

CAUSE NO. 22-00105

CSD VAN ZANDT LLC
Plaintiff

v.

UDO BIRNBAUM
Defendant

§ IN THE DISTRICT COURT

§ 294th JUDICIAL DISTRICT

§ VAN ZANDT COUNTY, TX

DEFENDANT'S RESPONSE TO AN UNHINGED ATTORNEY

TO THIS HONORABLE COURT:

1. This Court, in its “to Corey Kellam”, informed him of already having found that a Lisa Girot had no such 150 acres to convey to Plaintiff, and need to determine whether Plaintiff knew or should have known such. And so, by Affidavit of Robert Dow, attorney Kellam tells this Court that Dow had no knowledge of a 2017 deed, till **July 24, 2002**, and only after purchase.

2. Stupidly “oops” by such Affidavit, is however, that Dow spills that he knew then, a full month before filing suit against Birnbaum on **August 24, 2022**, that all he held was a bag of air, instead of title, and that ever after, both he and his Corey Kellam, have been peddling to this Court, what they both knew were nothing but lies by Lisa Girot, used to protect their own lies they were peddling.

4. That simple. Details in Defendant's Response to this Court's Inquiry, attached hereto, as is Corey Kellam's BS Response to such, as addressed above.

UDO BIRNBAUM, *Pro Se*
540 VZ County Road 2916
Eustace, TX 75124
903 802-9669
BRNBM@AOL.COM

Certificate of Service

Today August 18, 2023 by Certified
7022 2410 0002 2355 4272 to
Corey Kellam, Flowers Davis, 1021 ESE
Loop 323, Suite 200, Tyler, Texas 75701

SO HERE GOES:

4. Robert Dow, **before purchasing**, when he immediately called Ms. Lisa Girot, regarding Mr. Birnbaum having just run off his surveyors, should have known that something was awfully irregular about what Ms. Lisa Girot was telling.

5.. And an awfully irregular relationship, between Ms. Lisa Girot and Mr. Robert Dow, is evidenced in that phone call, which just came to light by the Zoom Deposition of Lisa Girot on May 9, 2023.

6. The subject quickly moved into wild spins as to Defendant Birnbaum, and how they would back each other in going forward, without any indication of Mr. Dow having inquired with any of the neighbors, or intention to do so, or contact the other grantors, i.e. Patricia Moore Barclay or James Moore III. The topic was all about plotting a common scheme to “go forward”, and assurances to each other of each others’ future protection, such as at 07:50 into the 18:54 minute telephone recording, as such at 1:33:20 in the 1:54:02 Zoom video deposition of Ms. Lisa Girot, Mr. Dow, as BUYER, agreeing to protect the SELLER, regarding their in between them “**it**”:

“And we told you we’d take it on and so we are going to try to be sure to protect us and like we said protect you too.”

7. And NOW, in response to this Court’s **July 20, 2023** inquiry Robert Dow, by Affidavit, swears that: (see Attach)

“10. My first knowledge of the unrecorded 2017 deed referenced in this lawsuit was on the morning of July 24, 2022, when a Rob Coady, a contractor hired by CSD Van Zandt LLC, discovered a copy of the unrecorded 2017 deed in a Ziploc bag which was attached to a gate on the property subject to this litigation, which was about a month after CSD Van Zandt, LLC acquired the property.”

8. So what did Mr. Dow do, upon the **July 24, 2022** evidence that Girot never had anything to convey him? Go to the police, or his title insurers, that he had been swindled?

9. NO, instead **Mr. Dow, again, runs back to Lisa Girot**, as revealed by the just May 9, 2023 Zoom Deposition of Lisa Girot, and has his Corey Kellam weave his earlier, before buying, recording of the tale by Lisa Girot, and weave such into the fraudulent **Affidavit of Lisa Girot**, also have it spun into the **Affidavit of Robert Dow**, and not sue LISA GIROT, but BIRNBAUM, the victim of the Lisa Girot Real Estate Deed fraud upon an then 85 old elderly, Dow filing this very suit on **August 8, 2022**.

10. AND THEN, long later, on **October 20, 2022**, long after his on **July 24, 2022** having full knowledge of the Lisa Girot fraud, moves as PLAINTIFF – for Summary Judgment - such Motion now before this court, the Court now **July 20, 2023** inquiring whether Plaintiff, Plaintiff's Robert Dow, or Plaintiff's Attorney Corey Kellam, had knowledge – of the fraud by Ms. Lisa Girot.

11. All such as a suggestion to this Court.

12. The current email string upon this Court's inquiry of July 20, 2023 as Attach.

UDO BIRNBAUM, *Pro Se*
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Certificate of Service

Today August 1, 2023 by imbed in and attach to ongoing common string also regular mail Flowers Davis, 1021 ESE Loop 323, Suite 200, Tyler, Texas 75701

ATTACH "A"- re Court's inquiry
Ongoing e-mail thread
Court - CSD - Birnbaum



FLOWERS DAVIS

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VIRGINIA D. YOUNG
DANIEL C. ROSS

July 24, 2023

The Honorable Chris Martin
294th District Court - Van Zandt County, Texas
121 E. Dallas St., Ste. 301
Canton, Texas 75103

Sent via: Electronic Filing
and email to: brnbm@aol.com and
wbarker@vanzandtcounty.org

Re: Additional information requested for MSJ review – Cause No. 22-00105

Dear Judge Martin:

This letter is in response to the Court's request for additional information by email dated July 20, 2023.¹ I briefly responded to that email², but understand the Court requires the information by affidavit, which I have attached to this letter.³

Please do not hesitate to let me know if you have further questions.

Kindest Regards,

Corey R. Kellam

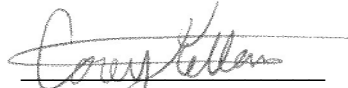
1 Email thread between Ms. Waynette Barker, Udo Birnbaum and Corey Kellam, attached as Exhibit A.

2 *Id.*

3 Affidavit of Robert Dow, Manager of Panola Holdings, LLC, Manager of CSD Van Zandt, LLC, attached as Exhibit B.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this instrument was served on all parties of record via electronic service manager on this the 24th day of July 2023.


Corey R. Kellam

From: Corey R. Kellam
Sent: Thursday, July 20, 2023 12:30 PM
To: 'Waynette Barker' <wbarker@vanzandtcountry.org>; 'brnbn@aol.com' <brnbn@aol.com>
Subject: RE: 22-00105 CSD VAN ZANDT LLC V BIRNBAUM

Ms. Barker, I should have also said in my email that I will be following up with an affidavit, I just wanted to present this information on the front end so you know I am in receipt of the request and will get something drafted promptly.

Thanks,

Corey



1021 ESE Loop 323, Suite 200
Tyler, Texas 75701
(903) 534-8063 Office
(903) 534-1650 Facsimile
crk@flowersdavis.com / www.flowersdavis.com

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From: Corey R. Kellam
Sent: Thursday, July 20, 2023 12:26 PM
To: 'Waynette Barker' <wbarker@vanzandtcountry.org>; brnbn@aol.com
Subject: RE: 22-00105 CSD VAN ZANDT LLC V BIRNBAUM

Hi Ms. Barker, and thank you for reaching out.

To answer the question, no, Ms. Girot has never had any ownership in, membership in, employment in, or

any other connection to CSD Van Zandt, LLC or its members, directors, or employees. Her first interaction with CSD Van Zandt, LLC was an email from her to my client on March 2, 2022, wherein she advises that she is interested in selling the property . I'm also including below a couple excerpts from Ms. Girot's deposition confirming as much.

Page 40, Lines 13-18

13 Q. How did you come to sell CSD Van Zandt the
14 property?

15 A. Oh, I think I received correspondence in the
16 mail regarding an interest in purchasing that property.
17 I did not have the property listed at that time or at
18 any time.

Page 40, Lines 23-25

23 Q. Okay. Do you know Mr. Robert Dow?

24 A. I do not know him personally. I know of him
25 through this transaction.

Thank you, and let me know if there are any additional questions.

Best,

Corey



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From: Waynette Barker <wbarker@vanzandtcounty.org>

Sent: Thursday, July 20, 2023 8:31 AM

To: Corey R. Kellam <crk@flowersdavis.com>; brnbn@aol.com

Subject: 22-00105 CSD VAN ZANDT LLC V BIRNBAUM

Importance: High

Mr. Kellam,

The Court has completed its review and consideration of the Plaintiff's Traditional MSJ. Additional information, which was not provided by the Plaintiff, is needed and requested by the Court. To determine whether the Plaintiff, is a bona fide purchaser without notice of Mr. Birnbaum's claim to the subject property by the unrecorded deed of 2017, the Court first acknowledges and finds that Ms. Lisa Girot, as notary of the unrecorded deed, had actual knowledge of Mr. Birnbaum's claim or potential claim to the subject property. Therefore, since Ms. Girot sold and transferred her interest in the subject property to the Plaintiff, the Court must now determine whether the Plaintiff had or should have had the same knowledge as Ms. Girot. The Court requests the following information by affidavit:

1. At any time has Ms. Girot had any ownership in, membership in, employment in, or any other connection to CSD Van Zandt, LLC or its members, directors, or employees?

Please submit the information as soon as practicable.

Respectfully,

Waynette Barker

294th District Court Administrator

PH: 903-567-4422

FAX: 903-567-5652

Email: wbarker@vanzandtcounty.org



JURY TRIAL DATES ONLY: PLEASE REMEMBER THAT YOU MUST HAVE GONE TO MEDIATION BEFORE ALL FINAL HEARINGS, BENCH TRIALS AND JURY TRIALS.

CIVIL JURY TRIALS 2023 (does not include criminal jury trial dates)

JULY NO JURY TRIALS

AUGUST 14 – 18 4 case set on the docket

SEPTEMBER 11-15 5 case set on the docket

OCTOBER 16-20 4 case set on the docket

NOVEMBER 13-17 6 case set on the docket

DECEMBER NO JURY TRIALS

Jury Trials for 2024

January 22 – 25, 2024 2 Cases set on the docket

February 20 – 23, 2024 2 Cases set on the docket

April 22-26, 2024 1 Case set on the docket

May 20-24, 2024 1 Case set on the docket

August 19-23, 2024

October 21-25, 2024 1 Case set on the docket

The will to win, the desire to succeed, the urge to reach your full potential... these are the keys that will unlock the door to personal excellence.

NOTICE: All email correspondence relating to pending cases will be filed with the District Clerk for inclusion in the record of the case. Any communication to the Court or staff via email must comply with Rules 21 and 21A, T.R.C.P., and to do so by the fastest means available to the other affected parties or counsel. The provisions of Canon 3B.(8) of the Code of Judicial Conduct should be carefully reviewed before any person connected with a case attempts any communication with the Judge or court personnel.

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CAUSE NO. 22-00105

CSD VAN ZANDT LLC
Plaintiff

§
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§
§
§

IN THE DISTRICT COURT

v.

294TH JUDICIAL DISTRICT

UDO BIRNBAUM
Defendant

VAN ZANDT COUNTY, TEXAS

AFFIDAVIT OF ROBERT DOW

STATE OF TEXAS

§
§
§

COUNTY OF DALLAS

Before me, the undersigned notary public, on this day personally appeared Robert Dow, who after being duly sworn, on his oath stated:

1. “My name is Robert O. Dow. I am over 18 years of age, of sound mind, and capable of making this Affidavit. I have not been convicted of a felony or crime involving moral turpitude.
2. This affidavit is being made in response to the Court’s inquiry as to whether, at any time, Ms. Lisa Girot had any ownership in, membership in, employment in, or any other connection to CSD Van Zandt, LLC or its members, directors, or employees.
3. I am the Manager of Panola Holdings, LLC, which is the Manager of CSD Van Zandt, LLC, and I am intimately familiar with CSD Van Zandt, LLC’s operations.
4. Ms. Girot has never had any ownership in, membership in, employment in, or any other connection to CSD Van Zandt, LLC or its members, directors, or employees.
5. My first communication with Ms. Girot was in response to an email from her on March 2, 2022, wherein she advised that she was interested in selling the property subject to this litigation.
6. CSD Van Zandt, LLC was not incorporated with the State of Texas until April 12, 2022, which was more than a month after my first communication with Ms. Girot.
7. On May 9, 2023 Ms. Girot sat for an oral and videotaped sworn deposition related to this lawsuit.
8. On page 40, lines 13-18 of the deposition, Ms. Girot confirms that she first responded to a marketing mailer, which was sent by me, regarding the sale of the property:

13 Q. How did you come to sell CSD Van Zandt the
14 property?

15 A. Oh, I think I received correspondence in the
16 mail regarding an interest in purchasing that property.
17 I did not have the property listed at that time or at
18 any time.

9. Later on page 40, lines 23-25 of the deposition, Ms. Girot also confirms she does not know me except for through the real estate transaction:

23 Q. Okay. Do you know Mr. Robert Dow?

24 A. I do not know him personally. I know of him
25 through this transaction.

10. My first knowledge of the unrecorded 2017 deed referenced in this lawsuit was on the morning of July 24, 2022, when a Rob Coady, a contractor hired by CSD Van Zandt LLC, discovered a copy of the unrecorded 2017 deed placed in a Ziploc bag which was attached to a gate on the property subject to this litigation, which was about a month after CSD Van Zandt, LLC acquired the property.”

Affiant further sayeth not.

Robert O. Dow

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this the 24th day of July 2023 to certify which witness my hand and seal of office.



Notary Public, State of Texas

Tara Waymire

CAUSE NO. 22-00105

CSD VAN ZANDT LLC <i>Plaintiff</i>	§	IN THE DISTRICT COURT
	§	
v.	§	294 th JUDICIAL DISTRICT
	§	
UDO BIRNBAUM <i>Defendant</i>	§	VAN ZANDT COUNTY, TEXAS
	§	

**PLAINTIFF’S RESPONSE TO 1) DEFENDANT’S RESPONSE TO COURT’S INQUIRY
AND 2) DEFENDANT’S MOTION TO ORDER MEDIATION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, CSD VAN ZANDT LLC (hereinafter “Plaintiff”) in response to *Defendant’s Response to Court’s Inquiry* and *Defendant’s Motion to Order Mediation*, seeking to correct factual untruths in Defendant’s response and requesting the Court deny Defendant’s motion for mediation. In support thereof, Plaintiff respectfully shows the Court the following:

**I.
DEFENDANT’S RESPONSE TO COURT’S INQUIRY IS RIFE WITH
UNSUBSTANTIATED CLAIMS**

1. Defendant’s *Response to Court’s Inquiry* is rife with factual inaccuracies and unsubstantiated statements. It fails to provide a scintilla of evidentiary value to the substance of Court’s inquiry into the following narrow question:

“At any time has Ms. Girot had any ownership in, membership in, employment in, or any other connection to CSD Van Zandt, LLC or its members, directors or employees?”

2. This question, which was directed at Plaintiff, not Defendant, was accurately and fully responded to in a letter and affidavit filed with the Court by Plaintiff on July 24, 2023.

3. Defendant immediately begins his Response to the Court by injecting his own subjective opinion as to the purpose of the Court’s inquiry, going so far as to explain to the Court what the Court really meant to ask – in multiple derivative, paraphrased, and bombastic statements.

Then Defendant, without any evidentiary proof, makes numerous inflammatory statements against Plaintiff, alleging a scheme of collusion by Ms. Girot and Plaintiff to commit a “real estate deed fraud scheme” against the elderly.

4. While difficult to respond to Defendant’s “throw everything and see what sticks” approach, Plaintiff wishes to briefly debunk Defendant’s fictional pleadings below by offering facts supported by the record before this Court.

5. FACT: No substantiated evidence exists in the Court’s record indicating that Defendant represented ownership in the Property to Plaintiff or any agent, employee, contractor, member, owner, or director of the Plaintiff prior to Plaintiff purchasing the Property.

6. FACT: The surveyor hired by CSD Van Zandt, LLC successfully completed a survey of the Property, which led to a new metes and bounds legal description included in the vesting deed into CSD Van Zandt, LLC. Said deed is attached as Exhibit B, Attachment 1 to Plaintiff’s *Traditional Motion for Summary Judgment* and was recorded as Document No. 2022-007473 in the Official Public Records of Van Zandt County, Texas.

7. FACT: No evidence presented to this Court even remotely suggests that Plaintiff committed a real estate fraud scheme against Defendant. Despite Defendant’s effort to continue spinning tales and taking statements and evidence out of context, the Court’s record is clear that:

- a. No scheme existed between Plaintiff and Ms. Girot, and
- b. Record title clearly showed Defendant was not the owner of the Property and had not been since his April 12, 2002 Warranty Deed to Gwendolyn Wright Thibodeaux, whereby Defendant conveyed the Property in exchange “***for \$10.00 cash in hand paid, and other good and valuable consideration this day paid to me paid to me all in cash by the said Gwendolyn Wright Thibodeaux, the***

receipt and sufficiency of which is hereby acknowledged and confessed. . .”.

8. FACT: Plaintiff has not, at any time, “run back to Ms. Girot” during this dispute. After becoming aware of Defendant’s alleged claim of ownership to the Property, which was more than a month after Plaintiff acquired the Property, Plaintiff retained legal counsel, filed this lawsuit, and has maintained a position of fee simple ownership of the Property for the duration of this dispute. All affidavits, depositions, and other evidence on record in the case support Plaintiff’s bona-fide purchaser status and confirm vested title in Plaintiff, including but not limited to Ms. Girot’s testimony on Page 46, lines 1-4 of her deposition:

1	Q. Did you ever communicate to Mr. Dow prior to
2	closing, prior to when CSD purchased the property, that
3	Mr. Birnbaum claimed an ownership in the 149 acres?
4	A. No, ma'am.

And her testimony on page 52, lines 12-15 of said deposition:

12	Q. Okay. So is it your testimony that prior to
13	purchasing the property, Mr. Dow had knowledge of the
14	existence of a 2017 deed?
15	A. I don't think he was aware of the deed.

9. FACT: The Court’s narrow inquiry has been answered - Ms. Girot did not, at any time, have any ownership in, membership in, employment in, or any other connection to CSD Van Zandt, LLC or its members, directors, or employees.

II.
DEFENDANT’S MOTION FOR MEDIATION SHOULD BE DENIED

10. Defendant demands mediation *be “required”* for this case and alleges this Court “requires mediation before all final hearings, bench trials, and jury trials, such in the interest of justice and to preserve resources.”

11. First, Plaintiff filed a Traditional Motion for Summary Judgment on October 20,

2022, and this Court may rule on said motion without a hearing.

12. Second, Plaintiff is unaware of this Court's alleged mediation requirement as indicated by Defendant. Regardless, Plaintiff has made multiple attempts to negotiate in good faith with Defendant to resolve this matter, including through informal mediation; in each case, Defendant has made a mockery of those settlement attempts, and it is clear Defendant has no intention of entering settlement negotiations in good faith.

13. Third, as a result of Defendant disclosing confidential settlement terms offered as part of prior negotiations between the parties in his *Motion to Order Mediation* and on Defendant's infamous and publicly accessible website¹, Defendant has irreparably damaged any remaining trust Plaintiff had that the integrity and confidentiality of future settlement negotiations would be respected or honored by Defendant.

14. Accordingly, and based upon the foregoing, Plaintiff urges the Court to deny Defendant's request for any additional mediation.

PRAYER

WHEREFORE PREMISES CONSIDERED, for the foregoing reasons, Plaintiff respectfully asks the Court to:

1. Dismiss Defendant's meritless and unsubstantiated *Response to Court's Inquiry*;
2. Deny Defendant's *Motion to Order Mediation*; and
3. Rule on Plaintiff's *Traditional Motion for Summary Judgment* filed with the Court on October 20, 2022.

Plaintiff also moves the Court to grant reasonable and necessary attorney's fees, costs of court, and such other and further relief to which Plaintiff may be justly entitled.

¹ www.damncourthousecriminals.com

Respectfully submitted,

FLOWERS DAVIS, P.L.L.C.
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Tyler, Texas 75701
(903) 534-8063
(903) 534-1650 Facsimile

/s/ Corey Kellam

COREY R. KELLAM
State Bar No. 24083297
crk@flowersdavis.com

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above and foregoing instrument has been served on all parties of record via electronic service manager on this the 14th day of August 2023.

/s/ Corey Kellam

COREY R. KELLAM

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Amy Womack on behalf of Corey Kellam

Bar No. 24083297

aw@flowersdavis.com

Envelope ID: 78493096

Filing Code Description: Answer/Response

Filing Description: Plaintiff's Response to Defendant's Response to Court's Inquiry and Motion to Order Mediation

Status as of 8/14/2023 11:58 AM CST

Case Contacts

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