

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF)
SECURITIES EX REL. IRVING)
FAUGHT, ADMINISTRATOR,)

Plaintiff,)

v.)

Case No. CJ-2009-2773
Judge: Gurich, Noma D.

GLOBAL WEST FUNDING, LTD.,)
Co., an Oklahoma limited liability)
company; GLOBAL WEST FINANCIAL)
LLC, an Oklahoma limited liability)
Company; SURE LOCK FINANCIAL,)
LLC, an Oklahoma limited liability)
Company; SURE LOCK LOANS LLC,)
Oklahoma limited liability company; THE)
WAVE-GOLDMADE, LTD., an)
unincorporated association; BRIAN)
MCKYE, an individual; JOE DON)
Johnson, an individual; JAMES)
FARNHAM, an individual,)

Defendants.)

and)

HERITAGE ESTATE SERVICE,)
LLC, an Oklahoma limited liability)
company,)

Relief Defendant.)

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

SEP 28 2009

PATRICIA PHESLEY, COURT CLERK
by _____ DEPUTY

**SPECIAL MASTER’S MOTION FOR AN ORDER IMPOSING SANCTIONS FOR
THE FAILURE OF BRIAN MCKYE TO COOPERATE IN DISCOVERY
AND TO COMPEL MCKYE’S ATTENDANCE AT DEPOSITION**

Stephen J. Moriarty ("Special Master") the Court appointed Special Master for
GLOBAL WEST FUNDING, LTD., Co., an Oklahoma limited liability company; GLOBAL
WEST FINANCIAL LLC, an Oklahoma limited liability company; SURE LOCK FINANCIAL,

LLC, an Oklahoma limited liability company; SURE LOCK LOANS LLC, an Oklahoma limited liability company; THE WAVE-GOLDMADE, LTD., an unincorporated association; and BRIAN MCKYE, an individual (all collectively referred to as “McKye and the Companies”) moves the Court for the entry of an Order, pursuant to 12 O.S. §3237, (a) awarding the reasonable expenses, including attorney fees, incurred by Special Master in the preparation for the first deposition and the re-scheduled deposition and (b) an Order compelling McKye to appear on a date certain for his deposition. In support of the Motion, the Special Master represents as follows:

Factual Background

1. On April 1, 2009, this Court entered its Order Appointing Special Master and Approving Waiver of Special Master's Bond. Pursuant to the Order, the Special Master was given full authority to “operate and manage all assets” of the Companies. Further, Special Master was given the authority to “take immediate custody, possession, and control of any and all assets” of the Companies.

2. On May 19, 2009, Special Master filed a Motion seeking authority to sell certain assets of McKye and the Companies.

3. On June 12, 2009, the Court entered an Order granting Special Master the authority to sell certain assets of McKye and the Companies

4. Special Master believes the Order of June 12, 2009 grants him the authority to sell a certain trailer located at 2000 N.W. 39th Street, Oklahoma City, Oklahoma. McKye believes the trailer to be his own separate property and demands possession of the trailer.

5. On June 2, 2009, McKye filed a Motion to Retrieve Personal Effects and request

Court to Direct Special Master to Return Personal Mail (the “McKye Motion to Retrieve Personal Property”). Pursuant to the McKye Motion to Retrieve Personal Property, McKye requested that he be allowed to retrieve his personal effects, property, papers, software, bedding, linens, etc..”

6. On June 11, 2009, Special Master filed his Response to the McKye Motion to Retrieve Personal Property. Special Master did not object to the return of personal items of nominal value, but objected to the return of property of value as inconsistent with this Court’s Order of April 1, 2009.

7. On July 13, 2009, the Court held hearings on a number of pending Motions, including the McKye Motion to Retrieve Personal Property. The transcript of that hearing provides, in part, as follows:

THE COURT: And Mr. McKye, regarding personal effects, have you come up with any sort of list to tell the Special Master what it is that you want?

MR. MCKYE: Well, I said, beds, linens and clothing, and like a dresser, several dressers. All of my personal belongings at the corporate office. And I did maintain a cot at each of the stores, or a futon, I should say. So I have like a microwave, items at corporate far outnumber each of the stores. So all I’m asking for access to is my bedding in the stores and like my microwave and you know, towels and things like that. And then at corporate, it’s too numerous to mention.

THE COURT: Is there a possibility of setting up an appointment for Mr. McKye to come to corporate?

MR. MORIARTY: That would be fine, Your Honor.

THE COURT: All right. Why don’t I just leave it to the two of you then to work out a mutually agreeable time for you to appear and point out the items you wish to retrieve, and perhaps bring some kind of vehicle with you to take away things at that point if you can. And then, if there is anything left, you all can make arrangements to pick up. Would that work?

MR. MCKYE: If Your Honor sustains my motion, do you want me to put together an approved order for your signature?

THE COURT: That would be fine. And I'll show your motion sustained. And I'll let you draft something and perhaps provide it to the Special Master and you all can work something out. I'm also suggesting that you go ahead at the quickest possible time to go arrange to meet with him at the office so you can retrieve whatever it is you want to retrieve. All right.

Transcript, page 16, line 20 through page 18, line 2.

8. On July 31, 2009, Special Master sent a letter to McKye stating McKye had failed to provide a list of his personal effects and failed to contact the Special Master to set up an appointment to identify his personal effects, as requested by the Court on July 13, 2009. McKye did not respond to the letter.

9. On August 5, 2009, in the middle of the closing of the sale to Your Credit, Inc., McKye showed up at the corporate office. He presented Special Master with a proposed Order regarding the McKye Motion to Retrieve Personal Property. Special Master told McKye he could agree to the proposed Order insofar as it directed the Special Master to forward personal mail and deliver identified personal items and papers, but could not agree to deliver certain trailers and tools not specifically requested in the Motion to Retrieve Personal Property, not described to the Court by McKye in the hearing on July 13, 2009 and not previously identified to the Special Master by McKye. At the same time, Special Master asked Mr. McKye to walk through the corporate office to identify items he claimed as personal property. McKye refused.

10. On September 3, 2009, Special Master, Nancy Shields (the landlord for the 39th Street property), Jim Buchanan (Mrs. Shield's broker) and Brian McKye met at 2000 N.W. 39th Street, Oklahoma City, Oklahoma for the express purpose of McKye identifying and removing his personal property. At that time, McKye did not remove any property.

11. On September 18, 2009, Special Master filed a Motion Seeking Specific Authority to Sell a Trailer and to Establish a Deadline for Removal by McKye of His personal Property. The matter is set for hearing on September 30, 2009 at 1:30 p.m..

12. On August 31, 2009, Plaintiff served a Notice of Deposition of Brian McKye; a copy of the Notice is attached hereto as Exhibit "A". The deposition was scheduled for September 15, 2009. McKye failed to appear for his deposition. Plaintiff and Special Master incurred time and expense preparing for the deposition.

13. After September 15, 2009, McKye contacted Plaintiff indicating he did not appear for his deposition because he had the flu.

14. Plaintiff agreed not to seek sanctions for McKye's failure to appear and issued a Second Notice to Take Deposition, a copy of which is attached hereto as Exhibit "B". The deposition was re-scheduled for September 22, 2009.

15. McKye did appear on September 22, 2009 and answered some questions posed by Plaintiff. In large part, McKye's responses were non-responsive and vague. McKye invoked his Fifth Amendment privilege against self-incrimination on numerous occasions.

16. Special Master appeared on September 22, 2009 to question McKye regarding the assets of the Companies and McKye, including the present location of assets. Special Master also sought information regarding the Trailer and McKye's personal effects. **McKye refused to answer any questions asked by Special Master in his deposition.** A copy of the relevant portion of the Transcript of September 22, 2009 is attached hereto as Exhibit "C".

17. Once again, Special Master incurred significant time and expense in preparation for the deposition.

Arguments and Authorities

Pursuant to 12 O.S. § 3237 (E), this Court has the power to sanction a party for their failure to appear and answer questions posed during their deposition. An appropriate sanction may include the assessment of reasonable expenses, including attorney fees, caused by the failure to cooperate. 12 O.S. § 3237 (E).

The record in this case is replete with examples of Mr. McKye's attempts to frustrate these proceedings and the efforts of the Special Master. These efforts have needlessly exhausted the precious resources available to pay creditor claims. The Special Master appeared at the re-scheduled deposition for the express purpose of obtaining discovery necessary for the September 30, 2009 hearing and for the case in general. Once again, McKye, by his refusal to answer any question, has frustrated these proceedings and hamstrung the efforts of the Special Master to identify assets from which creditor claims can be paid.

Special Master suggests that an appropriate sanction for McKye's failure to cooperate in discovery is (a) an award of the reasonable expenses, including attorney fees, incurred by Special Master in the preparation for the first deposition and the re-scheduled deposition and (b) an Order directing McKye appear on a date certain and answer questions posed by Special Master herein.

WHEREFORE, the Special Master respectfully requests that the Court enter an Order (a) awarding the reasonable expenses, including attorney fees, incurred by Special Master in the preparation for the first deposition and the re-scheduled deposition, said amounts to be determined at a later hearing, (b) compelling McKye to appear on a date certain for his deposition and to answer questions posed by Special Master herein, and (c) for such other and further relief as this Court deems just and proper.



STEPHEN J. MORIARTY (OBA #6410)
FELLERS, SNIDER, BLANKENSHIP,
BAILEY & TIPPENS, P.C.
100 North Broadway, Suite 1700
Oklahoma City, OK 73102
Phone: 405-232-0621
Fax: 405-232-9659
E-mail: smoriarty@fellerssnider.com

SPECIAL MASTER

NOTICE OF HEARING

Please be advised that a hearing on the foregoing Motion has been set for 3:00
P.m. on the 22nd day of October, 2009 before the Honorable Noma D. Gurich.

CERTIFICATE OF MAILING

This is to certify that on the 28th day of September, 2009, the foregoing was sent by U.S. Mail, first class, postage prepaid to:

Patricia A. Labarthe, Esq.
Jennifer Shaw, Esq.
Oklahoma Department of Securities
120 N. Robinson, Suite 860
Oklahoma City, OK 73102

R. Scott Adams, Esq.
Adams & Associates, P.C.
204 North Robinson
Twenty-Fifth Floor
Oklahoma City, OK 73102

Brian McKye
P.O. Box 957
Jay, OK 74346



Stephen J. Moriarty

EXHIBIT "A"
McKYE NOTICE TO TAKE DEPOSITION
September 15, 2009

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

OKLAHOMA DEPARTMENT OF)
SECURITIES, *ex. rel.* Irving L. Faught,)
Administrator,)

Plaintiff,)

vs.)

GLOBAL WEST FUNDING, LTD., CO.,)
an Oklahoma limited liability company, et al.,)

Defendants.)

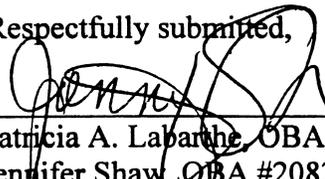
Case No. CJ-2009-2773

NOTICE TO TAKE DEPOSITION

TO: Brian McKye, *Pro Se*
PO Box 957
Jay, OK 74346

Please notice that, pursuant to 12 O.S. § 3230, the Plaintiff, Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator, will take the deposition upon oral examination of Brian McKye on Tuesday, September 15, 2009, at 10:00 a.m. in the offices of Word for Word Reporting, LLC, 100 North Broadway Avenue, Suite 3250, Oklahoma City, Oklahoma, before an officer authorized to administer oaths by the laws of the State of Oklahoma. The deposition shall be recorded by stenographic means.

Respectfully submitted,


Patricia A. Labarthe, OBA #10391
Jennifer Shaw, OBA #20839
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, OK 73102
(405) 280-7700
Attorney for Plaintiff

CERTIFICATE OF MAILING

The undersigned certifies that on the 31 day of August, 2009, a true and correct copy of the foregoing was mailed by first class mail, with postage prepaid thereon, addressed to:

Brian McKye
PO Box 957
Jay, OK 74346

Global West Funding, Ltd.
Global West Financial, LLC
Sure Lock Financial, LLC
Sure Lock Loans, LLC
The Wave Gold-Made, Ltd.
PO Box 60725
Oklahoma City, OK 73146

R. Scott Adams
Adams & Associates, PC
204 N. Robinson, 25th Fl.
Oklahoma City, OK 73102

James Farnham
6308 N. Harvard Avenue
Oklahoma City, OK 73122

Stephen J. Moriarty
Fellers, Snider, Blankenship, Bailey and Tippens, PC
100 N. Broadway, Ste. 1700
Oklahoma City, OK 73102


Jennifer Shaw

EXHIBIT "B"
McKYE NOTICE TO TAKE DEPOSITION
September 22, 2009

IN THE DISTRICT COURT OF OKLAHOMA COUNTY,
STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF)
SECURITIES, *ex. rel.* Irving L. Faught,)
Administrator,)

Plaintiff,)

vs.)

GLOBAL WEST FUNDING, LTD., CO.,)
an Oklahoma limited liability company, et al.,)

Defendants.)

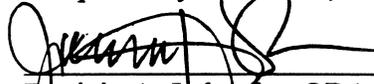
Case No. CJ-2009-2773

NOTICE TO TAKE DEPOSITION

TO: Brian McKye, *Pro Se*
PO Box 957
Jay, OK 74346

Please notice that, pursuant to 12 O.S. § 3230, the Plaintiff, Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator, will take the deposition upon oral examination of Brian McKye on Tuesday, September 22, 2009, at 10:00 a.m. in the offices of Word for Word Reporting, LLC, 100 North Broadway Avenue, Suite 3250, Oklahoma City, Oklahoma, before an officer authorized to administer oaths by the laws of the State of Oklahoma. The deposition shall be recorded by stenographic means.

Respectfully submitted,



Patricia A. Labarthe, OBA #10391
Jennifer Shaw, OBA #20839
Oklahoma Department of Securities
120 North Robinson, Suite 860
Oklahoma City, OK 73102
(405) 280-7700
Attorney for Plaintiff

CERTIFICATE OF MAILING

The undersigned certifies that on the 17th day of September, 2009, a true and correct copy of the foregoing was mailed by first class mail, with postage prepaid thereon, addressed to:

Brian McKye
PO Box 957
Jay, OK 74346

Global West Funding, Ltd.
Global West Financial, LLC
Sure Lock Financial, LLC
Sure Lock Loans, LLC
The Wave Gold-Made, Ltd.
PO Box 60725
Oklahoma City, OK 73146

R. Scott Adams
Adams & Associates, PC
204 N. Robinson, 25th Fl.
Oklahoma City, OK 73102

James Farnham
6308 N. Harvard Avenue
Oklahoma City, OK 73122

Stephen J. Moriarty
Fellers, Snider, Blankenship, Bailey and Tippens, PC
100 N. Broadway, Ste. 1700
Oklahoma City, OK 73102



Jennifer Shaw

EXHIBIT "C"
EXCERPT OF PROCEEDINGS
DEPOSITION OF BRIAN McKYE

IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF SECURITIES,)
ex rel. IRVING L. FAUGHT,)
Administrator,)
)
Plaintiff,)
vs.) No. CJ-2009-2773
)
GLOBAL WEST FUNDING, LTC., CO. an)
Oklahoma Limited Liability Company,)
)
Defendant.)

EXCERPT OF PROCEEDINGS

DEPOSITION OF BRIAN MCKYE

TAKEN ON BEHALF OF THE PLAINTIFF

ON SEPTEMBER 22, 2009

IN OKLAHOMA CITY, OKLAHOMA

WORD FOR WORD REPORTING, L.L.C.
100 NORTH BROADWAY
SUITE 3250
OKLAHOMA CITY, OKLAHOMA 73102
(405) 232-9673

REPORTED BY: HOLLY PARKER, CSR

A P P E A R A N C E S

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For the Plaintiff:

MS. PATRICIA LABARTHE
MS. JENNIFER SHAW
Attorneys at Law
120 N. Robinson Avenue
Suite 860
Oklahoma City, Oklahoma 73102

For the Defendant, Appearing Pro Se:

MR. BRIAN MCKYE
P.O. Box 957
Jay, Oklahoma 74346

Special Master for Global Funding, Ltd.:

MR. STEPHEN MORIARTY
Attorney at Law
100 North Broadway
Suite 1700
Oklahoma City, Oklahoma 73102

For Joe Don Johnson:

MR. R. SCOTT ADAMS
Attorney at Law
401 North Hudson Avenue
Suite 100
Oklahoma City, Oklahoma 73102

1 (A lunch recess.)

2 THE REPORTER: We're back on the record.

3 Q. (By Mr. Moriarty) Mr. McKye, you understand
4 you're still under oath?

5 THE WITNESS: I thought we were coming back
6 for more questions from you?

7 MS. LABARTHE: No.

8 MR. MORIARTY: No.

9 MS. LABARTHE: Mr. Moriarty has some
10 questions.

11 THE WITNESS: Oh, no. No. No, my notice is
12 from her office.

13 MR. MORIARTY: No, I understand, and it --

14 THE WITNESS: Not from yours.

15 MR. MORIARTY: But I'm a party to the
16 lawsuit, and anybody can appear.

17 THE WITNESS: No, you give me a separate --

18 MR. MORIARTY: No.

19 THE WITNESS: -- notice.

20 MR. MORIARTY: No.

21 THE WITNESS: No, I'm done.

22 MR. MORIARTY: Okay.

23 THE WITNESS: You don't deposition me.

24 MR. MORIARTY: Okay.

25 THE WITNESS: You want to do a separate

1 deposition, that's fine.

2 MR. MORIARTY: I want the record to be
3 clear --

4 THE WITNESS: Okay?

5 MR. MORIARTY: -- that Mr. McKye --

6 THE WITNESS: -- is leaving the meeting at
7 this point.

8 MR. MORIARTY: Yeah.

9 THE WITNESS: I thought I was coming back to
10 be depositioned from Patti --

11 MR. MORIARTY: No.

12 THE WITNESS: -- and Irv Faught. And with
13 that not happening -- with that not happening, I'm
14 leaving this meeting.

15 MR. MORIARTY: Okay. You --

16 THE WITNESS: Serve me notice --

17 MR. MORIARTY: That notice -- before you
18 leave, I want to make this -- you can listen to this
19 or not listen to this, because it's going to be on
20 the record.

21 THE WITNESS: Well, on the record without
22 me.

23 MR. MORIARTY: Okay. Fine.

24 Mr. McKye is subject to the notice. If
25 Mr. McKye departs, he is in violation --

1 THE WITNESS: Patti, do you have any other
2 questions from me?

3 MR. MORIARTY: -- and I will seek
4 appropriate sanctions from the Court. That's all I
5 have to say.

6 THE WITNESS: Okay. That's fine.
7 Patti, Jennifer --

8 MR. MORIARTY: We're off the record.

9 (Off-the-record discussion.)
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