

NORTH CAROLINA
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 8163

STEVEN MCRAE)
)
Plaintiff,)
)
v.)
)
KYLE RUSSELL CURTIS,)
)
Defendant.)
)
)

**RESPONSE IN OPPOSITION TO
DEFENDANT’S MOTION TO STRIKE**

Plaintiff Steven McRae, through his undersigned counsel, submits this Response in Opposition to Defendant’s Motion to Strike.

I. DEFENDANT’S MOTION SERVES TO HIGHLIGHT THE PROCEDURAL UNFAIRNESS OF THIS CASE.

The Complaint in this matter was filed in August 2019, alleging how Defendant had wrongfully and fraudulently obtained complete control of an enterprise he and Plaintiff had collaborated to create, how Defendant used that control to shut Plaintiff out of the enterprise, and how Defendant stole all of the revenues earned. More than a year has now passed, and Defendant has managed to ignore court orders and escape any consequences for his actions. By ignoring his legal obligations, Defendant has essentially been able to file two briefs in support of his motion to set aside (ECF Nos. 20, 31), file a reply brief and affidavit in support of his second motion to set aside even though he had missed the reply brief deadline with respect to his first motion (ECF No. 33), and escape the consequences for his contempt of the Court’s Entry of Partial Judgment by Default because the Court was unable to hold hearings during the time hearings were suspended for the COVID-19 pandemic (ECF No. 26.). As shown in affidavits recently filed with the Court,

Defendant has submitted forged and falsified records to the Court in an increasingly desperate attempt to concoct a story that he did not live where he was served. (See ECF Nos. 38 and 39.)

Defendant has disrespected the Court and made a mockery of this proceeding. His games should no longer be tolerated.

II. THE BUSINESS COURT RULES DO NOT PROHIBIT THE SUPPLEMENTAL AFFIDAVIT.

Defendant cites BCR 7.5, which states that “all materials, including affidavits, on which a motion or brief relies must be filed with the motion or brief.” Defendant asks the Court to read into this rule a prohibition on filing affidavits unless they are filed with a motion or brief. (ECF No. 37 at 2.) But the Rule itself contains no such prohibition.

Next, Defendant refers to the affidavit as “the equivalent of a surreply” and cites cases where motions for leave to file surreply briefs were denied. (ECF No. 37 at 3.) However, the affidavit is not a surreply and merely responds to the allegations set forth in Defendant’s late-filed reply affidavit. Moreover, as Defendant’s Reply brief was not limited to “matters newly raised in the responsive brief,” the Court has discretion to strike it. BCR 7.7.

III. THE RECORDINGS AND VIDEO LINKED IN THE AFFIDAVIT ARE NOT INADMISSIBLE.

Defendant complains that the audio recordings and YouTube link cited in Plaintiff’s Affidavit are inadmissible because they are not authenticated. Both audio recordings include the Defendant actively taking part in group discussions that were open and public. Both were authenticated by Plaintiff as true and accurate recordings. (ECF No. 35 ¶¶8, 9.) To the extent the Court deems it necessary for completeness, attached are declarations from the persons who made the recordings and saved them in the Google drive where they are linked. (Exhibit A.) Similarly, the YouTube video is available on a publicly accessible website and includes video of Defendant

discussing this case. The video link remains live.

If Defendant claims the recordings or video are inaccurate, he is free to dispute that it is his voice in the recordings, dispute that it is his voice and image in the video, dispute that the recordings are accurate, argue that the recordings or video have been altered, or any other grounds he may have to dispute them. This is not a circumstance where internet sources are being introduced as evidence in a manner where the defendant does not have an adequate opportunity to contest the content. Here, it is the Defendant's own words and image at issue. Notably, while one of the recordings and the YouTube video were both cited months ago in the case (ECF No. 22 at ¶ 7), Defendant has made no attempt to dispute the authenticity in any of his affidavits.

IV. THE SUPPLEMENTAL AFFIDAVIT RESPONDS DIRECTLY TO DEFENDANT'S REPLY AFFIDAVIT

Defendant's final complaint is that Plaintiff's supplemental affidavit does not reply to new arguments in Defendant's reply affidavit. In his Reply affidavit, Defendant for the first time states that he "first received a copy of the complaint several months later." (ECF No. 33.1 at ¶ 5.) Plaintiff's affidavit shows that Defendant's new position, which he has only just now brought up more than a year after he was served, is directly contradicted by Defendant's prior public statements that:

- he was going to respond and was "set to rumble" (ECF No. 35 at ¶ 8a);
- he had not actually moved (Id. at ¶ 8b);
- he "missed a filing deadline" (Id. at ¶ 9a);
- he had the "original papers that I was served" which included an "attachment part," which presumably refers to the summons (Id. at ¶ 9b.); and
- he failed to appear and missed the filing deadline (Id. at ¶ 10.).

None of these statements are consistent with Defendant's current position, that he only learned of the Complaint from a video and that he never received a copy of it until "several months later." If any of that were true, the first thing Defendant would have complained about is that he never knew about the deadlines so he could not properly respond.

V. CONCLUSION

For the reasons set forth above, Plaintiff requests that Defendant's Motion to Strike be denied.

Respectfully submitted, this the 9th day of September, 2020.

REVOLUTION LAW GROUP

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BCR 7.8 Certificate of Compliance

I certify that the forgoing brief meets the requirements of BCR 7.8 and does not exceed 7,500 words.

/s/ C. Scott Meyers

C. Scott Meyers

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed with the North Carolina Business Court through its electronic filing system, which will cause a copy to be served electronically on all counsel of record listed below:

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This the 9th day of September, 2020.

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