

ROBERT BURNS

NUMBER 602,922 SECTION 25

VERSUS

19<sup>TH</sup> JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

SANDY EDMONDS

STATE OF LOUISIANA

**EXCEPTIONS OF NO CAUSE OF ACTION  
AND IMPROPER SERVICE OF PROCESS**

NOW INTO COURT, through undersigned counsel, appearing herein solely for the purpose of the present Exceptions, comes defendant, Sandy Edmonds, who excepts to the plaintiff's Amended Petition, and moves the court to dismiss plaintiff's claims, with prejudice, on the following grounds:

1.

On or about June 27, 2011, plaintiff filed a Petition for Damages for Malicious Prosecution wherein defendant, Sandy Edmonds, was made defendant. The Petition for Damages was amended on or about September 7, 2011. The original and Amended Petition are offered in support attached hereto as "Exhibit A" and "Exhibit B",

2.

In response to the original Petition and Amended Petition for Malicious Prosecution, Ms. Edmonds filed an Exception of No Right of Action that came for hearing on or about November 14, 2011. After hearing oral argument, examining all pleadings and exhibits offered into evidence, the Court granted the Exception of No Cause of Action and further allowed plaintiff 30 days from the hearing date to file an amended petition for damages. Plaintiff filed a Second Amended Petition on or about December 9, 2011, adding additional causes of action, including defamation of character and tortious interference with a business relationship.

3.

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 Original Petition for Damages. Moreover, plaintiff fails to allege

CERTIFIED TRUE COPY

607226

19<sup>TH</sup> JUDICIAL DISTRICT  
EAST BATON ROUGE PARISH, LA

FILED  
2011 DEC 22 PM 1:40

DOUG WELBORE  
CLERK OF COURT

any facts to establish that Ms. Edmonds in any way acted with malice towards Mr. Burns.

4.

That the said Petition fails to state a cause 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. 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.

5.

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 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.

6.

Mr. Comer states in an affidavit previously filed into the record of the lawsuit that he instructed Ms. Sandy Edmonds, Executive Assistant for the LALB, to place a call to the East Baton Rouge Parish Sheriffs Office and the Louisiana State Police. Affiant made the decision to report Mr. Burns' conduct to police officials because he was concerned for Ms. Edmonds' safety, and the safety of other tenants in the Summa Court building, wherein Ms. Edmonds' office was located and wherein the LALB held periodic board meetings. Affiant is unaware of any conduct on the part of Ms. Edmonds that could be interpreted as having any malicious intent towards Mr. Burns.

7.

Additionally, Mr. Box states in an affidavit previously filed into the suit record of this lawsuit that he has received and reviewed a copy of Mr. Robert Burns' Petition for Damages the decision by affiant to terminate any potential business relationship with petitioner, Robert Burns, had nothing to do with the Louisiana Auctioneers Licensing Board or any actions on the part of Ms. Sandy Edmonds, the Executive Assistant to the Board. Ms. Edmonds never spoke with Mr. Beau Box, nor did she ever make any "False and scurrilous accusations", as alleged by Mr. Burns.

8.

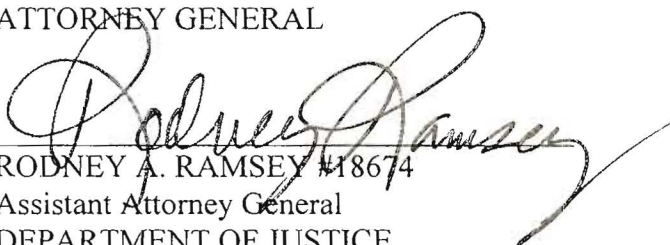
Ms. Edmonds further excepts to Mr. Burns' Petition for Damages pursuant to La. C.C.P. art. 925 on the grounds that neither she nor the Attorney General's Office has received formal service of plaintiff's amended petition as required by CCP Art. 1201, et seq. A courtesy copy of the pleading was received by the Attorney General's Office. However, as is evidenced by the amended petition, Mr. Burns is now alleging new causes of actions against plaintiff which require service of process on defendant.

WHEREFORE, defendant, Sandy Edmonds, prays that (1) the Exception of No Cause 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; (2.) that, in the alternative, her Exception of Improper Service of Process be maintained and the amended petition be dismissed. Defendant also prays that the plaintiff be cast with all costs associated with these exceptions and the hearing thereon.

Respectfully submitted:

JAMES D. "BUDDY" CALDWELL  
ATTORNEY GENERAL

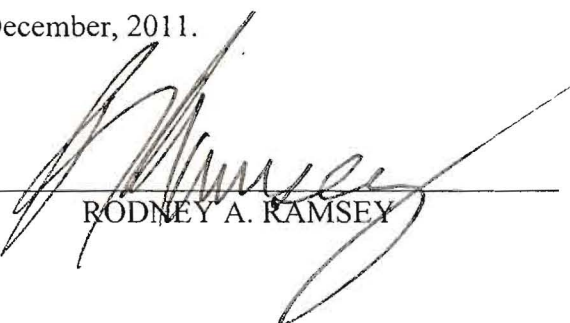
BY:



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, 3<sup>rd</sup> 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 of Action, Improper Service and Prescription 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, this 22nd day of December, 2011.

  
\_\_\_\_\_  
RODNEY A. RAMSEY

ROBERT BURNS

VERSUS

SANDY EDMONDS

NUMBER 602,922 SECTIONS 25

19<sup>TH</sup> JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

**ORDER**

Considering the foregoing Exceptions of No Cause of Action, Improper Service and Prescription:

**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 Exceptions of No Cause of Action and Improper Service of Process filed on behalf of defendant, Sandy Edmonds, should not be sustained and his suit dismissed, with prejudice, at his cost.

Baton Rouge, Louisiana, this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

---

HONORABLE WILSON FIELDS  
JUDGE, 19<sup>TH</sup> 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, 3<sup>rd</sup> Floor, 70802  
Telephone: (225) 326-6386; Facsimile: (225) 326-6494

ROBERT BURNS

VERSUS

SANDY EDMONDS

NUMBER 602,922 SECTION 25

19<sup>TH</sup> JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

**MEMORANDUM IN SUPPORT OF EXCEPTIONS OF NO CAUSE  
OF ACTION AND IMPROPER SERVICE OF PROCESS**

NOW INTO COURT, through undersigned counsel, comes defendant, Sandy Edmonds, who moves this Honorable Court as follows:

**I. EXCEPTION OF NO CAUSE OF ACTION:**

Mr. Burns has filed and amended petition adding ten (10) paragraphs to his original petition after the court dismissed his petition on November 14, 2011 for failing to state a cause of actions against Ms. Edmonds for malicious prosecution. A review of the additional paragraphs shows that the amended petition fails to state any new material facts and fails to state any cause of action against Ms. Edmonds. Ms. Edmonds offers and re-avers her original memorandum in support of her no cause of action as if copied herein *in extenso*.

**II. EXCEPTION OF IMPROPER SERVICE OF PROCESS:**

Ms Edmonds also excepts to plaintiff's amended petition on the basis that there has been no service of process on Ms. Edmonds as required by Louisiana Code of Civil Procedure articles 1312, 1313, and 1314. These articles provide in pertinent part as follows:

**Art. 1312. Service of pleadings subsequent to petition; exceptions**

Except as otherwise provided in the second paragraph hereof, every pleading subsequent to the original petition shall be served on the adverse party as provided by Article 1313 or 1314, whichever is applicable...

**Art. 1313. Service by mail, delivery, or electronic means**

A. 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 as provided in this Article, may be served either by the sheriff or by:

(1) Mailing a copy thereof to the counsel of record, or if there is no counsel of record, to the adverse party at his last known address, this service being complete upon mailing.

(2) Delivering a copy thereof to the counsel of record, or if there is no counsel of record, to the adverse party.

(3) Delivering a copy thereof to the clerk of court, if there is no counsel of record and the address of the adverse party is not known.

(4) Transmitting a copy by electronic means to counsel of record, or if there is no counsel of record, to the adverse party, at the number or addresses expressly designated in a pleading or other writing for receipt of electronic service. Service by electronic means is complete upon transmission but is not effective and shall not be certified if the serving party learns the transmission did not reach the party to be served.

B. 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.

C. Notwithstanding Paragraph A of this Article, if a pleading or order sets a court date, then service shall be made by registered or certified mail or as provided in Article 1314.

**Art. 1314. Same; service by sheriff**

A. A pleading which is required to be served, but which may not be served under Article 1313, shall be served by the sheriff by either of the following:

(1) Service on the adverse party in any manner permitted under Articles 1231 through 1266.

(2)(a) Personal service on the counsel of record of the adverse party or delivery of a copy of the pleading to the clerk of court, if there is no counsel of record and the address of the adverse party is not known.

(b) Except as otherwise provided in Article 2293, service may not be made on the counsel of record after a final judgment terminating or disposing of all issues litigated has been rendered, the delays for appeal have lapsed, and no timely appeal has been taken.

B. Personal service on a partner or office associate of a counsel of record, in the office of such counsel of record shall constitute valid service under Paragraph A of this Article.

The pleading at issue is an amended petition allegedly asserting new causes of action that plaintiff has filed after the court granted defendant's Exception of No Cause of Action and dismissed his original petition seeking damages for malicious prosecution. Although plaintiff has mailed a courtesy copy of his amended petition to undersigned counsel for Ms. Edmonds, this service is null and without effect. Mr. Burn's original petition was dismissed for failure to state a cause of action. Mr. Burns then filed an amended petition on or about December 9, 2011. 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. 1<sup>st</sup> Cir. 1971).*



#### **IV. SUMMARY AND CONCLUSION:**

Mr. Burns, who appears in proper person herein, has asserted a claim for damages against Ms. Sandy Edmonds, an employee of the Louisiana Auctioneers Licensing Board and Interior Design Board. Mr. Burns' initial petition was dismissed for failure to state a cause of action against Ms. Edmonds for malicious prosecution. This second lawsuit is re-litigation of the claims presented in the initial lawsuit. Mr. Burns does not allege any new material facts nor does he present new allegations to support any cause of action against Ms. Edmonds for which she may be liable under the law.

Mr. Burns has also filed a suit against the Boards' attorney, Anna Dow, the Arthritis Association of Louisiana and its employees, Ms. Karen Kennedy and Ms. Caroline Messenger, seeking damages for alleged defamation of character. The lawsuit against Ms. Dow is pending before Judge Caldwell. Ms. Edmonds cannot be sued for truthful statements made by employees of the Arthritis Association in good faith to police officials. These statements that were made out of concern for their personal safety and the safety of other tenants located in their office building. Mr. Burns admits that their statements did not result in his arrest or prosecution by the District Attorney's Office.

Mr. Burns also claims he should recoup the cost of advertising in the Advocate because a real estate agent, Mr. Beau Box, did not engage Mr. Burns to conduct auctions for his company. Defendant avers, based on information and belief, that, if called to testify at trial, Mr. Box would testify that he never entered into a formal agreement with Mr. Burns and that his decision had nothing to do with the complaint filed with the EBR Sheriff's Office, or any matters related to the Auction Board, the Arthritis Board, or the Summa Court office building in which the Boards were tenants at all relevant times herein.

The basis of the complaint filed with the police officers originated from employees of the Arthritis Association. Ms. Edmonds was listed on the East Baton Rouge Parish Sheriff's Office report because she was instructed by her employer to contact the police on behalf of the LALB. Moreover, Mr. Burns cannot establish any malice on the part of Ms. Edmonds, assuming Mr. Burns could prove the other elements of his cause of action, which he is unable to do. Ms.

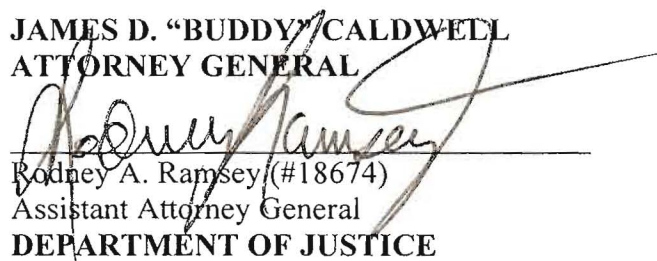


Edmonds respectfully requests that the Court again grant her Exception of No Cause of Action and dismiss all claims against her, at plaintiff's costs. In the alternative, Ms. Edmonds prays that the court dismiss Mr. Burns' amending petition for failure to properly serve Ms. Edmonds.

Respectfully Submitted:

**JAMES D. "BUDDY" CALDWELL**  
**ATTORNEY GENERAL**

BY:



Rodney A. Ramsey (#18674)  
Assistant Attorney General  
**DEPARTMENT OF JUSTICE**  
**LITIGATION DIVISION**  
1885 North 3<sup>rd</sup> Street (70802)  
Post Office Box 94005  
Baton Rouge, Louisiana 70804-9005  
Telephone: (225) 326-6386  
Facsimile: (225) 326-6494