ROBERT BURNS

NUMBER 602.922 DOCKET: 25

19TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

SANDY EDMONDS

STATE OF LOUISIANA

****

MEMORANDUM IN OPPOSITION TO EXCEPTION OF NO CAUSE OF ACTION AND IMPROPER SERVICE

NOW UNTO COURT comes Plaintiff, Robert Edwin Burns, in proper person, who submits to this Honorable Court this Memorandum in Opposition to Defendant's Exception of No Cause of Action and Improper Service which is scheduled for hearing on Monday, April 16, 2012 at 9:30 a.m. In submitting this Memorandum, Plaintiff avers that he has clearly stated a cause of action within his amended Petition as permitted by this Honorable Court pursuant to its Judgment of November 14, 2011 and signed on November 30, 2011 granting Petitioner 30 days in which to amend his pleadings. Accordingly, the Exception should be DENIED and the Defendants should be ordered to compose and file an Answer to the Petition of Plaintiff, as Amended, within the time prescribed by the Louisiana Code of Civil Procedure.

Service Was Proper in Every Respect!

Defense Counsel has been practicing law for 32 years, the vast majority of which has been with the Louisiana Attorney General's Office. During that timeframe, he no doubt has amassed experience in a very wide-ranging spectrum of litigation over his career. Nevertheless, since being admitted to practice law 32 years ago, the requirements for service have changed dramatically and, in fact, the entire former Code of Practice was replaced by the current Code of Civil Procedure. Defense Counsel could not be reasonably expected to keep up with the ever-changing means for service during that large timespan, and those changes have certainly accelerated with the advent of fax machines, the Internet, and a host of other technological advancements such as email and PDF file capability.

Because Petitioner does not have the advantage of a 30+ year law career, he had no choice but to look up proper service procedures within the Code of Civil Procedure to

ensure he followed them properly. Petitioner, as evidenced by Exhibit P-49, which is attached hereto and made a part hereof, had to provide Defense Counsel Joseph "Beaver" Brantley with a basic tutorial on proper servicing procedure. He did so when, as evidenced in Exhibit P-50, which is attached hereto and made a part hereof, Mr. Brantley sent Petitioner an email relaying that Petitioner had failed to follow proper service procedure regarding a Motion for Preliminary Default regarding Burns v. Dow (Docket 603248 pending before Judge Caldwell) and for which Mr. Brantley serves as Defense Counsel in that matter. Mr. Brantley stated that, "any pleading that requires a response or appearance is required to be served by the sheriff." As indicated in the Exhibit, Petitioner merely politely responded by referring Mr. Brantley to CCP 1313(A)(1) and CCP 1313(B). Mr. Brantley then, as evidenced by Exhibit P-50, responded by relaying, "I think the situation is covered by CCP 1155-1201." Only three very short sections exist in that CCP section range (1155, 1156, and 1201), and none are in any way whatsoever in conflict with CCP 1313(A)(1) and CCP 1313(B). Accordingly, Petitioner responded, as evidenced by Exhibit P-50, by merely stating, "I have no doubt that, if I failed to follow proper procedure on anything, the Court won't hesitate to make that fact known to us." The court made no such notification and, as evidenced by Exhibit P-51, which is attached hereto and made a part hereof, the Preliminary Order of Default was signed only one day after the email exchange between Petitioner and Mr. Brantley.

Defense Counsel Ramsey asserts alleged improper service procedure on the part of Petitioner even though Mr. Ramsey even placed CCP 1313(A)(1) and 1313(B) into the text of his argument supporting "improper service!". Mr. Ramsey further cited a single case to support his argument (comprised of the same *verbatim* sentence written by Mr. Brantley and referenced previously on this page): *Johnson v. Johnson, 645 So.2d 1260 (La. Ct. App. 1st Cir. 1971),* a case which is 41 years old and which transpired well before all of the aforementioned changes to service procedure codes (or even the revamp of Code of Practice into the Code of Civil Procedure as referenced previously) and at a time when Petitioner was in third grade and former Gov. Edwin Edwards was making his first run for Governor.

Ms. Anna Dow, Louisiana Auctioneer's Licensing Board (LALB) attorney and with whom Petitioner is also in litigation over the incidents of April 11, 2011 and April

12, 2011 (Docket 603248 pending before Judge Caldwell), also was **very** emphatic at the November 14, 2011 LALB meeting that she had no intention of answering Petitioner's amended pleadings in that matter and stating to Petitioner at that meeting, "you've never served me." Unbeknownst to her, however, a Preliminary Default Order, Exhibit P-51, had already been signed against her for her very failure to answer which resulted from Ms. Dow's misguided belief that Petitioner had failed to properly serve her (as echoed by Mr. Brantley in Exhibit P-49). Ms. Dow also apparently hadn't recently communicated with her newly-appointed Defense Counsel, Mr. Brantley, since he had actually answered the Petition almost immediately before the Preliminary Default Judgment was signed.

Given that Mr. Brantley has 39 years legal experience, Mr. Ramsey has 23 years legal experience, and Ms. Anna Dow has 32 years legal experience (that's 94 collective years of legal experience!), it's obvious to Petitioner that they all were very passionate about arcane service rules which existed at the time they initiated their law careers. To that end, Petitioner is pleased to, as a result of him having no such background to fall back upon and having to look up proper service procedures, bring all three of these attorneys current regarding CCP 1313(A)(1) and CCP 1313(B).

Mr. Ramsey asserts that, "although Plaintiff has mailed a courtesy copy of his amended petition to undersigned counsel for Ms. Edmonds, this service is null and without effect.....This pleading requires an answer or other appropriate responses by Ms. Edmonds. A pleading that commands a party to appear or file an answer must be served by the sheriff rather than by mail." *See, Johnson v. Johnson, 645 So.2d 1260 (La. Ct. App. 1st Cir. 1971).* Petitioner has already relayed that case to be wholly inapplicable in light of the substantial changes to service procedures to which he has alluded. In particular, CCP 1313(A)(1) states, "Except as otherwise provided by law, every pleading subsequent to the original petition, and every pleading which under an express provision of law may be served in this Article, may be served ***either by the sheriff or by: (1) Mailing a copy thereof to the counsel of record [that would be Mr. Ramsey], or if there is no counsel of record, to the adverse party at his last known address, this service being complete upon mailing***. CCP 1313(B) states, "When service is made by mail, delivery, or electronic means, the party or counsel making the service shall file in the record a certificate of the manner in which service was made." Petitioner included his

certificate of service and signed it at the conclusion of his amended pleadings. In short, contrary to Mr. Ramsey's contention that Petitioner was required to abide by a 41-year-old case he cites for service requirements, what Petitioner was required to do was adhere to the provisions of CCP 1313(A)(1) and CCP 1313(B), and he did so in every respect because, as he has mentioned, he didn't have the luxury of pulling on a knowledge base of 30+ years of practicing law and had no choice but to look the procedure up! Petitioner realizes that many attorneys are "belt and suspender" type individuals, but if Mr. Ramsey and Mr. Brantley have been insisting upon serving parties via the sheriff when the parties being served often didn't need such formality, they essentially squandered funds (in Mr. Ramsey's case, taxpayer funds) and merely enriched the coffers of the applicable parish sheriffs in doing so!

Issues of Material Fact and a Cause of Action Most Certainly HAVE Been Stated!

Petitioner will now proceed to addressing the core issue raised in Defense Counsel's Exception of No Cause of Action. For purposes of an Exception for No Cause of Action, a complaint should not be dismissed unless it appears ***beyond doubt*** that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief from the Court. In *Ackel v. Ackel, 696 So2d 140 (5 Cir. App. 1997)*, and *Daly v. Reed, 669 So.2d 1293 (4 Cir. App. 1996)*, the Courts stated, "the Exception of No Cause of Action is designed to test legal sufficiency of a Petition by determining whether Plaintiff is afforded remedy in law based on facts alleged in Petition." Additionally, as relayed in *Campbell v. Continental-Emsco Co. 445 So.2d 70 (2 Cir. App. 1984)*, the Court stated that, in considering whether a Petition discloses a cause of action, all factual allegations must be taken as true. Further, in *Robinson v. North American Royalties, Inc., 470 So2d 112 (La. 1985),* the Supreme Court of Louisiana expanded that analysis even further in relaying that, in deciding an Exception of No Cause of Action, all well-pleaded allegations of fact are accepted as true ***and no reference can be made to extraneous supportive or controverting evidence.*** The court must determine whether the law affords any relief to the plaintiff if the factual allegations of the petition are proven at trial.

Since Defense Counsel initially was assigned this assignment, he has been made aware of alarming attributes concerning his client via Petitioner's Memorandum in

Opposition to Special Motion to Strike which was heard by this Honorable Court on November 14, 2011. Those attributes include the now well-known fact that Ms. Edmonds has been under investigation by the Louisiana Legislative Auditor's Office for an extended period for alleged payroll fraud asserted by Patrick Lowery, the Chief of Accountability at the Louisiana State Department of Civil Service, and the fact that Ms. Edmonds had no qualms about making a private copy for her own covert purposes of a confidential Inspector General work paper entailing complaints lodged by her predecessor, Ms. Sherrie Wilks. Defense Counsel even admitted to his client having made the copy likely because he knew that Inspector General Street would not hesitate to testify that she did so.

Defense Counsel now knows that he has a client with significant "baggage" which she brings to the table. He further knows that Petitioner submitted, on September 1, 2011, a set of 94 Requests for Admissions of Fact and 25 Interrogatories, the responses to which, as evidenced by Exhibits P-45 and P-46, were filed with this Honorable Court on January 24, 2012, would have not only provided significant evidence of additional "baggage" but also shed light into exactly what all transpired between all of the involved parties on the dates of April 11, 2011 and April 12, 2011 and provided an avalanche of material supporting Petitioner's original cause of action of malicious prosecution and certainly greatly buttressed his current assertions that Ms. Edmonds engaged in tortious interference with a contractual relationship. However, since Mr. Ramsey chose to have his client essentially go on record as stating that virtually every Admission and Interrogatory requested by Petitioner is "irrelevant," he chose to refrain from disclosing what he knows would be incredibly damming evidence against Ms. Edmonds. The fact that he has done so lends further credence to why Petitioner's factual pleadings should be accepted as true as this Honorable Court is required to do in assessing Defendant's Motion for No Cause of Action. Further, had it not been for Defense Counsel's failed Motion to Strike, the filing of which automatically suspended discovery, Petitioner would have been able to get these Admissions of Facts and Interrogatories into evidence much sooner to significantly buttress his original-pleaded assertion of malicious prosecution.

Defense Counsel has operated under the premise that he can merely state to this Honorable Court Ms. Edmonds' word that she had no involvement in initiating the police

report, Exhibit P-5, even though that report clearly shows her as the **sole** complainant. Furthermore, in Interrogatory Number Two (2) of Exhibit P-45, Ms. Edmonds **admits** that she is the one who telephoned the EBRP Sheriff's Office! Petitioner notes that this statement is in **sharp contrast** to the very emphatic statement that LALB Attorney Dow made at the July 18, 2011 LALB meeting, which Petitioner captured on videotape, that it was the Arthritis Association of Louisiana who called police. In fact, at that meeting, Ms. Dow initially stated that Ms. Edmonds called police. She then corrected herself to say that the Arthritis Association called police. When Petitioner interjected, "That's not in my pleadings," (Dow had asserted that it was in his Petition that the Arthritis Association called police) Ms. Dow responded, as evidenced by the videotape of that meeting, "Well, that's what happened." When Petitioner later challenged Ms. Dow on having made a very definitive statement on who called police, Ms. Dow responded, "Um huh." Defense Counsel Ramsey has further operated under the premise that he can assert to this Honorable Court that Ms. Edmonds was not a complainant to Mr. Box; however, Ms. Edmonds readily admits, again in Interrogatory Number Two (2) of Exhibit P-45, that she did in fact telephone Mr. Chuck Mock, who was the listing agent and property manager of the property and who is an agent of Beau Box, to complain of Petitioner's visits for filming video clips. Petitioner asserts that Ms. Edmonds also relayed to Mr. Mock that the Terrorism Unit of State Police was being dispatched to Petitioner's residence, and Petitioner asserts that Mr. Mock relayed this fact to Mr. Box who, in turn, upon hearing such an incredibly drastic action, believed Petitioner to be a danger to him (Box) and others and therefore severed their business relationship as evidenced by Exhibit P-6 only minutes or hours after Ms. Edmonds' now-admitted phone call to Mr. Chuck Mock. Thus, further corroborating evidence now exits to substantiate what Petitioner has averred in his initial pleadings and amended pleadings and, in accordance with the cited cases above, for purposes of analyzing an Exception for No Cause of Action, Petitioner is entitled to the presumption that his assertions that Ms. Edmonds did in fact initiate complaints with the EBRP Sheriff's Office (now admitted by Defendant notwithstanding initial adamant denials of same), the Louisiana State Police Terrorism Unit, and, most importantly, was **an originating source** of the complaints made to Mr. Beau Box (now admitted to be indirect via Box agent Chuck Mock) which formed the

very core of Petitioner's initial claim upon which he is entitled to relief. Again, as clearly stated in the aforementioned court cases, for purposes of determining a ruling regarding an Exception for No Cause of Action, it is Petitioner who is entitled the presumption that his pleadings are true as pled.

The core issue at hand is simple, and it is this: Defendant contents that no issue of material fact exists in that, she claims, Mr. Box did not obtain complaints regarding Petitioner which originated from her. Petitioner contends that Mr. Box **did** receive complaints which originated from Defendant. Ms. Edmonds has now admitted that to be the case, albeit indirectly through Box agent Chuck Mock. Mr. Box's Affidavit, Exhibit D, is ***eerily silent*** on exactly *who* did make these complaints that caused Mr. Box to sever his joint venture business relationship with Petitioner on April 12, 2011 (see Exhibit P-6). Petitioner contends that, while Ms. Edmonds did not directly make those complaints to Mr. Box, she clearly admits that she originated her complaints to an intermediary, Mr. Chuck Mock. Thus, Defendant Edmonds clearly provided the damming statements to Mr. Box's agent, without any factual basis whatsoever, that resulted in Mr. Box severing a business relationship with Petitioner, and this act is a clear act of tortious interference with a business relationship for which Petitioner incurred significant direct financial harm as well as damage to his business reputation and upon which he is entitled to redress from this Honorable Court.

In the days after the police incidents of April 11, 2011 and April 12, 2011, Mr. Box certainly didn't return Petitioner's phone calls seeking the identity of the complainants. The fact that Petitioner had no other dealings with any of Mr. Box's clients aside from Defendant (and Defendants in other Petitions pertaining to this litigation, namely Ms. Kennedy and Ms. Messenger) in the 60-90 days leading up to the incidents of April 11, 2011 and April 12, 2011 (as reflected in Petitioner's email response to Mr. Box of April 12, 2011, Exhibit P-6) only further strengthens Petitioner's contention that Ms. Edmonds (along with Ms. Kennedy and Ms. Messenger) were the sources of origin of the complaints. Further, the timing of Mr. Box's email to Petitioner severing the relationship, which was less than three (3) hours before the Louisiana State Police Terrorism Unit visited Petitioner's home regarding ***known*** complaints by Ms. Kennedy, Ms. Messenger, and Ms. Edmonds as reflected in the EBRP Police Report,

Exhibit P-5, certainly lends strong and compelling credence to the fact that the complaints Mr. Box referenced in his email to Petitioner, Exhibit P-6, did in fact originate from Ms. Edmonds (notwithstanding the fact that an intermediary was involved).

The issue of whether Ms. Edmonds was an ***originator*** of the "numerous" complaints against Petitioner from Beau Box "clients" is certainly one of material fact which forms the basic core of the damages incurred by Petitioner. Petitioner never would have invested the extensive time and financial outlays building the joint venture relationship with Mr. Box had he possessed advanced knowledge that Defendant would stoop to such levels to sabotage those efforts. Petitioner clearly sustained near-immediate damages resulting from Ms. Edmonds' outlandish accusation for which she had no factual foundation whatsoever! Further, with Defendant Edmonds now admitting to being the one who called the Louisiana State Police Terrorism Unit, as substantiated by Exhibit P-48, a copy of the State Police report filed relative to the incident and previously entered into the record of this proceeding via memorandum filed on March 12, 2012, Ms. Edmonds possessed the authoritative ability to relay that the LALB (who is identified in P-48 as the one lodging the complaint) had even filed a complaint with the **Louisiana State Police Terrorism unit and they're being dispatched to Petitioner's residence.** Hence, ***any*** reasonable man would want to place as much distance between himself and such an individual as possible (as Mr. Box did as evidenced by Exhibit P-6).

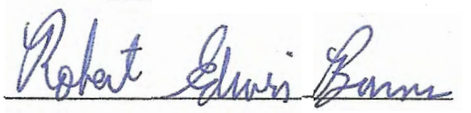
Therefore, Petitioner urges that this Honorable Court find that issues of material fact do in fact exist in the present case in that Mr. Box has not been forthcoming in his Affidavit regarding *who* made the complaints to him nor what the nature of those complaints entailed and that Petitioner is entitled to proceed with discovery and depose Mr. Box to address and resolve that issue of material fact as well as others pertaining to the actions of Defendant on April 8, 2011; April 11, 2011, and April 12, 2011. Petitioner further urges that Petitioner's amended petition, as permitted by this Honorable Court in its ruling of November 14, 2011, clearly states a Cause of Action upon which relief can be granted since, as evidenced by the court cases cited, Petitioner is entitled to the presumption that they are true for purposes of ruling on the present Exception of No Cause of Action.

Petitioner also urges that this Honorable Court formalize its oral ruling on November 14, 2011 denying Defendant's Special Motion to Strike and award Petitioner the $402 in court costs he incurred to defeat the Motion. Defense Counsel, upon seeing his efforts to have the Motion granted were futile, wished to place the best spin he could on a humiliating defeat by wording the court's judgment that the issue was "moot." The issue most certainly is **not** moot, however, and as Defense Counsel repeatedly emphasized that he was pursuing, as provided for under CCP 971(B), which states, "a prevailing party on a special motion to strike ***shall*** be awarded reasonable attorney fees and costs," Petitioner is likewise fully entitled to an awarding of the $402 in court costs he incurred to defeat Defendant's Motion. Petitioner therefore urges this Honorable Court to make formal its oral ruling that the Motion to Strike was denied on November 14, 2011 since Defense Counsel has refrained from resubmitting the Motion. Petitioner supplied a Proposed Judgment Order to this Honorable Court on December 27, 2011 to make that denial formal and award Petitioner the $402 in court costs he incurred to defeat the Motion. The only rebuttal Defense Counsel submitted to this Honorable Court in opposition was a statement that the he did not resubmit the Motion to Strike because he was resubmitting the present Exception of No Cause of Action. The two submissions were distinctly separate for the November 14, 2011 hearing, and they are distinctly separate now. The mere fact that this Petition continues and has ***not*** been stricken from the record and continues to be heard by the Court is an ***implicit denial*** of Defendant's Motion to Strike, and Petitioner merely urges this Honorable Court to make that implicit denial, as well as this Honorable Court's oral denial of the Motion at the time oral arguments were heard on November 14, 2011, formal by signing his Proposed Judgment Order which he filed with this Honorable Court on December 27, 2011.

WHEREFORE, petitioner, ROBERT EDWIN BURNS, prays that this Honorable Court DENY Defendant's Exception of No Cause of Action and Improper Service and further that this Honorable Court sign the proposed Judgment Order to DENY Defendant's Special Motion to Strike which he submitted on December 27, 2011.

Respectfully Submitted,

Robert Edwin Burns, in proper person
President, Auction Sells Fast, LLC
4155 Essen Lane, Ste 228
Baton Rouge, LA 70809-2152
(225) 201-0390 (office) (225) 235-4346
E-mail: Robert@AuctionSellsFast.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 2nd day of April 2012.

Robert Burns

From: Robert Burns <Robert@AuctionSellsFast.com>
Sent: Monday, November 07, 2011 6:23 PM
To: 'Joseph Brantley'
Subject: RE: Burns Vs. Dow
Attachments: Motion_Order_Preliminiary_Default_Anna_Dow.pdf

Beaver:

See CCP 1313(A)(1) and 1313(B): http://www.legis.state.la.us/lss/lss.asp?doc=111174, both of which were referenced in the memorandum in support of preliminary default.

For your convenience, I have attached a PDF copy of the motion and order.

Thanks.

Robert Edwin Burns
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Auction Sells Fast / BWW Realty
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Baton Rouge, LA 70809-2152
(225) 201-0390 (225) 235-4346
LA Lic. #: 1536
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From: Joseph Brantley [mailto:jpbiv@mac.com]
Sent: Monday, November 07, 2011 5:08 PM
To: Robert Burns
Subject: Burns Vs. Dow
Importance: High

Robert,

I just got back to Baton Rouge and received an email from Anna Dow in connection with the suit against her in Judge Caldwell's division. She advised that although she has never been served with the supplemental pleadings, you have filed a preliminary default. You may want to check on that because any pleading that requires a response or appearance is required to be served by the sheriff. If you would like, I will accept service for her and you can have me served. I probably will not need an extension after being served since I have obtained the original and supplemental pleadings.

Beaver

P-49

Robert Burns

From: Robert Burns <Robert@AuctionSellsFast.com>
Sent: Tuesday, November 08, 2011 9:24 AM
To: 'Joseph Brantley'
Subject: RE: Burns Vs. Dow
Attachments: Dow RB Letter to Force Answer 09.01.11.pdf

Beaver:

Although I see nothing in the CCPs you provided to contradict those I referenced to you, I have no doubt that, if I failed to follow proper procedure on anything, the Court won't hesitate to make that fact known to us.

Regarding timeframe for answer, I think I'd made that pretty clear in the attached certified letter dated September 1, 2011 and which Ms. Dow received on Tuesday, September 6, 2011 at 1:43 p.m. (I'm sure she's provided you with it by now); however, we are where we are.

I see continuance was agreed upon on the trial you had scheduled for Thursday. I had plans to come watch you in action. Guess I have to wait another 60 days, huh?

Thanks, Beaver.

Robert Edwin Burns
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From: Joseph Brantley [mailto:jpbiv@mac.com]
Sent: Monday, November 07, 2011 6:44 PM
To: Robert Burns
Subject: Re: Burns Vs. Dow

Robert,

I think the situation is covered by CCP 1155-1201. Notwithstanding that, if it is OK, I can have an answer filed by next Monday, at the outside. Let me know if that works.

Beaver

P-50

ROBERT BURNS

VERSUS

ANNA DOW

COST OK Amt. $41 per case Ref: 87304

NOV - 3 2011

BY: Deputy POSTED DY. CLERK OF COURT

NUMBER 603,248 DOCKET: 24

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

NOV 04 2011

STATE OF LOUISIANA

MOTION AND ORDER FOR PRELIMINARY DEFAULT

Considering the Memorandum in Support of Motion and Order for Preliminary Default, and on motion of Robert Burns, in proper person, it is ordered by this Honorable Court that a PRELIMINARY DEFAULT be entered herein.

CERTIFIED TRUE COPY 03 L641 DEPUTY CLERK OF COURT

Baton Rouge, Louisiana.

Granted and signed this 9th day of Nov., 2011.

JUDGE, 19th JUDICIAL DISTRICT COURT

EAST BATON ROUGE PARISH, LA FILED 2011 NOV -3 PM 2:15 DEPUTY CLERK OF COURT

Respectfully Submitted,

Robert Edwin Burns, in proper person
President, Auction Sells Fast, LLC
4155 Essen Lane, Ste 228
Baton Rouge, LA 70809-2152
(225) 201-0390 (office) (225) 235-4346
E-mail: Robert@AuctionSellsFast.com

Robert Edwin Burns

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 3rd day of November 2011.

Robert Edwin Burns

REC'D C.P. NOV 07 2011

EBR982040

P-51

REC'D C.P. NOV 10 REC'D