

District Court, Weld County, Colorado Address: P.O. Box 2038 Greeley, CO 80632	
CRAIG D. BUCKLEY, an individual, v. DREAM STONE, INC., a Colorado corporation, SCOTT MURPHY, an individual, EVE MURPHY, an individual, RON MURPHY, an individual	▲ COURT USE ONLY ▲
Attorneys for Defendants: Daniel T. Goodwin, #2971 Blaine D. Bowne, #24481 Donelson Ciancio & Goodwin, PC 8001 Arista Place, Suite 400 Broomfield, Colorado 80021 Telephone: 303-450-1665 Fax: 303-457-1175 E-mail: dangoodwin@colo-law.com blainebowne@colo-law.com	Case No. 2009CV991 Division: 1 Courtroom: Judge Hartman
DEFENDANTS' RESPONSE TO MOTION FOR SETTLEMENT CONFERENCE	

Defendants, by and through their attorneys, Donelson, Ciancio & Goodwin, P.C., respond to Plaintiff's Motion for Settlement Conference, as follows:

1. The Plaintiff's motion amounts to nothing more than a continuing diatribe against the Defendants and their counsel. However, Plaintiff frames the sole issues which form the basis of his Complaint, i.e. his claims are limited to "approximately \$840.00 in vacation pay, and a few months of Unemployment Compensation." (See, Paragraph 1 of Plaintiff's Motion for Settlement Conference).

2. Plaintiff admits that he has "no reasonable chance of prevailing." (See, Paragraph 4 of Plaintiff's Motion for Settlement Conference). He is correct in that admission, but the reason is that his claims are not justified.

3. Plaintiff further admits that he has gained the advice of counsel and, after conferring with counsel, desires to "extricate himself from this case via a Settlement Conference before the Court," the purpose being to "end this matter." (See, Paragraph 5 of Plaintiff's Motion for Settlement Conference).

4. The Plaintiff actually requests that his case be dismissed as "allowing this case to continue will cause the loss of Plaintiff's home, as he is currently unemployed due to the rigorous, unrelenting demands of fighting the Defendants." (See, Paragraph 8 of Plaintiff's Motion for Settlement Conference).



5. Plaintiff has admitted in his previous pleadings that he sought, and has been awarded, unemployment benefits from Dream Stone, Inc. (See, Plaintiff's Complaint, especially Paragraphs 25 and 31; See, Plaintiff's First Amended Complaint Paragraph 18). Plaintiff's apparent claims for a further award of unemployment benefits from this Court is barred by res judicata.

6. Plaintiff has admitted that he has filed a claim with the Colorado Department of Labor and Employment seeking an award for payment of alleged vacation pay due him. A copy of Plaintiff's "Claimant Response" filed with the Colorado Department of Labor and Employment-Labor Relations seeking vacation pay from Dream Stone, Inc., in Claim Number: 0444-10 is attached hereto as Exhibit 1.

7. The Plaintiff did not file this action seeking review of the unemployment benefits award but rather filed it as a first party cause of action for additional benefits ("a few months of unemployment compensation") arising out of his employment with Dream Stone, Inc.

8. Further, as to the issue of vacation pay, Plaintiff chose the Colorado Department of Labor and Employment ("CDLE") as the forum to decide the issue. The CDLE has not issued an order which Plaintiff seeks to have this Court review. This Court lacks the subject matter jurisdiction to hear Plaintiff's claims regarding unemployment benefits or wage issues against Dream Stone, Inc. The Plaintiff's claims must be resolved by the proper administrative agency. Stacks v. The Industrial Commission, et al., 65 Colo. 20; 174 P. 588; (1918).

9. Even reading the Plaintiff's claims in a light most favorably to him, each and every one of his causes of action arise out of injuries he alleges to have sustained as a result of his status as an employee of Dream Stone, Inc. Plaintiff's sole and exclusive remedy for physical or mental injuries incurred in the workplace is Worker's Compensation, which has pre-empted judicial jurisdiction of workplace damages claims, except for review of agency awards. Again, the District Court lacks the subject matter jurisdiction to hear Plaintiff's suit.

10. Defendants' challenge to the Court's subject matter jurisdiction herein is timely brought. The Town of Carbondale v. GSS Properties, LLC, 169 P.3d 675 (Colo. 2007).

11. Though inarticulately pled, Plaintiff has requested that the Court dismiss this matter pursuant to C.R.C.P. 41(a). The Defendants do not object to dismissal of Plaintiff's case with prejudice. Plaintiff's request for dismissal is made after consultation with an attorney licensed in Colorado, and, as alleged by Plaintiff, upon the attorney's advice.

12. Plaintiff has not shown the necessity for a Settlement Conference to obtain a dismissal of his case, and Defendants do not request a Settlement Conference and advise the Court that a Settlement Conference will not resolve this case. Plaintiff's claims are unwarranted, frivolous, groundless and vexatious. Defendants are prepared to defend their reputations from all of Plaintiff's claims. A Settlement Conference would invariably be used by the Plaintiff as a bully pulpit to continue to disparage the Defendants on the record.



13. Plaintiff's Motion provides the Court with additional reason to grant Defendants' Motion to Dismiss Plaintiff's Suit With Prejudice Pursuant to C.R.C.P. Rule 37(d) and Rule 41(b), or in the Alternative for Entry of Default Judgment, and for Hearing.

WHEREFORE, Defendants confess Plaintiff's Motion for Settlement Conference to the extent that the relief granted is limited to dismissal of Plaintiff's case with prejudice.

Respectfully submitted this 7th day of May, 2010.

DONELSON CIANCIO & GOODWIN, P.C.

s/Daniel T. Goodwin, Esq.

Daniel T. Goodwin, Esq., 2971

Blaine D. Bowne, Esq., #24481

Attorneys for Defendants

Pursuant to C.R.C.P. 121 §1-26(9), a printed copy of this electronically-filed document with original signatures is being maintained at the offices of Donelson Ciancio & Goodwin, P.C. and is available for inspection by other parties or the court upon request.

CERTIFICATE OF SERVICE

I do hereby certify that on this 7th day of May, 2010, a true and correct copy of the foregoing **DEFENDANTS' RESPONSE TO MOTION FOR SETTLEMENT CONFERENCE** was served via Lexis/Nexis File & Serve:

Craig Buckley

[REDACTED]

Longmont, CO 80501

[REDACTED]

s/Janice Bennett



From: Eve Murphy [mailto:emurphy@dreamstoneinc.com]
Sent: Thursday, May 06, 2010 2:55 PM
To: Juanita Wright
Cc: 'Dan Goodwin'
Subject: Craig D. Buckley - Complaint 0444-10



Dear Juanita:

In our preliminary discussion yesterday you mentioned that if Mr. Buckley were pursuing the unemployment claim in his court case in weld Countyt that CDLE would not pursue it. I have talked to our attorney and yes, indeed, Mr. Buckley has made the CDLE part of his complaint in Court. I attached his latest pleadings that reference that fact, see paragraphs 6-9 of his Motion to Strike Answer to Amended Complaint, and also in his pleading Motion for Settlement Conference, paragraph 1. I can provide other documentation if you need it, but these are the latest pleadings received from him.

If you have any questions, or need further information, please contact me.

Eve Murphy

Juanita Wright

From: Eve Murphy [emurphy@dreamstoneinc.com]
Sent: Wednesday, May 12, 2010 9:18 AM
To: Juanita Wright
Cc: 'Dan Goodwin'
Subject: Craig Buckley

COPY

Hi:

I just wanted to confirm in writing our conversation this morning regarding the email I sent you May 6, 2010, regarding Mr. Buckley and the fact that he has made the vacation pay part of his Weld County lawsuit. During our discussion you asked if I had a problem if you forwarded what I sent you to Craig. I responded that it would not be a problem since these documents were created by him. I also indicated that I had other documents he has filed that substantiate that vacation pay is part of his lawsuit.

You also told me that after you had an opportunity to look over what I sent that you and I would talk.

Eve

Juanita Wright

Buckley v. Weld County District Court et al.
TRO Mot - Exhibit # 14

From: Eve Murphy [emurphy@dreamstoneinc.com]
Sent: Wednesday, May 12, 2010 12:13 PM
To: Juanita Wright
Cc: 'Dan Goodwin'
Subject: RE: Craig D. Buckley - Complaint 0444-10

Dear Juanita:

Thanks for responding and clearing up my misunderstanding. I assumed that the vacation pay issue was with CDLE/unemployment. However, now knowing that you are with the Division of Labor does not affect anything. The "vacation" issue is part of his lawsuit in Weld County, as is evidenced by his own filings that I sent you. However, if Mr. Buckley did not divulge to you that the issue was not part of his lawsuit in Weld County, then he was not being truthful. I hope that these documents prove his dishonesty in dealing with your agency. For the record, Mr. Buckley has filed against our company with every agency in existence, made outrageous claims that we have disproved, all being part of his continued harassment of our company.

Also, again for the record, Craig Buckley is not due vacation pay. Had he been eligible for vacation, he would have been paid.

As I informed you, he has filed other paperwork in Court that clearly prove that his claim for vacation pay is part of that lawsuit. If you need copies, please email me. And, if you have any questions, please do not hesitate to contact me.

Eve

From: Juanita Wright [mailto:Juanita.Wright@state.co.us]
Sent: Wednesday, May 12, 2010 10:32 AM
To: Eve Murphy
Subject: RE: Craig D. Buckley - Complaint 0444-10
Importance: High

Just to provide clarification to your statement, " In our preliminary discussion yesterday you mentioned that if Mr. Buckley were pursuing the unemployment claim in his court case in weld County that CDLE would not pursue it".

During our discussion, you referenced the matter (unpaid vacation) being filed in court. I advised you that I had been informed the matter was not being handled through court. My recollection of my comment and/or statement to you was, "if you are telling me the unpaid vacation is being handled in court, the Division of Labor would not/does not have statutory authority to become involved". You then reiterated, the matter was in court and you would provide verification; which you recently emailed me.

Because I don't work for Unemployment Insurance, I would have no authority to get involved in Unemployment Insurance issues. However, since I work for the Division of Labor, we have statutory authority in administering the Colorado Wage Act (CRS 8-4-101 et. seq.). As you may already know, the Act requires Colorado employers to pay employees their earned wages in a timely manner. The law addresses deductions from wages, vacation, commissions, bonuses, final pay, pay periods, paydays, and pay statements.

Before I copy Mr. Buckley in this email, I wanted you to have the opportunity to read and provide any necessary comments, adjustments or any further discussion with me concerning my understanding of our conversation.

3/25/2011

Juanita Wright

From: Eve Murphy [emurphy@dreamstoneinc.com]
Sent: Wednesday, May 12, 2010 12:39 PM
To: Juanita Wright
Cc: 'Dan Goodwin'
Subject: RE: Craig D. Buckley - Complaint 0444-10



Hi:

I really need to proofread a little better. . . . I meant to say in my email just sent to you. . . "However, if Mr. Buckley did not divulge to you that the issue was part of his lawsuit in Weld County, then he was not being truthful." Sorry for the confusion. . .

Eve

From: Juanita Wright [mailto:Juanita.Wright@state.co.us]
Sent: Wednesday, May 12, 2010 10:32 AM
To: Eve Murphy
Subject: RE: Craig D. Buckley - Complaint 0444-10
Importance: High

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Before I copy Mr. Buckley in this email, I wanted you to have the opportunity to read and provide any necessary comments, adjustments or any further discussion with me concerning my understanding of our conversation.

Juanita E. Wright
Compliance Officer
303.318.8444 w#
303.318.8400 f#

The Division of Labor (DOL) within the Colorado Department of Labor and Employment functions only in an administrative capacity for the State. Neither general information nor the specific answer to any question by DOL, should be accepted as a legal opinion. Only an attorney may provide a legal opinion and the writer is not an attorney.

From: Eve Murphy [mailto:emurphy@dreamstoneinc.com]
Sent: Thursday, May 06, 2010 2:55 PM
To: Juanita Wright

10/12/2010

Craig Buckley

From: "Juanita Wright" <Juanita.Wright@state.co.us>
To: "Craig Buckley" <cdbuckley@comcast.net>
Sent: Wednesday, May 12, 2010 4:23 PM
Attach: Dream Stone Marble - #2 Buckley_09-340504MOTNMotion for Settlement
Conference552010154324.pdf
Subject: LC# 0444-10

The conference call between your former employer, Eve, and I did not take place yesterday as scheduled. However, I did speak with her today.

Do you remember me stating if the matter of your complaint regarding unpaid vacation was being handled in court, the Division of Labor (DOL) lacks statutory authority? Therefore and because your claim has been filed/appears to be filed through court, DOL lacks the ability to become and/or to stay involved; DOL does not have statutory authority over the court(s). DOL is required to close your claim for unpaid vacation pay.

I am scheduled to be out of the office tomorrow, Friday, May 14. I should be unavailable Tuesday, May 18, if you should need to speak directly to me.

Juanita E. Wright
Compliance Officer
303.318.8444 w#
303.318.8400 f#

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