

IN THE DISTRICT COURT OF OKLAHOMA COUNTY,
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

Oklahoma Department of Securities)
ex rel. Irving L. Faught, Administrator,)
)
Plaintiff,)
vs.)
Bruce Scambler,)
)
Defendant.)

APR 16 2015

TIM RHODES
COURT CLERK

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CJ-2014-1346

**DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S OBJECTION TO
DEFENDANT'S MOTION TO RECONSIDER**

COMES NOW, defendant, and submits this DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S OBJECTION TO DEFENDANT'S MOTION TO RECONSIDER by and through Defendant, Bruce Scambler pro se.

I INTRODUCTION

- 1 Plaintiff filed yet another "Motion to Strike" over a week ago now on 7th April, 2015 complaining this time that Defendant's Motions to that time did not fully comply with Rule 37 of the Rules of the Seventh and Twenty-Sixth Judicial Districts, and requesting these defendant's motions be stricken and cast out under Rule 37..
- 2 Plaintiff threw this additional Motion to Strike out and thereby "cast another stone", this one on this *striking documents for formatting errors* subject matter. Defendant would reply that all this this "*striking documents*" is getting away from the core securities subject matter of the case. Nonetheless, this is a litigation, and there are many ways to win other

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than staying on subject. Plaintiff is seeking at this time, to win the case by MFSJ, and the more documents the plaintiff can strike, the less chance the defendant has to win the MFSJ, or so plaintiff would appear to be angling for. This is a legal process with rules of evidence in play, and not at this time trial by jury per se on the peer review of the facts. Hence, in the application of making a decision for MFSJ on these facts, to this situation, all motions and legal components apply to the MFSJ which would be a district court win for the plaintiff. Defendant is just looking to get beyond this MFSJ and on to discovery and depositions towards trial.

3 Plaintiff is it seems now helping defendant by acting contrary to their own motions and in arguing their motions defeating their own case arguments. The plaintiff's MOTION TO STRIKE, is itself in error and should according to plaintiff's motion arguments last week be itself stricken. PLAINTIFF'S OBJECTION TO DEFENDANT'S MOTION TO RECONSIDER ("POTDMTR") shows there are material facts in dispute at this time, and so plaintiff's MFSJ should be denied, as well there being real business reasons why there were multiple documents and pdf signatures so the ("POTDMTR") if not stricken should be denied and that last order stricken.

4 With the plaintiff throwing out these Motions to Strike last week, the well known phrase of "**populus in vitrum tecta non saxa**" came immediately to mind. Defendant had no idea that a week later plaintiff would be filing a motion not in compliance with Rule 37. Should one in this case say "**domus ex legis peritis in speculum non saxa**" (lawyers in glass houses should not throw stones).

5 Having filed the "Motion to Strike" over a week ago now (filed on 7th April, 2015) it appears that a week is a long time in the life of a busy department of attorneys. Perhaps, we ask, plaintiff forgot they filed this additional Motion to Strike? Perhaps, we ask,

plaintiff believes such a motion's application only applies to defendants, and in particular pro se defendants? Defendant does not have answers to these questions. Plaintiff's motion simply does not comply with Rule 37 of the Rules of the Seventh and Twenty-Sixth Judicial Districts and should be handled accordingly.

6 If the ("POTDMTR") is not stricken, then **sequitur**, (it follows) neither should any of defendant's motions. What is good for the goose is good for the gander.

II ARGUMENT AND AUTHORITIES

7 Defendant, pro se must be held to the same standards as an attorney. (per Funnell v. Jones, 1985 OK 73, ¶ 4, 737 P.2d 105, 107. If so, then ipso facto, the **opposite** applies equally. Application of that principle, vice versa, in court filings, means the plaintiff attorney must be held to at least the same standards as a layman pro se, (as those standards exist in case law) if not more. A motion's application then applies to defendants and plaintiffs equally under Rule 37. Because the PLAINTIFF'S OBJECTION TO DEFENDANT'S MOTION TO RECONSIDER ("POTDMTR") does not comply with the Rules of the Seventh and Twenty-Sixth Judicial Districts Rule 37, it should be stricken. To quote from the plaintiffs Motion to Strike filed April 7th 2015

"... Further, Rule 37(A) requires that briefs be double-spaced. See 7th & 26th Jud. Dist. R. 37(A). Any motion or brief filed in violation of Rule 37 "shall not be considered by the assigned judge and shall be stricken from the record." 7th & 26th Jud. Dist. R. 37(E) (emphasis added)".

8 Plaintiff's cite and argue that **"Any motion or brief filed in violation of Rule 37 "shall not be considered by the assigned judge and shall be stricken from the record." 7th & 26th Jud. Dist. R. 37(E) (emphasis added)"**. So if that is the case it would appear to apply to this motion. Plaintiff's POTDMTR or "Reply Motion" should be stricken. If it is stricken defendant's Motion to Reconsider should be granted for **defectu responsionis**,

(lack of reply)

9 POTDMTR does not comply with Rule 37 of the local district court rules. Rule 37 of the Rules of the Seventh and Twenty-Sixth Judicial Districts provides, in pertinent part (as quoted:

A. All motions and briefs shall be typewritten in clear type not less than 12-point, with single spaced lines of quoted matter and double spaced lines of unquoted matter. The margins of the printed page shall be one and one-quarter (1 1/4) inches on the left side and one (1) inch on the other three sides.

10 Page 1 of Plaintiffs POTDMTR does not include a “quote”, there are no parentheses or “quote marks”. There is a reference to three motions with details of date as filed (See Exhibit A). That is not a quote and is not written as a quote. The Rule does not permit this to be single spaced.

11 Pages 2-7 of Plaintiffs POTDMTR includes headings which are not double spaced. The rule does not permit unquoted matter to be single spaced. (See Exhibit B).

12 Plaintiffs POTDMTR should be stricken because the filing does not comply with Rule 37 of the Rules of the Seventh and Twenty-Sixth Judicial Districts.

13 The court has discretion as to the decisions regarding this Rule. The problem with plaintiff throwing stones from a glass house is that the defendant then has the stone that was cast and can cast it back, as this Defendant’s Motion to Strike would request. Prima facie POTDMTR should be stricken, so says the plaintiff. The honorable judge will ensure that **bonus sensus eius praevalerit**, (good sense will prevail). Thus it seems extremely unlikely that the court will strike this POTDMTR motion because of an error under Rule 37....or is it unlikely? Perhaps it is not unlikely and in fact just what the court must do?

14 What is “extremely unlikely” is for a court to not rule that **a regula tamen a regula** (“a Rule is a Rule”). The court is one of equity, sense or sensibility is not the legal determinant. If court does not strike this POTDMTR motion, which clearly breaks Rule 37, and on the plaintiffs own claims for Rule 37’s strict application made only a week ago, then where is Rule 37 A. Is it ok to have 10 point or 8 point font in motions? Is it ok to have ½ inch margins in motions? Is it ok to have “brush script m7? (*brush script m7*) Is that clear type? Is it ok to file motions or send plaintiff copies of motions printed on both sides of the page? Application of the strict rule is not an easy matter, and so it is a lot less than “extremely unlikely” for the court to have to apply the strict rule. Essentially, then the court is **enervati** (hamstrung). It would not seem fair to strike plaintiff’s motion for such an infraction of Rule 37 as made by plaintiff. Yet, that is exactly what the court must do, or else open up itself to a new precedent allowing a plethora of font, script and formatting diversities, outside the rule. Moreover, if the court does not strike plaintiffs POTDMTR motion, it would not be fair in equity, and so court should not, strike defendant’s motions as filed under cite of similar rule Rule 37 as plaintiff has requested. Thus the font and spacing become a matter of Solomon, it makes it a question of degree of fairness and in that situation the court may wish to be equally fair to both sides and order to “strike them as are not in compliance”. That is not unlikely.

15 Then the question becomes whether motions may be resubmitted, and whose motions may be submitted? The defendant pro se has case law saying his lack of legal ability is in his favor to resubmit. *Burroughs v. Bob Martin Corp.*, 1975 OK 80, ¶ 23, 536 P.2d 339 states “*Our courts are committed to the policy that every party be afforded a fair opportunity to present his or her side of a cause*”, and *ROWE v. HCA HEALTH SERVICES OF OKLAHOMA, INC.* the appeal court held: *a trial court is required to grant additional*

time to permit a litigant to correct any defects in a petition. 12 O.S.2001, § 2012(G).

Dismissing Plaintiff's entire claim because he neglected to attach an expert's affidavit,

under the facts before us, fails to address the case on its merits and is contrary to the

policies set out in the Oklahoma pleading code. There may not be similar guidance in

case law in favor of the attorney resubmitting. If you give this inch where would it stop

ten mile on? The courts would not really want attorneys clogging up the system with

multiple submissions on every motion to correct or re-correct or strike due to their

professional errors. As such, the court may not be of a mind to grant an attorney the same

latitude, and open this door to set a precedent for eternal re-submissions. In this case at

this time, a week or so after the plaintiff requested the court apply this Rule 37, perhaps it

*is time to make an example of the attorney who threw the first stone and say, **petistis hoc***

***ipsum tibi quod petisti** (“you asked for this, you get just exactly what you asked for”).*

Your POTDMTR is stricken.

VII CONCLUSION

16 The plaintiff has in filing POTDMTR, not in compliance with Rule 37, put the court in a dilemma. Should the door be opened to allow attorneys to endlessly re-submit motions not filed in accordance with rule 37? Should Rule 37 be set aside and ruled not to apply? If the court strikes the motions, defendant, pro se would appeal to the court to resubmit. Plaintiff attorney may not have such an appeal. Alternatively, if court does not strike this POTDMTR motion then it would not be fair to strike defendant's motions under cite of similar application of Rule 37.

17 Defendant still requests Court to reconsider its decision in “Striking the Cantex Revised Minutes” and let them in to the case, and on the basis that MIDFIRST BANK v. WILSON

2013 OK CIV APP. would apply, as cited, and that that a MFSJ is not ripe or in compliance with statute Section 2056 (E) based on plaintiff's filings deny the MFSJ. The errors in the plaintiff's filings do not get plaintiff to qualifying status for MFSJ.

VIII PRAYER

18 Defendant prays the court decide on the application in degree of error allowed under its Rule 37. Defendant requests court strike POTDMTR under plaintiff's own argument. Defendant requests court grant defendants motion and reconsider its decision and allow the Cantex Revised Minutes to be entered in to the record. Defendant requests court just look at the lack of sworn or certified copies on the plaintiffs affidavits to it's MFSJ and dismiss the MFSJ, save all of this filing submission review and resubmission and, let defendant move on to commence discovery.

respectfully submitted,



Bruce Scambler, pro se Defendant
3555 N.W. 58th St., #1000 LMT West
Oklahoma City, OK 73112
(Tel 405 608 2700)

File Note: Defendants time: defendant had expended fifty nine (59) hours on legal responses, with an added further three (3) hours to compile and added two (2) hours for two trips to travel to the Court House to file responses in person (pro se litigants can not mail in replies) for a total of sixty two (64) hours.

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 13th day of April 2015, a true and correct copy of the above and foregoing DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S OBJECTION TO DEFENDANT'S MOTION TO RECONSIDER was mailed with postage prepaid thereon, addressed to

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Bruce Scambler, pro se
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Exhibit A

IN THE DISTRICT COURT OF OKLAHOMA COMP IN DISTRICT COURT
STATE OF OKLAHOMA OKLAHOMA COUNTY

APR 13 2015

Oklahoma Department of Securities
ex rel. Irving L. Faught,
Administrator,

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Plaintiff

v.

Case No. CJ-2014-1346

Bruce J. Scambler,

Defendant.

PLAINTIFF'S OBJECTION TO DEFENDANT'S MOTION TO RECONSIDER

Defendant has filed three documents in this matter containing a motion to reconsider this Court's ruling striking Defendant's first response to Plaintiff's motion for summary judgment:

- 1) Reply of Defendant to Motion for Summary Judgment and Motion of Defendant to Reconsider Previous Ruling Based on New Evidence, filed March 24, 2015;
- 2) Reply of Defendant to Plaintiff's Application for Attorney Fees and Defendant's Motion to Reconsider Previous Ruling Based on New Evidence, filed on April 2, 2015; and
- 3) Supplement to Defendant's Reply to Plaintiff's Motion for Summary Judgment, Reply to Claim for Fees, Defendant's Motion to Strike and Supplement to Defendant's Motion to Reconsider Previous Ruling Based on New Evidence, filed on April 2, 2015.

Plaintiff objects to Defendant's cumulative motion to reconsider on the grounds that modification or vacation of the ruling is unwarranted. Plaintiff asks that the Court deny Defendant's cumulative motion.

ARGUMENT AND AUTHORITIES

Defendant's motion is in substance a meritless request for reconsideration of a non-final order filed on March 18, 2015 ("Order") that struck Defendant's first response to Plaintiff's motion for summary judgment in its entirety on the grounds that the Affidavit of Defendant that was submitted in support of his response was submitted in bad faith with fabricated exhibits. See *LCR, Inc. v. Linwood Properties*, 1996 OK 73, ¶¶ 10-11 and 13-16, 918 P.2d 1388, 1392-93. Defendant bases his motion on his purported discovery of "new evidence."

The Order is within this Court's control to modify or vacate. *Id.* at n. 4. However, modification or vacation of the Order is unwarranted because Defendant's "new evidence" is neither new nor relevant. Defendant's "new evidence" does not prove the authenticity of the Affidavit's fabricated exhibits or cure the Affidavit's other defects. Further, Defendant's "new evidence" is not newly discovered by Defendant.

I. The "new evidence" is not relevant because it does not prove the authenticity of the fabricated Statement of Unanimous Consent.

The "new evidence" that Defendant relies upon in his motion for reconsideration is an email chain, dated August 19, 2010, between Kaily Ball and Trace Maurin in which Kaily Ball (a) sent the minutes for the CanTex Energy Corp. Board of Directors meeting on August 18, 2010, to Trace Maurin; (b) asked him to print, review, sign, and then return the scanned minutes with his signature to her; and (c) asked for permission to save his signature in a PDF file in order to automatically insert it into future board minutes reviewed by Trace Maurin. Def.'s Mot. Recons. at ¶ 49 and Ex. 1 (March 24, 2015) (attached hereto as "Exhibit 1").