

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

MAR 16 2009

PATRICIA PRESLEY, COURT CLERK
by _____
DEPUTY

Oklahoma Department of Securities)
ex rel. Irving L. Faught, Administrator,)
)
Plaintiff,)
)
v.)
)
Jerry D. Cash,)
)
Defendant.)

Case No. CJ-2008-7963

OBJECTION TO MOTION TO CONSOLIDATE

Defendant Jerry D. Cash respectfully objects to the Oklahoma Department of Securities' ("ODS") Motion to Consolidate.

12 O.S. § 2018(C) provides:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

The Oklahoma Supreme Court made it clear that the trial court has broad discretion in considering a motion to consolidate:

The consolidation of claims for trial is neither mandatory nor a matter of right. Consolidation is a procedural mechanism to enhance the efficiency of judicial process and its economy. A trial court has broad discretion in performing its task of orderly processing of litigation to allow (or to refuse) consolidation of proceedings for trial and disposition.

State v. One Thousand Two Hundred Sixty-Seven Dollars, 2006 OK 15, 131 P.3d 116, 122.

However, the ODS, as moving party bears the burden of proof of persuading the Court that consolidation is desirable. *See Oklahoma Civil Procedure – Forms and*

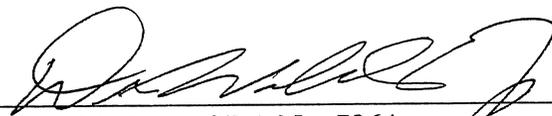
Practice, § 902 (“The party moving for consolidation has the burden of persuading the court that consolidation is desirable.”). ODS offers little argument and no evidence regarding the common questions of law or fact. Moreover, while 12 O.S. § 2018(C) clearly contemplates various levels of consolidation, ODS fails to distinguish whether it is seeking consolidation of some or all of the questions consolidated.

Defendant Cash opposes the request for consolidation to the extent it seeks to consolidate the two trials, as such consolidation would impose substantial hardship and prejudice on Defendant Cash. The petition against Defendant Grose includes nine paragraphs related to a separate alleged kickback scheme, wholly unrelated to Defendant Cash. The kickback scheme, as alleged, appears to involve Defendant Gross, who was Chief Financial Officer for Quest Resource Corporation and its affiliates (“Quest”), and an individual named Brent Mueller, who eventually became Quest’s purchasing manager. Mueller has recently been charged with misprison of a felony in the federal district court for the Western District of Oklahoma. (Case No. CR-09-068D) for allegedly having knowledge of and acting to conceal Defendant Grose’s role in the kickback scheme. Inevitably, testimony and evidence regarding actions related to Defendant Cash would be intermingled with testimony and evidence expressly limited to Defendant Grose. This would not only increase the potential for confusion but extend the length of the trial. Defendant Cash would be forced to expend time and litigation costs for the trial of issues wholly unrelated to any accusations made against him.

Defendant Cash would therefore respectfully request that the Court deny the Oklahoma Department of Securities Motion to Consolidate. In the alternative, if the Court construes and grants ODS’s Motion to Consolidate as a general consolidation of

the two cases, Defendant Cash would ask the Court to grant leave to file a motion for separate trials pursuant to 12 O.S. § 2018(D) prior to a trial on the consolidated actions.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

This will certify that on the 16th day of March 2009, a true and correct copy of the above and foregoing instrument was mailed, by U.S. First Class Mail, postage prepaid, to the following counsel of record:

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DANIEL G. WEBBER, JR.