

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.
1021 ESE Loop 323, Suite 200
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

Name	BarNumber	Email	TimestampSubmitted	Status
Celia C.Flowers		ccf@flowersdavis.com	8/14/2023 11:51:16 AM	SENT
Corey RossKellam		crk@flowersdavis.com	8/14/2023 11:51:16 AM	SENT
Jennifer Wallace		legalassistant@flowersdavis.com	8/14/2023 11:51:16 AM	SENT
Ashley Fortune		alf@flowersdavis.com	8/14/2023 11:51:16 AM	SENT
Shannon MBarber		sb@flowersdavis.com	8/14/2023 11:51:16 AM	SENT
Udo Birnbaum		brnbn@aol.com	8/14/2023 11:51:16 AM	SENT