



BANKSTON & ASSOCIATES
A LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

Larry S. Bankston
larry@bblawyers.net

April 15, 2013

Jenna H. Linn
jinn@bblawyers.net

Clerk of Court
19th JDC, Parish of East Baton Rouge
P.O. Box 1991
Baton Rouge, LA 70821

ATTN: CIVIL SUITS

RE: *Robert Burns and Rev. Freddie Phillips vs. LA Auctioneer's Licensing Board, et al*
Docket No.: 616,916, 19th Judicial District Court
My File No.: 1107-00014

Dear Sir/Madam:

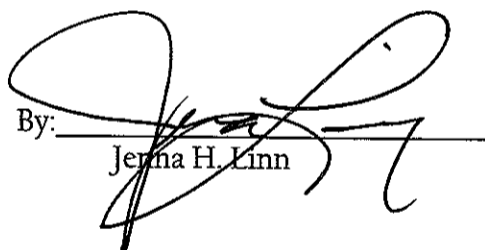
Enclosed please find the original and three copies of *Dilatory Exception of Non-Conformity and, Alternatively, Motion to Strike* on behalf of defendants, Louisiana Auctioneer's Licensing Board, et al. Please file the original into the suit record, submit two copies to the sheriff's office for service and return a conformed copy to our office in the enclosed self-addressed, stamped envelope.

Please note that defendant, Louisiana Auctioneer's Licensing Board, is exempt from filing fees pursuant to La. R.S. 13:4521.

If you should have any questions or comments, please do not hesitate to contact me.

Sincerely,

BANKSTON & ASSOCIATES, L.L.C.

By: 
Jenna H. Linn

JHL: jmr

Enclosure: Dilatory Exception/envelope

cc: Honorable Wilson Fields (via facsimile only)
Sandy Edmonds (via email only)
James M. Sims (via email only)
Tessa Steinkamp (via email only)
Gregory L. Bordelon (via email only)
Robert Burns (via email only)
Rev. Freddie Phillips (via email only)

8708 Jefferson Highway, Suite A • Baton Rouge, LA 70809
Telephone (225) 766-3800 • Facsimile (225) 766-7800

ROBERT BURNS AND
REV. FREDDIE LEE PHILLIPS

* NUMBER 619707 SECTION 27

VERSUS

* 19TH JUDICIAL DISTRICT COURT

LOUISIANA AUCTIONEER'S
LICENSINGBOARD, JAMES M.
SIMS, TESSA STEINKAMP
GREGORY L. "GREG" BORDELON,

* PARISH OF EAST BATON ROUGE
* STATE OF LOUISIANA

**DILATORY EXCEPTION OF NON-CONFORMITY AND, ALTERNATIVELY,
MOTION TO STRIKE**

NOW INTO COURT, through undersigned counsel, solely for the purpose of this exception, come Louisiana Auctioneer's Licensing Board, James M. Sims, Tessa Steinkamp, and Gregory L. Bordelon, who in response to Plaintiffs', Robert Burns and Freddie Phillips, Petition for Damages, respectfully except as follows:

1.

In accordance with La. C.C.P. Art. 891, Plaintiffs' Petition shall comply with Article 854 and also "shall contain a short, clear, and concise statement of all causes of action arising out, and of the material facts of, the transaction or occurrence that is the subject matter of this litigation."

2.

Pursuant to La. C.C.P. Art. 854, all allegations of fact of the petition shall be simple, concise, and direct, and the contents of each paragraph shall be limited to a single set of circumstances.

3.

Plaintiffs have failed to comply with the provisions of La. C.C.P. Art. 854 and 891 in that their Petition contains lengthily, ambiguous, and unclear statements.

4.

Such noncompliance with La. C.C.P. Art. 891 and 854 makes it difficult for named Defendants to determine the nature and true meaning of Plaintiffs' claims.

5.

As such, named Defendants are unable to accurately respond to Plaintiffs' allegations.

MOTION TO STRIKE

IN THE ALTERNATIVE, Louisiana Auctioneer's Licensing Board, James M. Sims, Tessa Steinkamp, and Gregory L. Bordelon move to strike all exhibits attached to Plaintiffs' Petition for Damages, Exhibits "P-1" through "P-6", as well as portions of the Petition which are immaterial and impertinent.

6.

Specifically, named Defendants move to strike the following portions from Plaintiffs' Petition for Damages:

- a. Paragraph 7: "Specifically, he wanted the minutes to note the fact that Board Member and Vice Chairman James Sims responded by stating, 'I's here,' and that Consumer Member Greg Bordelon responded, 'I's here too.'";
- b. Paragraph 8 in its entirety;
- c. Paragraph 9 in its entirety;
- d. Paragraph 10 in its entirety;
- e. Paragraph 11 in its entirety;
- f. Paragraph 12 in its entirety;
- g. Paragraph 13 in its entirety;
- h. Paragraph 14 in its entirety;
- i. Paragraph 15 in its entirety;
- j. Paragraph 16 in its entirety;
- k. Paragraph 17: "Petitioner Phillips wished to assert at the January 8, 2013 meeting that, if the LALB could expand minutes on August 2, 2010 (despite having voted at the very same meeting not to expand them), and quote Petitioner Phillips totally out-of-context (excluding his commentary leading up to the quote which entailed Petitioner Phillips' plea for Petitioner Burns not to resign), then the LALB could certainly expand the November 5, 2012 minutes to reflect the roll-call responses of Defendants Sims and Bordelon";
- l. Paragraph 19: "Petitioner Burns intended to relay the fact that the per diem payments of r September 17, 2012 were unauthorized and a violation of Governor Jindal's Executive Order (specifically Executive Order BJ 12-09)... Ms. Miley further indicated that such

payments had been received from all LALB members attending that September 17, 2012 LALB meeting”;

- m. Paragraph 22 in its entirety; and
- n. Paragraph 23 in its entirety.

7.

The above referenced portions of Plaintiffs’ Petition for Damages, as well as Exhibits “P-1” through “P-6”, are immaterial, redundant, and impertinent.

8.

Additionally, the above referenced portions of Plaintiffs’ Petition for Damages and Exhibits are unrelated to Plaintiffs’ claims, unworthy of any consideration, and are prejudicial to named Defendants.

9.

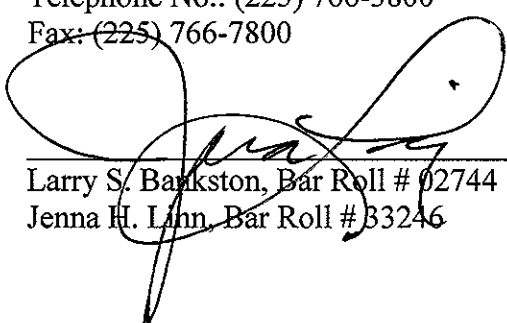
In accordance with La. C.C.P. Art. 964, the court may order stricken from any pleading any insufficient demand or defense or any redundant, immaterial, impertinent, or scandalous matter.

WHEREFORE, Louisiana Auctioneer’s Licensing Board, James M. Sims, Tessa Steinkamp, and Gregory L. Bordelon pray as follows:

- a. That their exception be maintained and that Plaintiffs’ Petition for Damages be dismissed at Plaintiffs’ costs;
- b. Alternatively, that their exception be maintained and that Plaintiffs be ordered to supplement its Petition for Damages at Plaintiffs’ costs;
- c. Alternatively, named Defendants pray that the above referenced portions of Plaintiffs’ Petition for Damages and Exhibits “P-1” through “P-6” be stricken from these proceedings; and
- d. All other just and equitable relief.

Respectfully submitted:

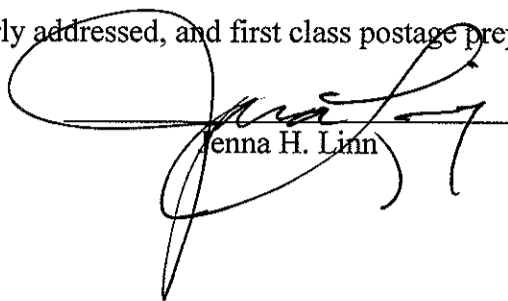
Bankston & Associates, L.L.C.
8708 Jefferson Hwy, Suite A
Baton Rouge, LA 70809
Telephone No.: (225) 766-3800
Fax: (225) 766-7800



Larry S. Bankston, Bar Roll # 02744
Jenna H. Linn, Bar Roll # 33246

CERTIFICATE

I hereby certify on this 15th day of April, 2013, a copy of the foregoing pleading was served on Robert Burns, by transmitting a copy of same via electronic mail, facsimile or regular United States mail, properly addressed, and first class postage prepaid.



Jenna H. Linn

ROBERT BURNS AND
REV. FREDDIE LEE PHILLIPS

* NUMBER 619707 SECTION 27

VERSUS

* 19TH JUDICIAL DISTRICT COURT

LOUISIANA AUCTIONEER'S
LICENSING BOARD, JAMES M.
SIMS, TESSA STEINKAMP
GREGORY L. "GREG" BORDELON,

* PARISH OF EAST BATON ROUGE
* STATE OF LOUISIANA

ORDER

Considering the Foregoing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiffs, Robert Burns and Freddie Phillips, show cause on the ____ day of _____, 2013 at ____ o'clock why this exception should not be maintained and why Plaintiffs' Petition for Damages should not be dismissed at Plaintiffs' costs.

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

Judge, 19th Judicial District Court

In the alternative:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiffs, Robert Burns and Freddie Phillips, show cause on the ____ day of _____, 2013 at ____ o'clock why this Motion to Strike should not be granted and why portions of Plaintiffs' Petition for Damages and Exhibits should not be stricken from these proceedings.

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

Judge, 19th Judicial District Court

PLEASE SERVE:

Freddie Phillips
8055 Hanks Drive
Baton Rouge, LA 70812

Robert Burns
4155 Essen Lane, Ste. 228
Baton Rouge, LA 70809

ROBERT BURNS AND REV. FREDDIE LEE PHILLIPS	*	NUMBER 619707 SECTION 27
VERSUS	*	19TH JUDICIAL DISTRICT COURT
LOUISIANA AUCTIONEER'S LICENSING BOARD, JAMES M. SIMS, TESSA STEINKAMP GREGORY L. "GREG" BORDELON,	*	PARISH OF EAST BATON ROUGE STATE OF LOUISIANA

MEMORANDUM IN SUPPORT OF DILATORY EXCEPTION OF NON-CONFORMITY AND, ALTERNATIVELY, MOTION TO STRIKE

MAY IT PLEASE THE COURT:

Louisiana Auctioneer's Licensing Board, James M. Sims, Tessa Steinkamp, and Gregory L. Bordelon submit this memorandum in support of their Exception of Non-Conformity and, alternatively, Motion to Strike.

In accordance with La. C.C.P. Art. 891, Plaintiffs' Petition "shall contain a short, clear, and concise statement of all causes of action arising out, and of the material facts of, the transaction or occurrence that is the subject matter of this litigation." Additionally, pursuant to La. C.C.P. Art. 854, all allegations of fact of the petition shall be simple, concise, and direct, and the contents of each paragraph shall be limited to a single set of circumstances.

Plaintiffs have failed to comply with the provisions of La. C.C.P. Art. 891 and 854. Plaintiffs' Petition contains lengthily, ambiguous, and unclear statements. The pleaders have a duty to express their allegations in clear and unmistakable language; ambiguous and uncertain pleadings are construed against him.¹ Plaintiffs herein have failed to comply with such duty.

Additionally, Plaintiffs clump a multitude of irrelevant circumstances and stories into single paragraphs of the petition. The petition must set forth the facts upon which recovery can be based; otherwise, the defendant would have neither adequate notice of the allegation nor an opportunity to counter the claim.² Immaterial facts should not be included in a petition. A fact is material, so as to require its inclusion in plaintiff's petition, when its existence or nonexistence may be essential to the plaintiff's cause of action under the applicable theory of recovery.³

Plaintiffs' Exhibits "P-1" through "P6", as well as portions of Plaintiffs' Petition for Damages are immaterial, impertinent, and are unessential to Plaintiffs' alleged cause of action.

¹*West Carroll Nat. Bank of Oak Grove v. West Carroll Parish School Bd.*, App. 2 Cir.1961, 136 So.2d 699

²*Howell v. Taylor*, App. 2 Cir.2001, 799 So.2d 1175, 35,279 (La.App. 2 Cir. 10/31/01); LA-C.C.P. Art. 891.

³*Mangerchine v. Reaves*, App. 1 Cir.2011, 63 So.3d 1049, 2010-1052 (La.App. 1 Cir. 3/25/11), rehearing denied; LA-C.C.P. Art. 891

Specifically, the following portions of Plaintiffs' Petition for Damages are immaterial and should not be made a part of such pleading:

- a. Paragraph 7: "Specifically, he wanted the minutes to note the fact that Board Member and Vice Chairman James Sims responded by stating, 'I's here,' and that Consumer Member Greg Bordelon responded, 'I's here too.'";
- b. Paragraph 8 in its entirety;
- c. Paragraph 9 in its entirety;
- d. Paragraph 10 in its entirety;
- e. Paragraph 11 in its entirety;
- f. Paragraph 12 in its entirety;
- g. Paragraph 13 in its entirety;
- h. Paragraph 14 in its entirety;
- i. Paragraph 15 in its entirety;
- j. Paragraph 16 in its entirety;
- k. Paragraph 17: "Petitioner Phillips wished to assert at the January 8, 2013 meeting that, if the LALB could expand minutes on August 2, 2010 (despite having voted at the very same meeting not to expand them), and quote Petitioner Phillips totally out-of-context (excluding his commentary leading up to the quote which entailed Petitioner Phillips' plea for Petitioner Burns not to resign), then the LALB could certainly expand the November 5, 2012 minutes to reflect the roll-call responses of Defendants Sims and Bordelon";
- l. Paragraph 19: "Petitioner Burns intended to relay the fact that the per diem payments of r September 17, 2012 were unauthorized and a violation of Governor Jindal's Executive Order (specifically Executive Order BJ 12-09)... Ms. Miley further indicated that such payments had been received from all LALB members attending that September 17, 2012 LALB meeting";
- m. Paragraph 22 in its entirety; and
- n. Paragraph 23 in its entirety.

The above referenced exhibits and portions of Plaintiffs' Petition for Damages are immaterial, redundant, and impertinent. Throughout these portions of the Petition, Plaintiffs discuss how certain board members responded to roll call during previous and irrelevant

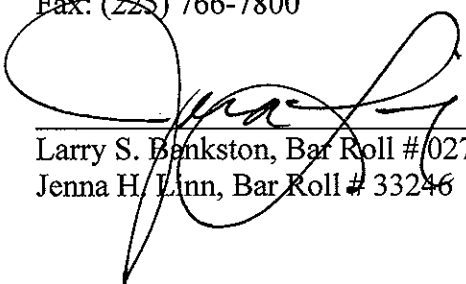
meetings, alleged comments made by counsel for the Louisiana Auctioneers Licensing Board (“LALB”), irrelevant complaints to the Governor’s Office, an unrelated article in The Advocate, previous emails sent to counsel for LALB from Plaintiff, an unrelated report from the Governor’s Office, previous comments made by a Defendant concerning his “diabetes and dentures”, the seating position of the board members, irrelevant alleged comments made by board members, alleged comments and occurrences from board meetings that took place more than four years ago, irrelevant Executive Orders, alleged discussions between Robert Burns and the Head of Louisiana Boards and Commissions regarding reimbursements by board members, in addition to other immaterial circumstances.

The above referenced portions of Plaintiffs’ Petition for Damages are immaterial, unrelated to Plaintiffs’ claims, and prejudicial to Defendants. Any redundant, immaterial, impertinent, or scandalous matter should not be included in a petition and may be stricken from a pleading.⁴ A motion to strike a pleading is proper if the allegations being challenged are so unrelated to a plaintiff’s claim as to be unworthy of consideration and that their presence in a pleading would be prejudicial to the moving party.

Defendants assert that the above referenced exhibits and portion of the Petition for Damages are irrelevant, immaterial, prejudicial, and unworthy of any consideration. As such, Exhibits “P-1” through “P-6” and the aforementioned portions of the Petition for Damages should be stricken from these proceedings. Additionally, Plaintiffs’ noncompliance with La. C.C.P. Art. 891 and 854 makes it difficult for named Defendants to determine the nature and true meaning of Plaintiffs’ claims. As such, named Defendants are unable to accurately respond to Plaintiffs’ allegations.

Respectfully submitted:

Bankston & Associates, L.L.C.
8708 Jefferson Hwy, Suite A
Baton Rouge, LA 70809
Telephone No.: (225) 766-3800
Fax: (225) 766-7800

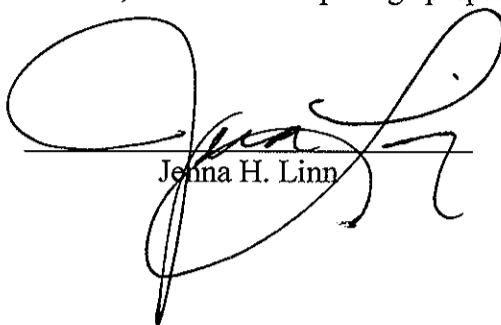


Larry S. Bankston, Bar Roll #02744
Jenna H. Linn, Bar Roll # 33246

⁴La. C.C.P. Art. 964

CERTIFICATE

I hereby certify on this 15th day of April, 2013, a copy of the foregoing pleading was served on Robert Burns, by transmitting a copy of same via electronic mail, facsimile or regular United States mail, properly addressed, and first class postage prepaid.



Jenna H. Linn