ROBERT BURNS

NUMBER 624531 DOCKET: 27

19TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

LOUISIANA AUCTIONEER'S LICENSING BAORD, CHARLES "HAL" McMILLIN, JAMES M SIMS, DARLENE JACOBS-LEVY, GREGORY L. "GREG" BORDELON, CHARLES "CLAYTON" BRISTER, TESSA STEINKAMP, LARRY S. BANKSTON, BANKSTON AND ASSOCIATES, LLC

STATE OF LOUISIANA

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MEMORANDUM IN OPPOSITION TO DECLINATORY EXCEPTION OF LIS PENDENS

NOW UNTO COURT comes Plaintiff, Robert Edwin Burns, in proper person, who submits to this Honorable Court this Memorandum in Opposition to a Declinatory Exception of Lis Pendens filed by attorney Grant Guillot on behalf of Defendants Louisiana Auctioneer's Licensing Board, Charles "Hal" McMillin, James M. Sims, Darlene Jacobs-Levy, Gregory L. "Greg" Bordelon, Charles "Clayton" Brister, and Tessa Steinkamp, which is scheduled for hearing on Monday, February 3, 2014 at 9:30 a.m.

Defense Counsel Guillot's contention that the defamation matter before this Honorable Court and the Executive Session litigation pending before Judge Fields "arose from the same transaction" is fundamentally flawed in that they did **not** arise from the same transaction, period! Therefore, all of the court cases cited collapse like dominos as does Defense Counsel Guillot's request for the present matter to be dismissed via LA CCP 531 and 925(A)(3).

To save this Honorable Court time, Plaintiff presents in table format the distinguishing characteristics through which he argues that the two lawsuits **unequivocally DO NOT emanate from the same transaction:**

Item Under Consideration	"Executive Session Transaction" (Open Meetings Violation)	"Defamation Transaction"
Individual, SEPARATE Vote Required?	YES	YES
Prescription Period Differ? Potential Judgment Award Differ?	YES. 60 days on prescription. Damages limited to $100 for each named defendant plus pro-rated share of court costs and attorney's fees.	YES. 1 year on prescription. Damages not restricted by any statute whatsoever.
Potential for Transactions to Transpire ***Mutually Exclusive***	YES. Could have gone into Executive Session and, upon	YES. Obviously could have defamed character without

of one another?	exiting, expressed appreciation to Plaintiff for his revelations regarding payroll irregularities and stating a firm resolution to correct same (which would have obviously been prudent).	having gone into Executive Session.
Parties to Transaction Differ? Subject Matter Differ?	YES. Board Attorney Larry S. Bankston and Board Chairman Tessa Steinkamp excluded from transaction and not included as named defendants because neither had the ability to vote to approve the transaction. In short, Defense Counsel Guillot conveniently overlooks the fact that Defendants Bankston and Steinkamp **had no say whatsoever** into whether the Board could go into Executive Session (they could NOT and did NOT vote); however, they most certainly had the ability to engage in the defamation and/or acts precipitating it, and both Defendants Bankston and Steinkamp did so! **Subject matter limited** to narrow focus of whether **participating** Board Members convened an illegal Executive Session, nothing more, nothing less. Liability under LA R. S. 42:28 clearly states any **liability is PERSONAL**. Defense Counsel's assertion that liability is "imputed" to Ms. Steinkamp via LALB liability is patently absurd! **Defendant LALB has no liability whatsoever under LA R. S. 42:28**; therefore, it is **impossible for a nonexistent liability to be "imputed" to Ms. Steinkamp!**	YES. Mr. Bankston added as Defendant even though he was not a voting LALB member because he had the opportunity to avoid defamation by refusing to pursue the matter (thus clearly exhibiting the distinction of that transaction vs. the Executive Session transaction where he had no latitude). Furthermore, Mr. Bankston chose to actively participate in the defamation transaction as evidenced by the excerpt from the video of the hearing wherein he flatly said, "There's no question Mr. Burns' court filing [regarding Ms. Edmonds' purported 'blatant payroll fraud'] is **false and misleading**." Similarly, by Mr. Bankston's own admission, Chairman Steinkamp actively participated in the defamation transaction in that she is the one who made the decision to pursue the "blatant payroll fraud" aspect of the hearing, which has now blown up spectacularly in **ALL** Defendants' faces. **Subject matter totally different** from Open Meetings litigation as liability for defamation arises from totally separate action which was mutually exclusive of the decision to convene an illegal Executive Session.

Defendant Bankston refused to even provide invoices which were not redacted pertaining to the present litigation. In fact, it was not until Plaintiff threatened a third lawsuit (Writ of Mandamus) and copied Louisiana Attorney General Buddy Caldwell's office on the threat, that Defendant Bankston finally caved and supplied the invoices which weren't redacted. For Defense Counsel Guillot to suggest that Plaintiff must forego a blatant Open Meetings Violation suit because one or more Defendants in the

present defamation matter would drag their feet far beyond the limited 60-day window of fulfilling the Open Meetings Violation prescription period is patently absurd.

Further, Defense Counsel Guillot recognizes that he has **serious** problems in trying to convince this Honorable Court that the parties of both suits are the same. Mr. Bankston is not a named Defendant in the Open Meetings Matter. Nevertheless, he certainly had an obligation to inform his clients that they were convening an illegal Executive Session, and he failed miserably at fulfilling that obligation. Defendant Bankston explained that failing to Judge Fields at a March 25, 2013 Summary Judgment hearing (both sides filed for Summary Judgment) by stating that he was "operating in a different capacity." Those five words alone indicate that, by Defendant Bankston's own admission, he was not part of any Open Meetings violation and that he furthermore felt he did not even have any obligation to inform his clients of their impending violation. That fact notwithstanding, Defense Counsel Guillot wants to somehow have this Honorable Court stretch (literally) and declare that the parties are the same! Plaintiff repeatedly advised Defendant Board Members to ensure that both Mr. Bankston and Ms. Dow (Defendant LALB's other attorney) have malpractice insurance so as to reimburse them for any damages they incur for either attorney's obvious ambivalence to the State's Open Meetings Laws. Defendant LALB Members repeatedly ignored Plaintiff's admonitions in that regard.

Further problems Defense Counsel Guillot has regarding the parties not being the same are evidenced by his memorandum in which he desires to "impute" liability to Ms. Steinkamp in the Open Meetings matter by virtue of the fact the LALB is a named Defendant. As Plaintiff has stated emphatically in his Open Meetings litigation (and as Defense Counsel Guillot either is, or certainly should be, well aware), LA R. S. 42:28, stresses that liability under the Open Meetings law is a **personal liability** which **cannot** be absorbed, transferred to, or imputed to the "employer" (LALB Defendant as Mr. Guillot attempts to argue). Ms. Steinkamp **cannot** be held personally liable in the Open Meetings litigation because she was **not** a participant, period! It is **that** simple! The LALB cannot be held responsible for **any** of the individual personal liabilities which arise from the LALB members blatantly and defiantly violating the provisions of LA R. S. 42:17(A)(1) as they did. It is a **personal liability** (and is clearly designated as such by

statute), and this fact totally and completely destroys any argument of Defense Counsel Guillot that the parties of these two proceedings are the same!

Defense Counsel Guillot is engaging in an utterly desperate attempt to contain damages to $500 ($100 x 5 Board Members) via his present filing. That limitation alone demonstrates that it entails a separate transaction! Defense Counsel Guillot is representing clients who have gotten themselves into a disastrous predicament. How did they do so? Defendants issued a "public reprimand" (with three Defendants stating in an illegal Executive Session – Docket # 619707 pending before Judge Fields – that Plaintiff should have his **auction license revoked**) for "going after our employee." Subsequent to making such blatantly defamatory statements about Plaintiff, the Louisiana Office of Inspector General (OIG) issued a report dated December 9, 2013, which was attached to an Opposition to Strike Memorandum filed by Plaintiff in response to a Strike Motion filed by Defendant Bankston and for which Defense Counsel Guillot was provided a copy, as Exhibit P-2.

In that report, the OIG cites the LALB and the Interior Design Board for "wasting public funds" through their practices of permitting their shared Executive Director, Sandy Edmonds, to be on extensive out-of-state vacations yet claim she is "on the clock." So, Plaintiff **was actually subjected to a full-blown hearing for disciplinary action against his license for pointing out the very findings of the OIG report and warning Defendants of same nearly two (2) years before the report was issued!** In fact, in an email dated Thursday, July 12, 2012 and sent to Defendant Greg Bordelon (whose LALB Membership has recently been severed), Defendant Vice Chairman James Sims, and Defendant Charles "Hal" McMillin, with said email also having been attached to an Opposition to Strike Memorandum filed by Plaintiff in response to a Strike Motion filed by Defendant Bankston and for which Defense Counsel Guillot was provided a copy, as Exhibit P-3. In that email, Plaintiff Burns stated (see item # 3 in the email) that, **"As LAPA has advised each of you in emails soon after the 5/21/12 LALB meeting, Chief of Civil Service Accountability, Patrick Lowery, has indicated that the LALB (and IDB) work arrangements constitute 'blatant payroll fraud.'"** Ms. Edmonds, as of the date of that email, July 12, 2012, had historically routinely taken vacations (often for a week at a time) yet claimed she was on the clock. **Incredibly, Mr. Bankston was**

formally hired by the LALB at its May 21, 2012 meeting (though somehow he began working for Defendant LALB to begin pursuing Plaintiff on March 9, 2012). Two days later, May 23, 2012, Defense Counsel Bankston sent Plaintiff Burns a letter laying the foundation for the aforementioned hearing. As readily cited in the OIG report, Exhibit P-2 [see table at top of page four (4)], Ms. Edmonds was actually engaging in an episode of payroll fraud the *very next day*, May 24, 2012!! So, rather than Defendant LALB Members taking Plaintiff Burns' warnings to heart and adhering to their fiduciary duties to the auction licensees of Louisiana, they actually had their attorney, Larry S. Bankston, lay the groundwork for an Administrative Hearing for action against Plaintiff's license while Ms. Edmonds was **simultaneously committing even more payroll fraud!!** Instead of heeding Plaintiff's polite warnings, Defendants actually ended up having the whole matter blow up in their collective faces by necessitating that a law-enforcement agency, the OIG, investigate the matter and issue a report chastising Defendants publicly for the **very same issue** for which Plaintiff had given them a courtesy warning!! Furthermore, Defendants ignored Plaintiff's verbal statement to them at the Administrative Hearing that the Louisiana Legislative Auditor's Office, which had completed a review with accompanying damming report on the LALB payroll practices days before Defendant LALB launched its pursuit of Plaintiff, stated that "we do not consider this matter closed, but we are not at liberty to divulge where we may proceed from here." Where the Legislative Auditor proceeded from there was to refer the matter to EBRP District Attorney Hillar Moore's Office for potential criminal prosecution of Ms. Edmonds. It was then Mr. Moore who forwarded the matter on to the OIG which ultimately culminated in the issuance of their report.

Interestingly enough, Exhibit P-2, the OIG report, clearly indicates that Ms. Edmonds didn't even tell either of her "superiors" that she was taking the vacations. Furthermore, she lied to the OIG investigators when they interviewed her in the presence of Defendant Bankston and Ms. Anna Dow (the LALB's other attorney). For that deception to the OIG, as evidenced at the bottom of page six (6) of the OIG report, the OIG recommended each Board, "**consider appropriate disciplinary action, up to and including termination.**" It is just this type of corruption that the LALB seeks not only to block from seeing the light of day but to in fact conduct itself in a Mafia-like manner to

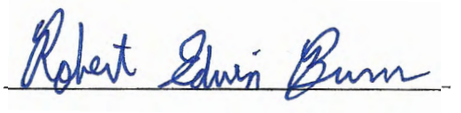
cram its corruption down the throats of the licensees it regulates as well as the public at large. Any licensee who dares challenge its Mafia-like practices as Plaintiff did quickly finds himself appearing before Defendant LALB's Membership for an Administrative Hearing!

In short, Defense Counsel Guillot's arguments that these two lawsuits "arose from the same transaction" is absurd on its face! The parties are clearly different. Further, Ms. Steinkmap has no liability whatsoever for the Open Meetings litigation because she was not a participant and the absence of any such potential liability makes it impossible to be "imputed" to her LALB "employer" as Defense Counsel Guillot is desperately trying to assert. Further, LALB Members voted to engage in one transaction (convening an illegal Executive Session) and then voted to engage in a totally separate transaction (issuing a reprimand against Plaintiff, an action for which they collectively look like fools in light of Exhibit P-2, the OIG report). Defense Counsel Guillot asserts to this Honorable Court that Plaintiff must forego his right to obtain $100 from each Board Member in the Open Meetings litigation because he infers Plaintiff should have crammed the defamation claim into that litigation even though he knows Plaintiff had only a 60-day window in which to file such a suit and Mr. Bankston was stonewalling providing invoices which weren't redacted to by which Plaintiff could substantiate Defendant Bankston's involvement. Given the feet-dragging on obtaining what should have been completely assessable public records (e.g. Defendant Bankston's invoices), it would have been impossible for Plaintiff to have even established the foundation for such a defamation suit within 60 days. That's exactly why the courts impose the more-restrictive prescription period for Open Meetings lawsuits (i.e. because they're cut-and-dry and black-and-white in terms of either being violated or not), whereas substantiating a defamation suit to ascertain whether or not it is even warranted can't be completed within 60 days (particularly with a completely uncooperative prospective Defendant such as Mr. Bankston). Defense Counsel doesn't like the fact these are separate transactions (and they clearly are); however, he has only his own clients to blame for the indefensible actions in which they engaged on September 17, 2012.

WHEREFORE, petitioner, ROBERT EDWIN BURNS, prays that this Honorable Court DENY Defendants' Declinatory Exception and instruct the named Defendants to file an answer to his Petition.

Respectfully Submitted,

Robert Edwin Burns, in proper person
President, Auction Sells Fast, LLC
4155 Essen Lane, Ste 228
Baton Rouge, LA 70809-2152
(225) 636-5506 (office) (225) 235-4346
E-mail: Robert@AuctionSellsFast.com



Certificate of Service:

I hereby certify, on this 13th day of January, 2014, that a copy of the foregoing has been served upon counsel for all parties to this proceeding by submitting a copy of same via electronic mail, facsimile, or First Class United States Mail, properly addressed and postage prepaid.