

IN THE DISTRICT COURT, HARRIS COUNTY

189th Judicial District

Robert J. Kruckemeyer)	MOTION TO STRIKE
)	PLAINTIFF'S FIRST
Plaintiff)	AMENDED PETITION
)	No. 2023-11266
)	
vs.)	
)	
Blogger Inc. D/B/A/, LAWIN)	
TEXAS.COM)	
)	
)	
Defendant)	
)	
)	
)	

MOTION TO STRIKE PLAINTIFF'S FIRST AMENDED PETITION

Defendants, Counter-Plaintiffs and Third-Party Plaintiffs Mark Burke, individually, and on behalf of Blogger Inc., and Joanna Burke ("The Burkes"), file this Motion to Strike for the following reasons;

TIMELINE OF EVENTS

On Feb 21, 2023, the Plaintiff's Original Petition And Application For Permanent Injunction [docketed](#).

On May 1, 2023, "Defendant's Original Answer and Jury Demand" was filed by Imposters and Co-Conspirators David Oubre and Jason Powers of Lewis Brisbois on behalf of Berkshire Hathaway Direct Insurance Company ("Imposters and Co-Conspirators") allegedly representing Blogger, Inc. without capacity, nor any documented authority to do so.

On May 11, 2023, Bob registered "The Kruckemeyer Law Firm" as a DBA in Harris County.

On May 30, 2023, "Defendant's Motion to Dismiss Pursuant to the Texas Anti-Slapp Law, Texas Civil Practice & Remedies Code 27.001 et seq." was filed by Imposters and Co-Conspirators David Oubre and Jason Powers of Lewis Brisbois on behalf of Berkshire Hathaway Direct Insurance Company ("Imposters and Co-Conspirators") allegedly representing Blogger, Inc. without capacity, nor any documented

authority to do so.

On Jun 5, 2023, “Plaintiff’s First Amended Original and Application for Permanent Injunction” [docketed](#), adding new parties. The causes of action remain the same.

On Jun 6, 2023, Imposters and Co-Conspirators file “Motion to Withdraw” with a hearing scheduled for July 25, 2023, walked back mid-afternoon the same day to a setting by submission (date, Jun 19, 2023).

On Jun 15, 2023, “Defendants Mark Burke and Joanna Burkes Original Answer and Jury Demand” and “ORIGINAL COUNTERCLAIM AND APPLICATION FOR PERMANENT INJUNCTION” by the real parties in interest docketed.

On Jun 26, 2023, Plaintiffs Notice of Dismissal of Joanna Burke without Prejudice filed.

On Jun 27, 2023, the “First Amended Counterclaim/Third Party Petition and Application for Permanent Injunction” by the real parties in interest docketed.

FACTS, ARGUMENT AND AUTHORITIES

Relying upon real parties in interest The Burkes appearance, pleadings including addendums, verifications, and declarations, the “Plaintiff’s First Amended Original and Application for Permanent Injunction” as docketed on Jun 5, 2023 should be stricken from the record and the complaint dismissed with prejudice.

In The Burkes pleadings, they assert debt collecting Texas Lawyer Robert Kruckemeyer (“Bob”) and Texas Lawyer Randall Sorrels (“Randy”) lack authority and capacity, along with David Oubre, Jason Powers, Lewis Brisbois and BHDIC.

In their pleadings, The Burkes specifically asked the court to set a hearing or rule on this matter. To date, the court has not set any hearings, requested briefing, nor released any Orders related to this civil action.

The Burkes contest the Plaintiff’s Amended Petition should be stricken. Whilst it is recognized in *Deadmon v. Dallas Area Rapid Transit*, 347 S.W.3d 442, 444 (Tex. App. 2011) that “an amended petition

supplants any earlier petition ”, citing to Tex. R. Civ. P. 65 may overcome The Burkes objection to Bob’s perjurious affidavit¹ as to his non-existent entity “The Kruckemeyer Law Firm” at the time of filing his verified Original Petition, and/or relying upon TEX. R. CIV. P. 28, it should be stricken and dismissed with prejudice for at least three reasons.

A comparison of the facts of each Petition confirms the only changes include the addition of; (i) new parties, namely Mark Burke and Joanna Burke; (ii) an updated signature page changing the original petition from “Pro Se” to “Attorneys for Plaintiff” (see side-by-side [image](#) comparison); (iii) the unchanged content of the affidavit, with the exception of the updated signature, date and notary, and (iv) the arguments in The Burkes counterclaim, including the “Actual Fraud” section. Relevant here is (ii), (iii) and (iv).

First, the underlying facts alleged in the Amended Petition remain

¹ See; Addendum K, section “Perjury”, Image No. 108883357; Exhibit: “Perjury & DBA Registration”.

the same, and taken as true, Bob has perjured himself because “The Kruckemeyer Law Firm” (“Firm”) did not exist until May 2023. Bob’s complaint revolves around his Firm’s debt collection practices, which did not legally exist at the time of the alleged defamatory article. See image version of Original Petition at 12, stating LIT’s article was published on Jun 22, 2022;

12. On June 22, 2022, LawIn Texas published an article on its Laws In Texas website. The headline reads: “Cowboy Lawyer Robert J. Kruckemeyer of The Kruckemeyer Law Firm Violate Texas Laws.” The sub-heading reads: “Lawyer Robert J Kruckemeyer has held a Texas Bar license for nearly 40 years. He is unlawfully filing for garnishment, and approved by judge.” (the “Article”). The byline for the Article reads that it was by: “justicefortexas.” A true and correct copy of the Article is attached hereto as Exhibit 1.

And then compare the content of the Amended Petition at 15;

15. On June 22, 2022, LawIn Texas and Burke published an article on the Laws In Texas website. The headline reads: “Cowboy Lawyer Robert J. Kruckemeyer of The Kruckemeyer Law Firm Violate Texas Laws.” The sub-heading reads: “Lawyer Robert J Kruckemeyer has held a Texas Bar license for nearly 40 years. He is unlawfully filing for garnishment, and approved by judge.” (the “Article”). The byline for the Article reads that it was by: “justicefortexas.” A true and correct copy of the Article is attached hereto as Exhibit 1. Upon information and belief, the author(s) of the Article was either MBurke, JBurke or both.

The Burkes interpretation is supported when applying the textual

interpretation, see; Tex. R. Civ. P. 93: “14. That a party plaintiff or defendant is not doing business under an assumed name or trade name as alleged.”; “4. That there is a defect of parties, plaintiff or defendant.”; “2. That the plaintiff is not entitled to recover in the capacity in which he sues, or that the defendant is not liable in the capacity in which he is sued.”; “1. That the plaintiff has not legal capacity to sue or that the defendant has not legal capacity to be sued.”. Additionally, further into the Amended Petition, at 18 D), Bob complains of LIT’s description – a “Rogue Debt Collection **Law Firm** in Houston” (emphasis added).

Whilst the LawsInTexas.com (“LIT”) article mentioned Bob, it is only in his ‘capacity’ as owner of “The Kruckemeyer Law Firm”, as Bob admitted in both affidavits, see; Addendum K, p. 3. Bob may amend his Petition, but the underlying facts have not changed. For those reasons, striking the Petition is warranted.

Second, the signature page in the Amended Petition alleges that Randy’s Firm is now lead counsel and Bob’s Firm is acting as joint counsel.

As pointed out in Addendum K, p. 14-16 this cannot stand, in law.

Third, relying upon the arguments in the counterclaim (Addendum K), actual fraud defeats an attempt to amend a Petition, see; *Muniz v. State*, 575 S.W.2d 408, 411 (Tex. Civ. App. 1979), and generally;

“An attorney must be held to a more strict standard than the layman because of the position of public trust which he enjoys. As such, his standard of conduct must be high. A lawyer assumes a position of responsibility to the law itself, and any serious disregard of the law by him or her is much more grave than that by the layman who may breach the law innocently or otherwise. A lawyer has always been regarded as an officer of the court. He is charged with obedience to the laws of this State and of the United States.”

This is further evidenced by Bob’s non-existent entity and failure to register “The Kruckemeyer Law Firm” under an assumed name is a violation, a misdemeanor in Texas Law.

See; *Seidler v. Morgan*, 277 S.W.3d 549, 555 n.3 (Tex. App. 2009);

“The Texas Business and Commerce Code contains a requirement in Texas that if an entity regularly conducts business under an assumed name, it must file a certificate with information about the business. TEX. BUS. COM. CODE ANN. §§

36.10, 36.11 (Vernon 2002) (violation is a misdemeanor (TEX. BUS COM. CODE ANN. § 36.26 (Vernon 2002))).”

Indeed, as stated in Addendum K, p. 3, “The Kruckemeyer Law Firm” did not exist until May 11, 2023, after the date this civil action commenced but before the real parties in interest, The Burkes responded, raising this issue for the first time.

Clearly, Bob was aware of his decades of non-compliance with Texas law and acted on his own initiative to belatedly correct the misdemeanor, however, that only affirms The Burkes arguments here.

See; *Pelletier v. Vict. Air Conditioning, Ltd.*, No. 13-20-00011-CV, at *26-27 (Tex. App. Jan. 6, 2022) (explaining moving of assets to avoid a judgment and/or garnishment is evidence of ‘actual fraud’). As outlined, the same ‘actual fraud’ applies to these proceedings.

REQUEST FOR A MOTION HEARING

The Burkes formally request a motion hearing be set. In anticipation, they will confer with the parties after obtaining dates two available dates

from the court, and upon agreement of the parties will notice the same formally on the docket.

CONCLUSION

The Burkes Motion to Strike Plaintiff's First Amended Petition should be GRANTED and the complaint dismissed with prejudice.

RESPECTFULLY submitted this 10th day of July, 2023.
I declare under penalty of perjury that the foregoing is true and correct.
This declaration under Chapter 132, Civil Practice and Remedies Code.



Mark Burke
State of Texas / Pro Se

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing motion has been forwarded to Plaintiff/ Counter-Defendants / Third-Parties and counsel by electronic filing notification and/or electronic mail and/or facsimile and/or certified mail, return receipt requested, this the 10th day of July, 2023.

A handwritten signature in black ink, appearing to read "Mark Burke". The signature is written in a cursive style with a prominent vertical stroke on the left side.

Mark Burke
State of Texas / Pro Se

Automated Certificate of eService

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Status as of 7/10/2023 9:45 AM CST

Case Contacts

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