



BANKSTON & ASSOCIATES
A LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

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November 7, 2013

Jenna H. Linn
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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.: 619,707; Section 27; 19th Judicial District Court
My File No.: 1107-0004

Dear Sir/Madam:

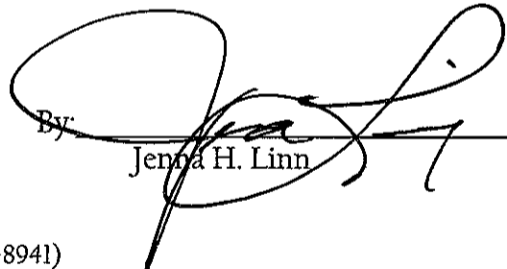
Enclosed please find the original and three copies of a *Dilatory Exception of Non-Conformity and, Alternatively, Motion to Strike*, on behalf of defendant, Louisiana Auctioneer's Licensing Board, et al. Please file the original into the suit record, submit two copies to the sheriff's office for service 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.

Thank you for your attention to this matter and should you have any questions or comments, please do not hesitate to contact our office.

Sincerely,

BANKSTON & ASSOCIATES, L.L.C.

By 
Jenna H. Linn

JHL: jmr
Enclosure: Exception/envelope
cc: Honorable Todd Hernandez (via facsimile no. 389-8941)
Robert Burns (via email only)
Rev. Freddie Phillips (via email only)
Client (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	*	PARISH OF EAST BATON ROUGE
GREGORY L. "GREG" BORDELON,	*	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' *Amendment to Pleadings*, respectfully re-urge their exception of non-conformity as follows:

1.

On or about July 22, 2013, this Honorable Court granted Defendants' Exception of Non-conformity.

2.

Plaintiff was given an opportunity to cure the defects contained in his Petition for Damages.

3.

However, Plaintiffs' *Amendment to Pleadings* still fails 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.

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."

5.

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.

6.

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.

7.

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

8.

Where a plaintiff fails to fully cure the defects raised by a dilatory exception of nonconformity, dismissal of the plaintiff's petition is proper.¹

9.

Further, portions of Plaintiffs' *Original Petition for Damages, Amendment to Pleadings*, and Exhibits are unrelated to Plaintiffs' claims, unworthy of any consideration, and are prejudicial to named Defendants.

10.

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.

11.

Defendants, contend that portions of Plaintiffs' *Petition for Damages and Amendment to Pleadings* which are immaterial, redundant, and impertinent, specifically all Exhibits attached to such pleadings as well as Paragraphs 9, 10, 11, 15, 16, 18, 19, 22, and 23, should be stricken from the pleadings.

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

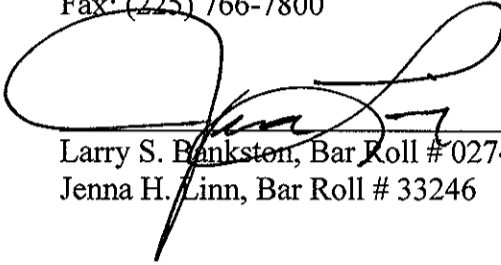
- a. That their exception be maintained and that the above captioned matter be dismissed at Plaintiffs' costs;
- b. Alternatively, that their exception be maintained and that Plaintiffs be ordered to supplement its *Amendment to Pleadings* at Plaintiffs' costs;

¹ *Jones v. Geddis*, 44,215 (La. App. 2 Cir. 4/8/09), 9 So. 3d 1061.

- c. Alternatively, named Defendants pray that the above referenced portions of Plaintiffs' *Petition for Damages and Amendment to Pleadings*, Paragraphs 9, 10, 11, 15, 16, 18, 19, 22, and 23 and all Exhibits, be stricken from these proceedings; and
- d. All other just and equitable relief.

Respectfully submitted:

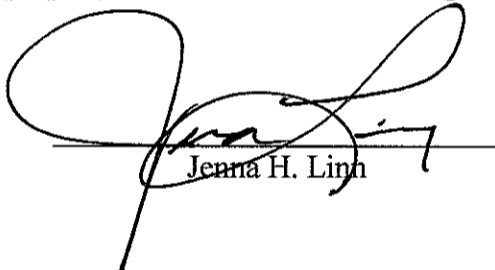
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Larry S. Bankston, Bar Roll # 02744
Jenna H. Linn, Bar Roll # 33246

CERTIFICATE

I hereby certify on this 8th day of November, 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 _____, 201____ 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 _____, 201____ 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 again failed to comply with the provisions of La. C.C.P. Art. 891 and 854. Plaintiffs' *Amendment to Pleadings* 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.² Plaintiffs herein have failed to comply with such duty.

*Jones v. Geddis*³ provides authority herein as it presents a similar situation. In *Jones*, the plaintiff, in proper person, filed suit against defendant. The defendant filed a dilatory exception of nonconformity pointing out that the pleadings failed to comply with La. C.C.P. Art. 891, in that there was no specification of domicile for the parties, and the address designated by the plaintiff was a post office box. The plaintiff was given an opportunity to amend his pleadings to cure the defects. When his amended pleadings failed to fully cure the defects, the trial court dismissed the case. The plaintiff appealed the trial court's decision.

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

³*Jones v. Geddis*, 44,215 (La. App. 2 Cir. 4/8/09), 9 So. 3d 1061.

On appeal, the appellate court recognized that the plaintiff's amended petition provided a physical address for both parties, but had not specified the domicile for the parties. The appellate court held that "the trial court gave the plaintiff an opportunity to amend his pleadings to cure the defects. The plaintiff furnished physical addresses of the parties, but never set forth their domicile. Because the plaintiff did not cure the defects in his pleadings, the trial court acted properly in dismissing the case."⁴

Similarly, in the preset case, Plaintiffs have been given the opportunity to cure the defects of their Petition for Damages. Plaintiffs have failed to fully cure such defects, and therefore dismissal of the case is warranted herein.

Additionally, Plaintiffs continue to 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.⁵ 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.⁶

Plaintiffs' exhibits as well as portions of Plaintiffs' Petition for Damages and Amendment to Pleadings are immaterial, impertinent, and are unessential to Plaintiffs' alleged cause of action. Specifically, the following portions of Plaintiffs' Petition for Damages are immaterial and should not be made a part of such pleading:

- a. Paragraph 9 in its entirety;
- b. Paragraph 10 in its entirety;
- c. Paragraph 11 in its entirety;
- d. Paragraph 15 in its entirety;
- e. Paragraph 16 in its entirety;
- f. Paragraph 18 in its entirety;
- g. Paragraph 19 in its entirety;
- h. Paragraph 22 in its entirety; and

⁴ *Id.* at 1064-65

⁵ *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

⁶ *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

i. 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, irrelevant alleged comments made by board members, 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. Plaintiffs improperly use their Petition for Damages as a public document to display irrelevant and inaccurate contentions regarding the LALB and its members.

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.⁷ 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/Amendment to Pleadings are irrelevant, immaterial, prejudicial, and unworthy of any consideration. As such, all exhibits and the aforementioned portions of the Petition for Damages/Amendment to Pleadings 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:
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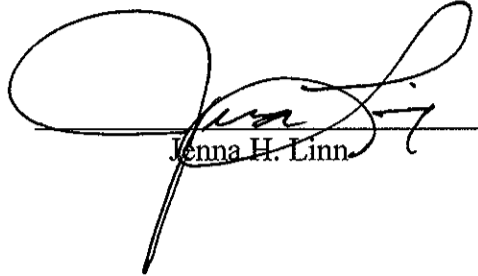


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⁷La. C.C.P. Art. 964

CERTIFICATE

I hereby certify on this 8th day of November, 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