P:3

SANCX
STPLX
COSTX

CAUSE NO. 2013-51350

JOSEPH PRESSIL	§	**IN THE DISTRICT COURT OF**
	§	
	§	
	§	
VS	§	**HARRIS COUNTY, TEXAS**
	§	
JASON A. GIBSON, *et al.*	§	
	§	
	§	
	§	
	§	**55TH JUDICIAL DISTRICT**

FILED
Chris Daniel
District Clerk
JUN 05 2017
Harris County, Texas
Time: 2:32
By: [illegible]

ORDER GRANTING DEFENDANTS' MOTION FOR SANCTIONS

Upon consideration of Defendants' Motion for Sanctions (the "Motion" filed 5/1/2017), the Response, replies and supporting evidence, the Court rules as follows:

During various appearances in this case, the Court has inquired of the Plaintiff about apparent deficiencies in proving up damages. It is therefore particularly noticeable and troublesome when Plaintiff gets caught manufacturing evidence related to damages. As observed in *Daniel v. Kelley Oil Corporation*, 981 S.W.2d 230, 235 (Tex.App.—Hou [1st] 1998), "[t]he very act of fabricating evidence strongly suggests that a party has no legitimate evidence to support [his] claims." This mindset weighs on the Court as it considers reacting to Plaintiff's conduct.

An "I-9" employment form was produced in discovery which appears on its face to have been signed and dated by Plaintiff on 11/17/2011. The document was produced as part of evidence that the Plaintiff applied for employment, but had been turned down due to the conduct of Defendants. The I-9, along with related documents, are key to Plaintiff's case and central to his only real damages, if any.

Some sharp-eyed individual associated with the Defendants noticed that the I-9 was a 2013 form, making it impossible to have been filled out by Plaintiff in 2011. The Plaintiff was

caught dead to rights and initially at his deposition had no real explanation other than to answer questions indirectly by parsing their meaning.

An explanation was later proffered in the Declaration of Joseph Pressil attached as Exhibit B to Plaintiff's 5/19/2017 Response. He admits that "sometime in 2013" an unknown project manager of Genrus, the company he had allegedly applied with, approached him at a job location and asked him to recreate the I-9 which Pressil had originally submitted in 2011. The original I-9, it was said, had been lost, and Genrus was looking to replace it.

Plaintiff offers no credible reason, and none comes to mind, why a company which had turned him down two years prior would care to re-create an I-9 form, or would even notice that it was gone, or how it would remember Plaintiff specifically to then somehow go find him. Nor does Plaintiff state why he would so willing agree to provide some stranger who walked up to him at a job site with his Social Security number and other identifying information as he re-created the lost I-9. The Court's discomfort with the scenario painted by Plaintiff is compounded when considering Plaintiff's proffer of an unsigned letter from Genrus in which Plaintiff's job application is declined, then oddly lays out the salary he would have received had he been employed and conveniently identifies Defendants' conduct as leading to the decision not to employ. The circumstances, as a whole, defy credibility.

This Court makes no finding, and is not required to determine, whether Plaintiff really had filled out an I-9 back in 2011. The Court is responding to the admission that the I-9 present in this case is a post-event fabrication which was passed off by Plaintiff as genuine until he got caught.

Since it is admitted that Plaintiff manufactured the I-9, the Court must respond in some way to preserve the integrity of the court and the system as a whole. Rule 215 of the Texas

Rules of Civil Procedure sets out guidelines for the Court to consider in issuing an appropriate sanction. The Court is also guided by the particularly persuasive reasoning found in *Kelley* which makes the point that simply removing the offending evidence accomplishes nothing more than placing the offending party back where he was had there been no effort to defraud the system. Such a sanction removes the offending evidence but reflects no level of punishment.

The Court has applied the four factors found in *TransAmerican Natural Gas v. Powell*, 811 S.W.2d 913 (Tex. 1991) in determining an appropriate sanction. The Court notes in particular that no lesser sanction is entered because any lesser sanction simply leaves Plaintiff where he was had he not attempted this fraud. Further, merely striking this evidence, or more broadly all evidence relating to the job application at Genrus, would deprive Defendant of the opportunity to use the manufactured I-9 as a means of exposing Plaintiff's fraud.

Accordingly, the only appropriate sanction is striking Plaintiff's pleadings. They are hereby stuck. No monetary sanctions are ordered other than an award of costs of court below. In doing so the Court accepts into evidence the sworn testimony, declarations and authenticated documents attached to the pleadings and embedded therein.

The Court directs the Defendant to provide an appropriate Final Judgment dismissing all of Plaintiff's claims, and awarding costs of court to the Defendants.

SO ORDERED.

SIGNED on the 5 day of June, 2017.

JUDGE JEFF SHADWICK