

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

ROY E. ERWIN, et al.,

Plaintiffs,

v.

BRYAN F. RUSS, JR., et al.,

Defendants.

§
§
§
§
§
§
§
§
§
§

Case No 6:09-CV-127-WSS

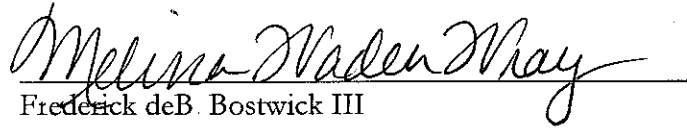
**DEFENDANT BRYAN F. RUSS, JR.'S,
OBJECTIONS, REQUEST FOR PROTECTION, AND ANSWERS
TO ROY E. ERWIN'S FIRST SET OF INTERROGATORIES**

TO: Plaintiff Roy E. Erwin, by and through his attorney of record, Ty Clevenger, Post Office Box 4806, Bryan, Texas 77805.

Defendant Bryan F. Russ, Jr., ("Rusty Russ" or "Defendant") hereby serves his objections, request for protection, and answers to Roy E. Erwin's first set of interrogatories pursuant to the Federal Rules of Civil Procedure. Rusty Russ reserves the right to and will supplement these objections and answers in accordance with the Federal Rules of Civil Procedure.

Respectfully submitted,

**BEARD KULTGEN BROPHY
BOSTWICK DICKSON & SQUIRES, LLP**



Frederick deB. Bostwick III

State Bar No. 02682500

J. David Dickson

State Bar No. 05839500

Melissa Waden Wray

State Bar No. 24008614

Central Tower

5400 Bosque Blvd., Ste. 301

Waco, Texas 76710

(254) 776-5500

(254) 776-3591 facsimile

ATTORNEYS FOR DEFENDANTS MACRU,
LLC; BRYAN F. RUSS, JR.; JAMES H.
McCULLOUGH; PALMOS RUSS McCULLOUGH
& RUSS, LLP; LK&P, LIMITED; OAKS &
DIAMONDS, LLC; VELNON, LLC; DEMINIMUS
MANAGEMENT, LLC; FLARE ROYALTIES
GENERAL PARTNER, LLC; FLARE
ROYALTIES, LP; HEARNE BUSINESS PARK,
LLC; JERRY BAXTER; BRYAN F. RUSS III; AND
MOLLY HEDRICK

CERTIFICATE OF SERVICE

I certify that on September 24, 2010, a true and correct copy of this instrument was served on all counsel of record by first class mail and/or certified mail, return receipt requested, in accordance with the Federal Rules of Civil Procedure.

Ty Clevenger
3131 E. 29th St., Ste. D-200
Bryan, Texas 77802
(979) 530-9523 facsimile
Attorney for Plaintiffs

Clyde Vance Dunnam
Dunnam & Dunnam, LLP
Post Office Box 8418
Waco, Texas 76714
(254) 753-7434 facsimile
Attorneys for Defendants Nestor Leamon and Shirley Bielamowicz

Paul J. McConnell III
DeLange Hudspeth McConnell & Tibbets, LLP
1177 West Loop South, Suite 1700
Houston, Texas 77027
(713) 871-2020 facsimile
Attorneys for Defendants Stephen Boykin and Guaranty Title of Robertson County, Inc.

Larkin C. Eakin, Jr.
Beirne Maynard & Parsons, LLP
1300 Post Oak Blvd., Suite 2500
Houston, Texas 77056
(713) 782-6785 facsimile
Attorneys for Defendant Dona E. Harris

Michael L. Atkinson
Atkinson & Associates, PC
322 Metcalf St.
Conroe, Texas 77301
(409) 756-7719 facsimile
Attorneys for Defendant Dick Milstead

Christopher A. Beck
Baker Beck, PC
202 Avenue A
Conroe, Texas 77301
(936) 494-2445 facsimile
Attorneys for Defendants Catherine Motley and Michael Muzyka

Derrel J. Luce
Law Offices of Derrel Luce
4600 Bosque Blvd , #2B
Waco, Texas 76710
(254) 772-8884 facsimile
Attorney for Defendants Hollie Elliott and Jerry Wayne Nichols


Melissa Waden Wray

**OBJECTIONS, REQUEST FOR PROTECTION, AND ANSWERS
TO INTERROGATORIES**

INTERROGATORY NO. 1:

Please describe the net worth of Defendant for each year from 2003 until 2009.

OBJECTIONS:

Defendant objects to the interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence and it seeks information that is not relevant to the claim or defense of any party. Defendant has a pending dispositive motion that may eliminate any claims for affirmative relief to which the requested information may be relevant. Until the viability of those claims is determined by the Court, discovery of sensitive information of this nature is premature and subject to misuse

Defendant objects to the interrogatory because it seeks confidential information in which Defendant has a reasonable expectation of privacy and, therefore, Defendant seeks protection from the interrogatory.

INTERROGATORY NO. 2:

Please describe any payment, gift, or other financial benefit that Defendant or any company or firm owned (partially or fully) by Defendant provided to Judge Robert M. Stem or any member of his immediate family since January 1, 1999. The term "describe" includes, but is not limited to, the type of payment or gift, its value, and the date it was given. For example, if Defendant helped pay for the wedding of Judge Stem's daughter in Mexico or otherwise made a gift, please describe that payment or gift.

OBJECTION:

Defendant objects to the interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence and it seeks information that is not relevant to the claim or defense of any party.

ANSWER:

Subject to and without waiving the foregoing objection, Defendant answers that he and his wife gave Judge Stem's daughter and her husband a non-monetary wedding gift in or around the summer of 2007. Defendant did not purchase the gift and does not recall what it was.

INTERROGATORY NO. 3:

Please describe any business relationships that Defendant has had with Judge Robert M. Stem, any member of Judge Stem's immediate family, or any entity owned by Judge Stem or any member of his immediate family, at any time between January 1, 2000, and the present. This request includes, but is not limited to, joint ventures or mutual ownership of property.

OBJECTIONS:

Defendant objects to the interrogatory because it is vague in that it fails to adequately define “business relationship”.

Defendant objects to the interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence and it seeks information that is not relevant to the claim or defense of any party.

ANSWER:

Subject to and without waiving the foregoing objections, Defendant answers that he purchased auto insurance through Judge Stem’s wife’s insurance agency from approximately 2005-10. Also, Palmos Russ McCullough & Russ, LLP, in which Defendant is a partner, purchased property insurance on its office building through Judge Stem’s wife’s insurance agency from 2000 until July 2010.

INTERROGATORY NO. 4:

Please describe all companies (other than those publicly traded), firms, partnerships, or other entities in which Defendant owned an interest from January 1, 2003, until the present. The term “describe” includes, but is not limited to, the name of the entity, its other members or owners, its place of formation or incorporation, and its purpose. This request includes domestic and foreign entities.

OBJECTION:

Defendant objects to the interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence and it seeks information that is not relevant to the claim or defense of any party. Defendant has a pending dispositive motion that may eliminate any claims for affirmative relief to which the requested information may be relevant. Until the viability of those claims is determined by the Court, discovery of sensitive information of this nature is premature and subject to misuse.

ANSWER:

Subject to and without waiving the foregoing objection, Defendant answers as follows:

Deminimus Management, LLC – James H. McCullough; Texas; any lawful business purpose.

Flare Royalties, LP – Flare Royalties General Partner, LLC, James H. McCullough; Texas; any lawful business purpose.

Flare Royalties General Partner, LLC – James H. McCullough; Texas; any lawful business purpose.

Hearne Business Park, LLC – Jerry Baxter, James H. McCullough; Texas; any lawful business purpose.

Hearne Hospitality, LLC – Jerry Baxter, James H. McCullough; Texas; any lawful business purpose.

MACRU, LLC – James H McCullough; Texas; any lawful business purpose

Oaks & Diamonds, LLC – James H. McCullough; Texas; any lawful business purpose.

Palmos Russ McCullough & Russ, LLP – James McCullough; Texas; any lawful business purpose

Velnon, LLC – James H. McCullough; Texas; any lawful business purpose

INTERROGATORY NO. 5:

Please describe whether Defendant obtained a waiver from all of his clients in Paragraphs 102-103 of the First Amended Complaint to represent conflicting claims.

OBJECTION:

Defendant objects to the interrogatory because it is vague in that it fails to adequately define or identify any “conflicting claims”.

ANSWER:

Subject to and without waiving the foregoing objection, Defendant answers that he obtained a waiver from the clients referenced in the matter discussed in Paragraphs 102-103 of the First Amended Complaint.

INTERROGATORY NO. 6:

Please describe any properties or bank accounts outside the United States in which Defendant has owned an interest at anytime The term “describe” includes, but is not limited to, the location of the property, its value, and any other co-owners or investors.

OBJECTIONS:

Defendant objects to the interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence and it seeks information that is not relevant to the claim or defense of any party.

Defendant objects to the interrogatory because it seeks confidential information in which Defendant has a reasonable expectation of privacy and, therefore, Defendant seeks protection from the interrogatory.

ANSWER:

Subject to and without waiving the foregoing objections, Defendant answers none

INTERROGATORY NO. 7:

Please describe how Defendant knows and what Defendant knows about Larry Aiken and Delaware Development Company, LLC (“DDC”) (see Paragraph 172 of the First Amended Complaint) This

request includes, but is not limited to, how Defendant became acquainted with Mr. Aiken and DDC, what the nature of their business is, all contact information for Mr. Aiken, and any actual or planned relationships between Mr. Aiken/DDC and Defendant or any entity owned by Defendant.

OBJECTION:

Defendant objects to the interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence and it seeks information that is not relevant to the claim or defense of any party.

ANSWER:

Subject to and without waiving the foregoing objection, Defendant answers that he does not know Larry Aiken and does not know anything about Mr. Aiken or DDC other than what is contained in the allegations he has read in the First Amended Complaint, the truth of which, is general, is in serious dispute

INTERROGATORY NO. 8:

Please describe any hunting, fishing, travel, or vacations Defendant has taken with Judge Robert M. Stem since January 1, 2003. The term "describe" includes, but is not limited to, the nature, dates, and locations of any such activities and who paid for any such activities.

OBJECTIONS:

Defendant objects to the interrogatory because it is vague in that it fails to adequately define "travel".

Defendant objects to the interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence and it seeks information that is not relevant to the claim or defense of any party.

ANSWER:

Subject to and without waiving the foregoing objections, Defendant answers none.

INTERROGATORY NO. 9:

Please describe all organizations or clubs in which both Defendant and Judge Stem are or have been members. The term "describe" includes, but is not limited to, the name and location of the club or organization, the local chapter, and the dates of membership.

OBJECTIONS:

Defendant objects to the interrogatory because it is vague, overbroad, and unduly burdensome, and constitutes a mere fishing expedition.

Defendant objects to the interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence and it seeks information that is not relevant to the claim or defense of any party.

ANSWER:

Subject to and without waiving the foregoing objections, Defendant answers that he does not have personal knowledge of Judge Stem's club memberships, but assumes that Judge Stem is a member of the State Bar of Texas (as is Defendant). Also, Defendant and Judge Stem may have been members of the American Bar Association at the same time. Defendant is not aware of any other organizations or clubs of which both he and Judge Stem are or have been members.

INTERROGATORY NO. 10:

For each and every hotel, motel, or inn owned by Defendant (or any company or entity in which Defendant owns an interest), please describe the annual revenues and business volume of such hotel, motel, or inn since January 1, 2003. This request includes, but is not limited to, the following:

- (a) The total annual revenues and total annual number of guests for each facility broken down by cash and credit card payments; and
- (b) The name, address, telephone number, and any other identifying information (e.g., driver's license or license plate number) of each individual who paid cash, as well as the date(s) and the facility where he/she stayed

OBJECTIONS:

Defendant objects to the interrogatory because it is vague, overbroad, and unduly burdensome, and constitutes a mere fishing expedition.

Defendant objects to the interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence and it seeks information that is not relevant to the claim or defense of any party.

Defendant objects to the interrogatory because it requests information that can be obtained from another source that is more convenient, less burdensome, or less expensive.

INTERROGATORY NO. 11:

Please describe all instances in which Defendant, his law firm, or any of his partners have represented Judge Robert M. Stem or any of his immediate family members in any legal matter. The term "describe" includes the persons represented, the purpose of the representation, the dates of representation, any amounts paid, the number of hours worked, and the name, case number, and jurisdiction of any litigation.

OBJECTIONS:

Defendant objects to the interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence and it seeks information that is not relevant to the claim or defense of any party. Defendant has a pending dispositive motion that may eliminate any claims for affirmative relief to which the requested information may be relevant. Until the viability of those claims is determined by the Court, discovery of sensitive information of this nature is premature and subject to misuse.

Defendant objects to the interrogatory because it seeks information protected by the attorney-client privilege and/or work product doctrine.

INTERROGATORY NO. 12:

Please describe all *ex parte* communications that Defendant or any member of his firm has had with Judge Robert M. Stem since January 1, 2003.

OBJECTIONS:

Defendant objects to the interrogatory because it is vague in that it fails to adequately define the intended scope of "*ex parte* communications."

Defendant objects to the interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence and it seeks information that is not relevant to the claim or defense of any party.

ANSWER:

Subject to and without waiving the foregoing objections, Defendant answers that the only *ex parte* communications Defendant has had with Judge Stem have been in the course of requests for injunctive or other relief that are allowed by law. Defendant does not consider casual greetings or social interaction *ex parte* communications. The only *ex parte* communications by other members of his law firm of which Defendant has personal knowledge have been of a similar nature to those identified by Defendant in this answer.

INTERROGATORY NO. 13:

Please describe all companies, firms, investments, partnerships, bank accounts or other property (other than publicly traded companies) in which Defendant and one or more other named defendants (including terminated or dismissed defendants) in the First Amended Complaint share a joint ownership interest. The term "describe" includes, but is not limited to the name of the property or entity, its value, its location, and its owners.

OBJECTIONS:

Defendant objects to the interrogatory because it is vague in that it fails to adequately define "joint ownership interest".

Defendant objects to the interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence and it seeks information that is not relevant to the claim or defense of any party. Defendant has a pending dispositive motion that may eliminate any claims for affirmative relief to which the requested information may be relevant. Until the viability of those claims is determined by the Court, discovery of sensitive information of this nature is premature and subject to misuse.

Defendant objects to the interrogatory because it seeks confidential information in which Defendant has a reasonable expectation of privacy and, therefore, Defendant seeks protection from the interrogatory.

ANSWER:

Subject to and without waiving the foregoing objections, Defendant answers as follows:

Deminimus Management, LLC – James H. McCullough, Bryan F. Russ, Jr.; Texas.

Flare Royalties, LP – Flare Royalties General Partner, LLC, James H. McCullough, Bryan F. Russ; Texas.

Flare Royalties General Partner, LLC – James H. McCullough, Bryan F. Russ, Jr.; Texas.

Hearne Business Park, LLC – Jerry Baxter, James H. McCullough, Bryan F. Russ, Jr.; Texas.

Hearne Hospitality, LLC – Jerry Baxter, James H. McCullough, Bryan F. Russ, Jr.; Texas.

MACRU, LLC – James H. McCullough, Bryan F. Russ, Jr.; Texas.

Oaks & Diamonds, LLC – James H. McCullough, Bryan F. Russ, Jr.; Texas.

Palmos Russ McCullough & Russ, LLP – James McCullough, Bryan F. Russ, Jr.; Texas.

Velnon, LLC – James H. McCullough, Bryan F. Russ, Jr.; Texas.

VERIFICATION

STATE OF TEXAS

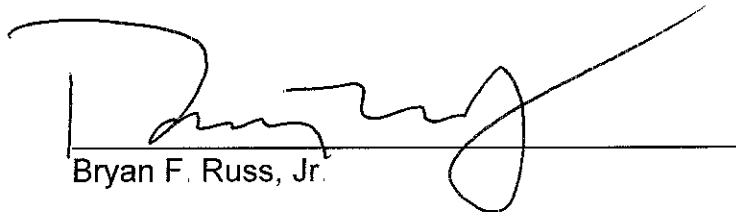
§

COUNTY OF ROBERTSON

§

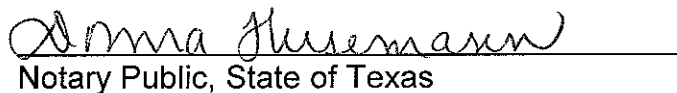
§

Before me, the undersigned authority, on this day personally appeared Bryan F. Rus, Jr., a person whose identity is known to me. After I administered an oath to him, upon his oath he said that he has read the foregoing objections and answers to Roy E. Erwin's first set of interrogatories and that the facts stated therein are within his personal knowledge and are true and correct.


Bryan F. Russ, Jr.

Sworn to and subscribed before me by Bryan F. Russ, Jr., on September 22, 2010.




Notary Public, State of Texas