

3 CIT Sheriff #5
AFFIDAVIT INABILITY TO PAY

ORIGINAL

DC-12-11142

SEP 26 2012

FILED
IN THE DISTRICT COURT OF
2012 SEP 19 PM 4:28
DALLAS COUNTY TEXAS
GARY FITZSIMMONS
DISTRICT CLERK
DALLAS CO., TEXAS
192nd-K
- DEPUTY
SHAZZNIC BECK

PLAINTIFF - ROY PUENTE

VS

DEFENDANT - DONALD SOLOMON
DEFENDANT - GREGG KILHOFFER
DEFENDANT - BEN POLACHEK

COMPLAINT AND JURY DEMAND ON ALL COUNTS

INTRODUCTION

This suit arises out of oral and published false defamatory statements made against Plaintiff Roy Puente. By their actions, included, but not limited to oral and written statements, the Defendant Donald Solomon, the Defendant Gregg Kilhoffer, and the defendant Ben Polachek are in violation of Texas Civil Codes by defaming the character of Plaintiff Roy Puente through libel and slander. As his immediate supervisor, Defendant Donald Solomon made false and defamatory statements to Plaintiff Roy Puente and initiated a defamatory disciplinary meeting with the intent to defame and slur Plaintiff Roy Puente's character as an employee and member of his community in good standing. With that intent, Defendant Donald Solomon knowingly sought to grossly exaggerate statements that were already defamatory in their context as fact about Plaintiff Roy Puente's character and performance as an employee. Based on the type of allegations and the surrounding circumstances as to manner in which these allegations are stated and published about Plaintiff Roy Puente's character as an employee, Defendant Donald Solomon knowingly set out to harm Plaintiff Roy Puente's immediate standing with his company Caven Enterprises, his associates, his friends, and the community; as well as, Plaintiff Roy Puente's future standing with any other company, his associates, his friends and the community. Defendant Donald Solomon makes false, embarrassing, and humiliating statements identifying Plaintiff Roy Puente as the subject of such statements in the presence of other employees. He continues his malicious action by falsely documenting a disciplinary report identifying Plaintiff Roy Puente as the subject of these false and defamatory statements. Defendant Donald Solomon further uses that document to defame and slur the reputation of Plaintiff Roy Puente and attack his competence to perform adequately in his profession by fraudulently misreporting several actions of Plaintiff Roy Puente to Corporate board members Defendant Gregg Kilhoffer and Defendant Ben Polachek. Defendant Gregg Kilhoffer and Defendant Ben Polachek defame and slur the character of Plaintiff Roy Puente by action of negligence in their failure to investigate with due diligence as Corporate board members any allegation that would be made of any ordinary employee in the position of General Manager of similar circumstances based on the outlined allegations. Further, by their participation, attendance and agreement in the actions of the disciplinary meeting held on Monday, September 19, 2011, Defendant Gregg Kilhoffer and Defendant Ben Polacheck attest and affirm the character and actions of Plaintiff Roy Puente, as described by Defendant Donald Solomon, as being true and agreed upon, both as individuals and as a body of

Corporate board members in whole, attacking Plaintiff Roy Puente's competence to perform adequately in his profession. The firing of Plaintiff Roy Puente is then followed up with written and verbal communication to an agent of the Texas Workforce Commission on October 6, 2011, as the malicious and defamatory disciplinary is re-published to and discussed with Michelle Reed for the purpose of aggressively denying Plaintiff Roy Puente any benefits earned and available with Unemployment Benefit Services of Texas. This action to deny Plaintiff Roy Puente said unemployment benefits earned is approved and executed in writing and orally by the Defendant Donald Solomon, the Defendant Gregg Kilhoffer, and the Defendant Ben Polachek with the defamatory disciplinary produced on September 19, 2011, as their grounds for denial.

By the collective oral statements, written accounts, and published accounts to third parties, the actions of Defendant Donald Solomon, Defendant Gregg Kilhoffer, and Defendant Ben Polachek are an attack of Plaintiff Roy Puente's competence to perform adequately in his profession and have inflicted emotional distress and trauma, mental pain, anguish, public embarrassment, humiliation, with immediate and future financial liability placed upon said Plaintiff Roy Puente.

PARTIES

1. Plaintiff Roy Puente is a natural person residing at 3921 Rawlins Street, Apt P, Dallas, Dallas County, Texas 75219; was a resident of Dallas, Texas during all relevant times of this action; and is unmarried.

2. Defendant Donald Solomon is a natural person residing at 4138 Buena Vista Street, Dallas, Dallas County, Texas, 75204; was a resident of Dallas, Texas, during all relevant times of this action; and is unmarried.

3. Defendant Gregg Kilhoffer is a natural person residing at 3509 Longview Street, Dallas, Dallas County, Texas, 75206; was a resident of Dallas, Texas, during all relevant times of this action; and is unmarried.

4. Defendant Ben Polachek is a natural person residing at 116 South Winnetka Avenue, Dallas, Dallas County, Texas 75208; was a resident of Dallas, Texas, during all relevant times of this action; and is married.

COUNT 1: DEFAMATION OF CHARACTER – LIBEL & SLANDER

5. Plaintiff Roy Puente repeats and re-alleges and incorporates by reference the allegations in paragraphs 1, 2, 3, and 4 above with the same force and effect as if herein set forth.

6. Plaintiff Roy Puente was hired in November, 2010, as General Manager of club/bar The Mining Company (TMC) for Caven Enterprises.

7. Plaintiff Roy Puente was hired by the Corporate board that included Defendant Donald Solomon, Defendant Gregg Kilhoffer, and Defendant Ben Polachek
8. Defendant Donald Solomon was/is the Operations Supervisor, Purchasing Director, and immediate supervisor to Plaintiff Roy Puente.
9. Defendant Gregg Kilhoffer is the President of Caven Enterprises and Corporate board member.
10. Defendant Ben Polachek is the CFO of Caven Enterprises and Corporate board member.
11. Defendant Donald Solomon published one or more oral and written false statements as matters of fact which were intended to impugn upon Plaintiff Roy Puente a character of being unstable, dishonest, lacking integrity, lacking virtue; thus challenging his reputation among associates, his friends, and in the community as a moral, upstanding, honest individual capable of being responsible for a career position in a like business setting or venue.
12. On October 6, 2011, Michelle Reed, an agent for the Texas Workforce Commission, engages in a conference call with Scott Stevens, a representative for Caven Enterprises, and Plaintiff Roy Puente. The purpose of the conference call arises out of the written denial by Caven Enterprises board members Defendant Donald Solomon, Defendant Gregg Kilhoffer, and Defendant Ben Polachek to Plaintiff Roy Puente as being eligible for unemployment benefits based on the defamatory statements and actions as outlined in the disciplinary re-published to the Texas Workforce Commission approved by Caven board members Defendant Donald Solomon, Defendant Gregg Kilhoffer, and Defendant Ben Polachek. During that conference call, Plaintiff Roy Puente was forced to self-publish in his response to the state which included, but not limited to, humiliating and embarrassing allegations found in the disciplinary provided to the state by Caven Enterprises board members Defendant Donald Solomon, Defendant Gregg Kilhoffer, and Defendant Ben Polachek.
13. Plaintiff Roy Puente did not receive a copy of the disciplinary write up. Thus, defamatory statements were, including, but not limited to, the following description of a disciplinary meeting held prior to Plaintiff Roy Puente's immediate firing from his position at TMC with Caven Enterprises.
 - a. Approximately 3pm, Monday, September 19, 2011, Plaintiff Roy Puente was asked to attend a meeting in the corporate offices for Caven Enterprises, located at 4018 Cedar Springs Rd., Dallas, Texas, 75219, approximately 1.5 blocks from the bar/club Throckmorton Mining Company, where Roy Puente was working in his office. Roy Puente walked down to the office and was asked to be seated directly in front of Mr. Solomon, approximately 2 ft away, as Defendant Ben Polachek, Defendant Gregg Kilhoffer and Scott Stevens sat to the left of Plaintiff Roy Puente and to Defendant Donald Solomon's right hand side. At that time, Plaintiff Roy Puente was unaware of the

subject matter of the meeting and asked as to the matter. Defendant Donald Solomon produced a disciplinary article that was read aloud to the above mentioned in attendance.

b. The defamatory comments were presented as a whole, though individually stated and read aloud:

1. Donald Solomon stated: "Roy Puente was a "no call/no show" on August 16, 2011."(The date given is 30days prior to date of disciplinary meeting). In approving this statement as part of a whole in firing Roy Puente, Gregg Kilhoffer, Ben Polachek were negligent by their non-action and failure to conduct due diligence with this claim by Donald Solomon. Witnesses, company documents(including an employee disciplinary), security video, security codes, a documented conversation with Donald Solomon, Caven security, TMC's administrative help and Roy Puente the following evening inquiring as to Roy Puente's status from the previous day will show this to be a gross, malicious and intentional fabrication on the part of Donald Solomon.

2. Donald Solomon stated to those in attendance and re-stated to Roy Puente: "You were 15min late to Pride scheduled Sunday". Donald Solomon stated: "You're late... you're 15 minutes late" to Roy Puente inside the TMC (The Mining Club) location at 11am, Sunday, September 18, 2011, in the presence of two Caven employees. Previous to the statement made by Donald Solomon, Roy Puente and Kenneth Ledbetter (assigned administrative help by Donald Solomon and Corporate board members Gregg Kilhoffer and Ben Polachek) had received no communication in any form, including those forms as is ordinarily accepted or expected from a supervisor to an employee, for direction or changes in hours of operation for the club TMC – no direct verbal notification, no email, not discussed in a company meeting, no company memo or notice. Previous to Sunday, September 18, 2011, TMC hours of operation for opening of business was 5pm on Sundays. Previous to Sunday, September 18, 2011, Donald Solomon had never accompanied General Manager Roy Puente and the TMC staff at any time to ensure the time schedule for opening business was adhered to by the staff members of TMC. On the morning of Sunday, September 18, 2011, Donald Solomon conducted no conversation with Roy Puente outside of the above noted statement. However, Roy Puente immediately followed up with a statement and question to Donald Solomon as he walked away from Roy Puente: "We don't normally open until 5pm. We decided to open up early and I'm glad we did. Donald?... Donald?... May I please have an explanation how I'm 15 minutes late?" No response was given by Donald Solomon. He continued walking away and thru the exit door next to the dj booth. It was clear to Roy Puente and the two Caven employees in the immediate vicinity witnessing the conversation that Donald Solomon's intent was to clearly notify Roy Puente of a failure on his part and Donald Solomon's disapproval of Roy Puente's stated action as an employee. Roy Puente pleads with the court to please take note that from opening TMC's doors at 11am, Sunday, September 18, 2011 until the end of the disciplinary hearing in which Roy Puente was fired, Monday, September 19, 2011, Roy Puente had in fact worked 25 hours in two days. Roy Puente worked on Sunday, September 18, 2011, from 11am until approximately 4am; then

returning back to the TMC office at 9am until he was fired at approximately 4pm. Roy Puente also asks the court to please take note that documentation can and will be provided, if called upon, to show Roy Puente worked over 700 hours overtime or beyond his scheduled 40 hours in the 10 months employed as a salaried manager of Caven Enterprises. During those 10 months, Roy Puente had never been admonished, chastised, verbally warned, or disciplined in any manner of form for his inability or failure to "open" the club/bar TMC per scheduled time.

3. Donald Solomon stated: "\$75 is missing from the safe." As General Manger, Roy Puente was entrusted with expense money up to \$250-\$300 and instructed by Donald Solomon, Ben Polachek, Gregg Kilhoffer or some other authorized accounting person to sign for said amounts and return to the accounting department the audited receipts and/or change in total of original amount received. For the 3-5 times an expense amount had been issued from the accounting department, an expense amount of \$300 for Christmas decorations was the only time a definite time constraint accompanied the cash amount issued to Roy Puente. This statement of "\$75 missing from safe" is made in part and as a whole for Roy Puente's disciplinary to intentionally slur his character and reputation as a person who is dishonest. The \$75 in cash was returned to Donald Solomon approximately 25 minutes later by Roy Puente, when escorted back to the TMC office to retrieve his personal belongings. The cash was complete and held in whole in the same envelope... with the same original handwriting on the outside of the envelope when received by Roy Puente. Roy Puente was instructed to remove the \$75 from the safe when he was specifically told by Donald Solomon to use his own vehicle to purchase a plant for the club/bar TMC. Donald Solomon had full knowledge that the \$75 cash would not be in the safe on those days Roy Puente was following his specific instructions to purchase the item himself and to make sure the plant came with a warranty and to use his (Roy Puente) own vehicle. Donald Solomon had already been kept up to date by Roy Puente and another Caven employee that on two occasions the purchased plant would not fit into his Lincoln Town Car. By publishing the statement in a disciplinary form and further using that disciplinary to enact the firing of Roy Puente, Donald Solomon's actions infer that Roy Puente was a thief when, in fact, he was not.

4. Donald Solomon stated to those in attendance and re-stated to Roy Puente that the harmony of the entire block during Pride weekend was disrupted and drama was created when Roy Puente burst or barged into the adjoining S4 (Caven club) office on Saturday, September 17, 2011. As witnessed by two managers of Caven Enterprises, this description or accounting has been grossly embellished by Donald Solomon for use as a disciplinary tool to bolster his false claims for firing Roy Puente. Based upon how a reasonable person of ordinary intelligence would perceive this disciplinary allegation, considering the surrounding circumstances and the context of the previous false statements, Donald Solomon's intent was to harm Roy Puente's reputation as a stable manager, noting the disruption had taken place over the entire course of the weekend. The statement made by Donald Solomon is not expressed as an opinion, but rather as fact attesting to a reckless individual affecting numerous people over

the course of an entire weekend and specifically naming Roy Puente as being responsible for the said effect.

5. Donald Solomon made a statement to those in attendance that invoices had not been properly reviewed from a contract labor company for the date specified as August 16, 2011. In addition, he stated that Roy Puente had made schedule changes without making necessary notices available to employees within 24 hours and was responsible for a missing bank or change bag from the previous day of business. All allegations are defamatory in their context as showing an inability on the part of Roy Puente to follow company policies or perform duties directed to him as outlined in the job description as General Manager. These allegations are set forth in the context that slurs Roy Puente's character due to his inability to perform job duties or functions assigned to him or an understanding of company policies and procedures. In addition, the allegations attack Roy Puente's competence and ability to perform adequately in his position. Witnesses, including Caven employees, and evidence will show a negligence on the part of Defendant Gregg Kilhoffer and Defendant Ben Polachek in their lack of due diligence in investigating this allegation.

14. Plaintiff Roy Puente is not a public figure.

15. Based on their actions, these false oral and published statements are imputed by Defendant Donald Solomon, Defendant Gregg Kilhoffer, and Defendant Ben Polachek against Plaintiff Roy Puente. The false allegations and slurs are intended to impugn Plaintiff Roy Puente's character by Defendant Donald Solomon, Defendant Gregg Kilhoffer, and Defendant Ben Polachek including his honesty, integrity, virtue, and reputation. The false oral and written statements by Defendant Donald Solomon are further presented in an employee disciplinary form that he was unstable or acted in poor judgment that affected an entire block of employees and non-employees over an entire weekend – all have defamed Plaintiff Roy Puente. By lack of due diligence, agreeing with the actions or result of the disciplinary meeting with Plaintiff Roy Puente, Defendant Gregg Kilhoffer and Defendant Ben Polachek commit an action of defamation due to negligence.

16. Each of the defamatory statements which are the subject of this lawsuit is false.

17. The defamatory statements resulted in immediate and future financial liability to Plaintiff Roy Puente.

19. Each of the defamatory statements were published and/or stated with the intent to identify Roy Puente as the sole person of such statements by communication or print.

20. Each of the defamatory statements were published and/or stated with negligence – that is, it is made with knowledge of its falsity and with reckless disregard as to its truth by statement of fact or lack of due diligence. The defamatory statements, known to be false, are then used with reckless disregard with reference to Plaintiff Roy Puente's employment, reputation, and good standing with the community.

21. A qualified privilege to make a statement exists when the person making the statement makes it in good faith on a subject matter in which the speaker has a common interest with the other person, or with reference to which the speaker has a duty to communicate to the others. Defendants Donald Solomon, Gregg Kilhoffer, and Ben Polachek are not protected under the defense of privilege.

a. Defendant Donald Solomon abused his defense of privilege as a supervisor when he decided to make calculated false defamatory statements with negligence – that is, with knowledge of its falsity and with reckless disregard as to its truth. The oral and published defamatory statements were not made, nor presented in good faith.

b. Defendant Gregg Kilhoffer abused his defense of privilege as an employer when he was negligent in his due diligence with regard to the investigation of allegations brought forth in the employee disciplinary and the re-published statements made against Plaintiff Roy Puentes on October 6, 2011. Defendant Gregg Kilhoffer's actions as part of a Corporate board and as an individual showed an extreme lack of good faith.

c. Defendant Ben Polachek abused his defense of privilege as an employer when he was negligent in his due diligence with regard to the investigation of allegations brought forth in the employee disciplinary and the re-published statements made against Plaintiff Roy Puentes on October 6, 2011. Defendant Ben Polachek's actions as part of a Corporate board and as an individual showed an extreme lack of good faith.

COUNT 2: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

22. Plaintiff Roy Puentes repeats, re-alleges and incorporates by reference the allegations in paragraphs 1 through 21 above with the same force and effect as if herein set forth.

23. By their actions, Defendant Donald Solomon, Defendant Gregg Kilhoffer, and Defendant Ben Polachek intentionally and deliberately inflicted emotional distress and humiliation on Plaintiff Roy Puentes by defaming him to many people, including but not limited to the following: associates, friends, Scot Stevens, Kenneth Ledbetter, Gregg Kilhoffer, Ben Polachek, Rob Webb, Matthew Louzau, Michelle Reed of Texas Workforce Commission and Unemployment Benefit Services, and self-published through the career applications of many companies such as Lowe's, Federal Express, and UPS when asked for a "reason for leaving the company" when making applications to the above mentioned companies.

24. As a result of Defendant Donald Solomon's, Defendant Gregg Kilhoffer's, and Defendant Ben Polachek's extreme and outrageous defamatory conduct, Plaintiff Roy Puentes was, is, and, with a high degree of likelihood, will continue to be emotionally distressed, embarrassed, and humiliated due to this action of defamation against him.

25. As a result of Defendant Donald Solomon's, Defendant Gregg Kilhoffer's, and Defendant Ben Polachek's extreme and outrageous defamatory conduct, Plaintiff Roy

Puente has suffered and will continue to suffer mental pain, anguish, and severe emotional trauma due to this action of defamation against him.

WHEREFORE, Plaintiff Roy Puente demands judgment against Defendant Donald Solomon, Defendant Gregg Kilhoffer, and Defendant Ben Polacheck for compensatory general and special damages in the amount of \$350,000 and punitive damages in an amount deemed by the court or jury at time of trial to be just, fair, and appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Roy Puente', with a long horizontal flourish extending to the right.

PLAINTIFF ROY PUENTE,
Pro Se

September 19, 2012

3921 Rawlins St, APT P
Dallas, TX 75219

214.929.5999

4018 CEDAR SPRINGS RD

~~DE S, TX 75219~~

DALLAS, TEXAS

75219