail.com



Certificate of Service:

I certify that a copy of the foregoing has been served upon counsel for all parties to this proceeding by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 20th day of May, 2013.



LOUISIANA AUCTIONEER LICENSING BOARD

NUMBER 621426 DOCKET: 27

19TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

ROBERT EDWIN BURNS

STATE OF LOUISIANA

ORDER

Considering the foregoing:

IT IS ORDERED that Plaintiff’s Attorney, Larry S. Bankston, show cause on the _____ day of _____, 2013 at _____, why Defendant’s Motion for Plaintiff to reimburse Defendant for costs associated to defend this action should not be granted.

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

JUDGE

Please serve with Memorandum:

Larry S. Bankston
Bankston and Associates
8708 Jefferson Hwy Ste A
Baton Rouge LA 70809-2411

