

Complaint and Affidavit of Securing Execution of Document by Deception upon Udo Birnbaum.

SEC. 32.46 SECOND DEGREE FELONY

On or about the 14th day of November, 2014, CHRISTINA WESTFALL, STEFANI PODVIN, AND FRANK C. FLEMING, in Van Zandt County, Texas, did then and there, with intent to harm or defraud UDO BIRNBAUM, by deception, to-wit by submitting fraudulent court papers, caused JUDGE PAUL BANNER, as officer of the Court, to execute by signing a document affecting the pecuniary interest of UDO BIRNBAUM, the value of said pecuniary interest being \$100,000.00 or more, and said documents are of the tenor following:

Court Transcript – July 30, 2002 “Sanctions Hearing”. Note the “*well-intentioned*” **Order on Motion for Sanctions** (Aug. 9, 2002) - is the **document deceptively used Findings of Fact and Conclusions of Law** of Sept. 30, **2003** – upon the above **Order**
(Note: A judge making “Findings” upon his own Order? ONE year later? Something STINKS. Findings is official oppression per se – plum unlawful. The whole Finding is a CYA FRAUD!)
Application for Writ of Scire Facias to Revive Judgment - upon the above **Order**
(Note: “reviving” – in 2014 – an Order made in 2002? Something STINKS)
Order Reviving Judgment - on Nov. 14, 2014 - is the **document deceptively secured**

For background - FRAUD – right out of the chute:
Attorney Retainer Agreement of May 5, 1998 – re \$20,000 prepaid non-refundable Original Petition of Sept 20, 2000 – FRAUDULENT suit of “**sworn open account**” !

This Strange “Order on Motion for Sanctions”

FIRST, why would ANYONE need to or want to revive an ORDER?

SECOND, why Findings of Fact and Conclusion of Law – upon an ORDER?

But it does read, “*This judgment rendered July 30, 2002, signed August 9, 2002*”.

But the JUDGE himself making the findings of fact – in a JURY case?

And a \$62,770 PUNISHMENT for having exercised a FIRST AMENDMENT RIGHT of making a counter-claim when sued (and “*well-intentioned*” at that):

In assessing the sanctions, the Court has taken into consideration that although Mr. Birnbaum may be well-intentioned and may believe that he had some kind of real claim as far as RICO there was nothing presented to the court in any of the proceedings since I’ve been involved that suggest he had any basis in law or in fact to support his suits against the individuals, and I think – can find that such sanctions as I’ve determined are appropriate. (Transcript, end of Sanctions hearing July 30, 2002)

So, let us look very carefully at this really strange 2002 Order on Motion for Sanctions, and the Findings thereto, for if these were indeed a fraud, and deceptively used

to secure execution of the Order Reviving Judgment in 2014 – that would be securing, by deception, execution of a document affecting property – in 2014. It is that simple.

So all and everything hinges on the true nature of this document titled Order on Motion for Sanctions. Yes, it was issued by a court, but

There already existed a **Final Judgment**, “*This judgment rendered April 11, 2002, signed July 30, 2002*”. (“FIRST judgment”) – and it says **FINAL**.

Then much later yet another “judgment”, also titled Order on Motion for Sanction, by Judge Ron Chapman (“*This judgment rendered April 1, 2004, signed October 24, 2006*”) (“THIRD judgment”)

But back to this **Order on Motion for Sanctions**, “*This judgment rendered July 30, 2002, signed August 9, 2002*” (“SECOND judgment”), and **Findings** thereto:

This “judgment” reads like the ravings of a madman! No more “*well-intentioned*”!
This “judgment” says the \$62,885 punishment is “narrowly tailored”!
This “judgment” was done without a jury – but this was a jury cause!
This “judgment” was awarded to someone who was not a plaintiff!
This “judgment” punishes for filing a counter-claim, a First Amendment Right!
This “judgment” seeks punishment – “*which the Court seeks*” (the State seeks!)
This “judgment” **unconditionally** punishes. (CIVIL can only do “coercive”)

This BEAST is clearly and absolutely UNLAWFUL and VOID. Furthermore, a public servant, the judge, taking ANY adverse action against having exercised a First Amendment Right of access to the courts, by making a counter-claim - and he said that is why he is punishing – is official oppression per se. WHAT IS GOING ON?

THE ANSWER, upon my personal knowledge, including of the intermediary documents, is that attorney Frank C. Fleming personally crafted this outrageous Order on Motion for Sanctions, schemed the phrase “*this judgment rendered etc*” at the end, presented it to Judge Paul Banner, and the judge just executed it by signing it – SECURING EXECUTION OF DOCUMENTS BY DECEPTION by itself, in 2002, but by now outside the 7 year statute of limitations.

But it is the deceptive use of this 2002 Order, on or about **November 14, 2014** by attorney FRANK C. FLEMING, CHRISTINA WESTFALL (plaintiff law offices bookkeeper), and STEFANI PODVIN (plaintiff law offices attorney) that constitutes the

fresh SECURING OF EXECUTION OF DOCUMENTS BY DECEPTION (securing Order Reviving Judgment) – which is the Nov. 14, 2014 crime I am reporting today.

And even if Fleming had not indeed been the perpetrator in creating this 2002 Order, FRANK C. FLEMING, as an attorney, CHRISTINA WESTFALL, as the law offices bookkeeper, and STEFANI PODVIN, as an attorney, knew or should have known, that this Order on Motion for Sanctions they were presenting to obtain revival of judgment, was a FRAUD, as well as was EVERYTHING ELSE FROM THE START.

All statements upon personal knowledge, all attached documents true copies of the originals, except for obvious markups all by me, all also upon personal knowledge.

Attached:

Court Transcript – July 30, 2002 “Sanctions Hearing”. Note the “*well-intentioned*” Order on Motion for Sanctions (Aug. 9, 2002) - is the document deceptively used Findings of Fact and Conclusions of Law of Sept. 30, 2003 – upon the above Order (Note: A judge making “Findings” upon his own Order? ONE year later? Something STINKS. Findings is official oppression per se – plum unlawful. The whole Finding is a CYA FRAUD!)
Application for Writ of Scire Facias to Revive Judgment - upon the above Order (Note: “reviving” – in 2014 – an Order made in 2002? Something STINKS)
Order Reviving Judgment - on Nov. 14, 2014 - is the document deceptively secured

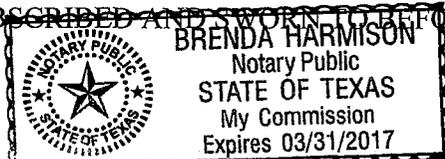
For background - FRAUD – right out of the chute:
Attorney Retainer Agreement of May 5, 1998 – re \$20,000 prepaid non-refundable Original Petition of Sept 20, 2000 – FRAUDULENT suit of “sworn open account” !

Udo Birnbaum
UDO BIRNBAUM
540 Van Zandt CR 2916
Eustace, TX 75124
(903) 479-3929
brnbm@aol.com

SIGNED this 24 day of Sept, 2015

Udo Birnbaum
UDO BIRNBAUM

SUBSCRIBED AND SWORN TO BEFORE ME on this 24th day of September, 2015



Brenda Harmison
Notary Public, State of Texas

Complaint securing by deception re 2nd page 3 of 3 pages

7-30-2002 "Sanction Hearing". Compare the "well-intentioned" here, with all the POISON WORDS in the ONE YEAR LATER "Finding of Fact" ! HINT: The "Finding" was a CYA - for all this done WITHOUT THE JURY.

1 damages, \$5,000.00 in punitive and the joint and several
2 \$50,085.00 in attorneys' fees. Mr. Birnbaum's sanctions as
3 against Mr. Fleming or against the P.C. is denied and nothing
4 is ordered.

well-intentioned

was a JURY trial. Why is HE weighing the evidence?

5 In assessing the sanctions, the Court has
6 taken into consideration that although Mr. Birnbaum may be
7 well-intentioned and may believe that he had some kind of
8 real claim as far as RICO there was nothing presented to the
9 court in any of the proceedings since I've been involved that
10 suggest he had any basis in law or in fact to support his
11 suits against the individuals, and I think -- can find that
12 such sanctions as I've determined are appropriate. And if
13 you will provide me with an appropriate sanctions order, I
14 will reflect it.

\$67,000 Sanction - for a "well-intentioned" COUNTER-CLAIM - a First Amendment Right ! Official Oppression

15 Now, as far as relief for sanctions on behalf
16 of Mr. Westfall, individually, that is specifically denied.

17 Any relief sought by any party by way of
18 sanctions which have not been specifically addressed either
19 by the granting or the denial of same -- such is denied.

20 Okay. How soon can I expect an order because
21 I gather this matter will go up to whatever appropriate
22 appeals court for review?

23 MR. FLEMING: I will give Mr. Birnbaum the
24 statutory three days. I'll submit it to him. And if I don't
25 hear back from him, I'll submit it to you after.

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It was a JURY case - and ONLY the jury can award "damages". There was NO JURY making this AWARD!

It is therefore, **ORDERED, ADJUDGED and DECREED** that the Counter-Defendants, Christina Westfall and Stefani Podvin are **awarded damages** as a sanction against and to be paid by defendant, Udo Birnbaum, to Christina Westfall and Stefani Podvin as follows:

- A. Christina Westfall and Stefani Podvin are awarded jointly and severally the amount of **\$50,085.00** as reimbursement for their joint attorney's fees.
- B. Christina Westfall is awarded actual damages for her personal inconvenience in the amount of **\$1,000.00**, and she is further awarded punitive damages for the harassment caused to her in the amount of **\$5,000.00**.
- C. Stefani Podvin is awarded actual damages for her personal inconvenience in the amount of **\$1,800.00**, and she is further awarded punitive damages for the harassment caused to her in the amount of **\$5,000.00**.
- D. The Court denies the request for a finding of any sanctions to be awarded in favor of G. David Westfall, individually.
- E. The Court denies the request for a finding of any sanctions to be awarded in favor of Udo Birnbaum.

IT IS FURTHER ORDERED THAT the judgment here rendered shall bear interest at the rate of **ten percent (10%)** from July 30, 2002, until paid.

All other relief regarding any motions for sanctions on file in this matter not expressly granted in this order is hereby denied.

THIS JUDGMENT RENDERED ON JULY 30, 2002, AND SIGNED THIS 9 day of August, 2002.

Paul W. ...

 JUDGE PRESIDING

02/08/21 11:09:59
 FILED PURSUANT TO

156/835

FRANK C. FLEMING
ATTORNEY AND COUNSELOR

VERY IMPORTANT NOTE: This was more than ONE year AFTER "Final Judgement". "Findings" in a JURY CASE? Something STINKS!

6611 Hillcrest Ave. #305
Dallas, TX 75205-1301
lawyerof@aol.com

Voice: 214/373-1234
Fax: 214/373-3232
or Fax: 214/265-1979

All one big CYA!

October 6, 2003

FILED FOR RECORD
03 OCT -8 PM 12:14
KAREN WILSON
DIST. CLERK
VAN ZANDT CO. TX
BY _____ DEP
Via Registered Mail

Court Clerk
294th District Court
Van Zandt County
121 E. Dallas Street
Canton, Texas 75103

Re: Cause No. : 00-00619
294th District Court
Law Offices of G. David Westfall, P.C.
v. Udo Birnbaum

Dear Clerk of the Court:

This matter is on appeal. However, Judge Banner still has authority to File Findings of Facts and Conclusions of Law in this matter.

But not contrary unsupported by the trial record.

Enclosed please find and file Judge Banner's cover letter and the original signed Findings of Fact and Conclusions of Law, signed by Judge Banner on September 30, 2003 along with one copy of the Findings. I have enclosed a returned envelope. Please mail me a copy of the file marked Findings.

No "cover letter" filed

If you have any questions, please call.

Very truly yours,

Frank C. Fleming

FRANK C. FLEMING

All one big CYA!

cc: Udo Birnbaum Via Fax No. : 903/479-3929

In a JURY trial the JURY determines the FACTS. In a "bench trial" - the judge determines the FACTS - but he HAS to make "Findings of Fact". There was NO JURY at this second "bench trial". There should of course be NO BENCH TRIAL - in a JURY CASE - and NO SECOND TRIAL at ALL! Judge Banner had a REAL PROBLEM!

APP 34

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All one big CYA!

in response to a request from the Defendant/Counter-Plaintiff, the Court makes its findings of fact and conclusions of law as follows:

Findings of Fact

1. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy claims against Christina Westfall and Stefani Podvin (the wife and daughter of the Defendant/Counter-Plaintiff's former attorney, David Westfall) were **groundless and totally unsupported** by any credible evidence whatsoever. Always remember - the court reporter found him saying - that Mr. Birnbaum was "well intentioned". Suddenly all this stuff.
2. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy claims against Christina Westfall and Stefani Podvin were without merit and brought for the purpose of harassment, delay, and to seek advantage in a collateral matter by attempting to cause the original **Plaintiff**, David Westfall to drop his claim for un-reimbursed legal services provided to the Defendant.
3. The Defendant/Counter-Plaintiff was afforded numerous opportunities to marshal his evidence and present any facts to support his allegations concerning RICO civil conspiracy claims against the wife and daughter of the Defendant/Counter-Plaintiff's attorney, David Westfall. The Defendant/Counter-Plaintiff wholly failed to provide any such credible evidence at either the summary judgment phase of the lawsuit or at the hearing on the motion for sanctions.
4. The attempt to provide testimony by the Defendant/Counter-Plaintiff concerning RICO civil conspiracy claims were his own opinions and **totally uncorroborated** by any other evidence.
5. The Defendant/Counter-Plaintiff never established that he had suffered any economic damages as a result of an alleged conspiracy. The Defendant/Counter-Plaintiff was sued by his former counsel to collect money for **legal work** which had been performed for the Defendant/Counter-Plaintiff for which the Defendant/Counter-Plaintiff had not paid his attorney in

Judge Paul Banner did NOT submit ANY of this to the jury! He INSTRUCTED THEM that Mr. Birnbaum had "FAILED TO ABIDE"!

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full. The jury found that the work had been performed by the attorney, the amount charged to the client was reasonable, and that there was an amount owed by the Defendant/Counter-Plaintiff to the Plaintiff. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy claims had no bearing on whether or not the Defendant/Counter-Plaintiff received the legal services and owed the balance of the outstanding attorney's fees.

6. The filing of the Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy was a blatant and obvious attempt to influence the outcome of the Plaintiff's legitimate lawsuit against the Defendant/Counter-Plaintiff and to cause harassment to the Plaintiff and his family members.

7. The behavior of the Defendant/Counter-Plaintiff in filing claims concerning RICO civil conspiracy in this lawsuit have been totally without substantiation on any cause of action pled.

8. The conduct of the Defendant/Counter-Plaintiff giving rise to the award of punitive damages was engaged in willfully and maliciously by the Defendant/Counter-Plaintiff with the intent to harm the Plaintiff and the Counter-Defendants.

How about "well intentioned"? Remember?

9. The amount of actual damages, attorney's fees, suffered by the Counter-Defendant was proven to be reasonable and necessary by a preponderance of the evidence and not challenged by the Defendant/Counter-Plaintiff at the hearing on sanctions. The amount of actual damages awarded was in an amount that was proven at the hearing.

Was a JURY case. No jury at this hearing.

10. The amount of damages for inconvenience awarded by the court was proven at the hearing by a preponderance of the evidence and not challenged by the Defendant/Counter-Plaintiff at the hearing on sanctions. The court awarded damages for inconvenience in an amount the Court found to be reasonable and necessary, supported by evidence, and appropriate considering the circumstances.

B.S.

All one big CYA!

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11. The amount of **punitive** damages awarded by the Court were found to be supported by the evidence and necessary under the circumstances to attempt to **prevent similar future action** on the part of the Defendant/Counter-Plaintiff.

Can't do this in a CIVIL proceeding. Takes FULL CRIMINAL PROCESS.

12. The sanctions award is directly related to the harm done.

13. The sanctions award is not excessive in relation to the harm done and the **net worth of the Defendant/Counter-Plaintiff**.

No evidence to any of this B.S. ever!

14. The sanctions award is an appropriate amount in order to gain the **relief which the Court seeks**, which is to stop the Defendant/Counter-Plaintiff and **others similarly situated** from filing **frivolous lawsuits**.

"relief which the Court seeks" - to keep from filing lawsuits - a First Amendment Right. OFFICIAL OPPRESSION PER SE.

15. The amount of the **punitive** damage award is an amount narrowly tailored to the amount of harm caused by the offensive conduct to be **punished**.

16. The Counter-Defendants suffered both economic and emotional damages as a result of the Defendant/Counter-Plaintiff's lawsuit and specifically the frivolous nature of the lawsuit caused damages which included expenses (in addition to taxable court costs), attorney's fees, harassment, inconvenience, intimidation, and **threats**.

No evidence to all this B.S. Remember "well intentioned"?

17. The Counter-Defendants established a prima facie case that this lawsuit was filed by the Defendant/Counter-Plaintiff without merit and for the purpose of **harassment**. The prima facie case was made by the testimony and documents introduced as evidence by the Counter-Defendants at the summary judgment proceedings as well as at the hearing on sanctions on July 30, 2002.

18. After the Counter-Defendants established their prima facie case, the Defendant/Counter-Plaintiff failed wholly to provide any credible evidence to support the legal theories of the Defendant/Counter-Plaintiff.

All one big CYA!

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Conclusions of Law

1. The Defendant/Counter-Plaintiff wholly failed to provide any credible evidence to substantiate any of his claims concerning a RICO civil conspiracy claim.
2. An essential element of each of Defendant/Counter-Plaintiff's claim was damages.
3. The Defendant/Counter-Plaintiff failed to prove any damage as a direct result of any action or inaction caused by the Plaintiff or the Counter-Defendants.
4. All of Defendant/Counter-Plaintiff's claims were as a matter of law unproved and untenable on the evidence presented to the Court. How about "evidence to the JURY"?
5. Based upon the facts presented to support Defendant/Counter-Plaintiff's claim concerning RICO civil conspiracy charges, the Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy were completely untenable.
6. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy charges were not based upon the law, were not a good faith extension of existing law, and were brought and continued to be urged for the purpose of harassment. was "civil RICO" - not the mumbo-jumbo above
7. The court concludes as a matter of law that Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy were brought for the purpose of harassment.
8. The Defendant/Counter-Plaintiff's behavior in bringing and prosecuting this frivolous lawsuit was a violation of one or more of the following: §9.000 et seq. Civ. Prac. & Rem. Code, §10.000 et seq. Civ. Prac. & Rem. Code, and/or Rule 13, T.R.C.P. what about "well intentioned"?
9. The Court has the power to award both actual and punitive damages against the Defendant/Counter-Plaintiff for the filing and prosecution of a frivolous lawsuit. This authority stems from one or more of the following: §9.000 et seq. Civ. Prac. & Rem. Code, §10.000 et seq. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.

Findings of Fact and Conclusions of Law
PAGE 5 of 7

Official Oppression per se

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10. The behavior and attitude of the Defendant/Counter-Plaintiff in filing and prosecuting this claim against the Counter-Defendants calls out for the award of both actual and punitive damages to be assessed against the Defendant/Counter-Plaintiff.
11. The Counter-Defendants were successful in presenting a prima facie case to the Court on the issue of sanctions. After the prima facie case was made, the burden of proof shifted to the Defendant/Counter-Plaintiff and the Defendant/Counter-Plaintiff failed in its effort to prove good faith in the filing of the RICO civil conspiracy claims.
12. The appropriate award for actual damages as a result of the filing and full prosecution of this frivolous lawsuit is an award of \$50,085.00 in attorney's fees. The Court makes this award under power granted to the Court by §9.000 et seq. Civ. Prac. & Rem. Code, §10.000 et seq. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.
13. The appropriate sanction for the inconvenience suffered by the Counter-Defendants for the filing and full prosecution of this frivolous lawsuit is an award of \$1,000.00 to Christina Westfall and \$1,800.00 to Stefani Podvin, to be paid by the Defendant/Counter-Plaintiff to the Counter-Defendants.
14. The appropriate punitive sanction for the filing and full prosecution of this frivolous lawsuit is an award of \$5,000.00 to Christina Westfall and an award of \$5,000.00 to Stefani Podvin, to be paid by the Defendant/Counter-Plaintiff to the Counter-Defendants.
15. The award of punitive damages is directly related to the harm done.
16. The award of punitive damages is not excessive.
17. The award of punitive damages is an appropriate amount to seek to gain the relief sought which is to stop this Defendant/Counter-Plaintiff, and others like him, from filing similar frivolous

lawsuits. OFFICIAL OPPRESSION per se. Can't do "punitive" in a CIVIL proceeding. Only "coercive". Requires "keys to own release"!

Findings of Fact and Conclusions of Law

PAGE 6 of 7

westfall\udo\judgment\findings of facts2

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18. The amount of the punitive damage award is narrowly tailored to the harm done.

19. Authority for the punitive damage award is derived from §10.000 et seq. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.

Any finding of fact herein which is later determined to be a conclusion of law, is to be deemed a conclusion of law regardless of its designation in this document as a finding of fact. Any conclusion of law herein which is later determined to be a finding of fact, is to be deemed a finding of fact regardless of its designation in this document as a conclusion of law.

Over ONE year AFTER "Final Judgment"? Come On!

SIGNED THIS 30 day of September, 2003.

Paul Banner
JUDGE PRESIDING

All one big CYA! By EVERYBODY - including the JUDGE!

Careful study of this document shows that all this B.S. is to C.Y.A. for having "awarded damages" WITHOUT A JURY - in a jury cause - and trying to CONCEAL that this is exactly what Judge Paul Banner had done.

--

It also is a window on his mindset during the JURY TRIAL of April 8-11, 2002, his hatred of Pro Se parties.

--

JUST READ ALL THIS VENOM IN THIS DOCUMENT. Remember, "although Mr. Birnbaum may be well intentioned --- etc. I (Mr. Banner) did not see the evidence as showing etc " - or something like that.

--

Was of course a JURY TRIAL - so why was Mr. Banner "weighing" the evidence?

All this was done WITHOUT a jury. This was a JURY cause!

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Order

Order

percent (10%) was awarded by the Judgment as well. A true and correct copy of the Judgment is attached hereto as Exhibit "1" to the Westfall Affidavit and attached hereto as Exhibit "1" to the Podvin Affidavit.

Order

Order

Order

3. Based upon the date of the signing of the Judgment, the Judgment became dormant on August 8, 2012. This Application seeks to revive the Judgment as to the judgment debtor Udo Birnbaum ("Judgment Debtor") pursuant to TEX. CIV. PRAC. & REM. CODE § 31.006.

Order

4. As of June 1, 2014, there remains due and owing on the Judgment by the Judgment Debtor, damages in the amount of \$62,885.00. Post-judgment interest has and continues to accrue from the original date of judgment at the rate of ten percent (10%) and remains unpaid as well.

Order

Order

Order

5. All payments made, credits, and offsets have been credited to the Judgment.

Order

6. The Judgment has not been paid or otherwise settled or compromised.

Order

7. Christina Westfall and Stefani Podvin bring this proceeding to revive the Judgment and to extend the enforcement of same.

Order

8. Christina Westfall and Stefani Podvin ask the Court to take Judicial Notice of the Judgment.

WHEREFORE, PREMISES CONSIDERED, Christina Westfall and Stefani Podvin request from this Court the following:

1. A Scire facias writ be issued as to defendant, Udo Birnbaum, in the manner and form prescribed by law, requiring defendant, Udo Birnbaum, to appear and show cause why the

Order

Judgment should not be revived;

Order

2. The Judgment be revived in all respects and extended for the full period provided by law;

3. The Court direct the issuance of execution on the Judgment;

Order

4. The Court award Christina Westfall and Stefani Podvin all costs; and

5. The Court grant Christina Westfall and Stefani Podvin such other and further relief to which they may show themselves to be justly entitled.

Respectfully submitted,


FRANK C. FLEMING
State Bar No. 00784057

Law Office of Frank C. Fleming
3326 Rosedale Ave,
Dallas, Texas 75205-1462
(214) 373-1234
(fax) 1-469-327-2930

**ATTORNEY FOR CHRISTINA
WESTFALL and STEFANI PODVIN**

Even the Appeals Court "found" that this Order on Motion for Sanctions does NOT comply with the Rules - for it does give even a HINT for the reason for the SANCTION.

(the reason of course was for being "well-intentioned" and making a counter-claim - A FIRST AMENDMENT RIGHT! (was caught by the court reporter!)

*

And done in a JURY cause - without the JURY!

And Mr. Birnbaum was asking Judge Paul Banner for "FINDINGS OF FACT AND CONCLUSIONS OF LAW" upon this.

"Houston, we have a problem"! (Apollo 13)

*

That is how the "FINDINGS" came about - over a YEAR later - while this mess was in the APPEALS COURT - and lawyer FLEMING made up all this CRAP in the "Findings".

*

The KEY to EVERYTHING is in the "FINDINGS" - annotated later.

The "Findings" is nothing more than a CYA for the unlawful "Order on Motion for Sanctions"!

the supposed "judgment" is in fact titled "ORDER ON MOTION FOR SANCTIONS!"

sum of \$62,885.00. Post-judgment interest at the rate of ten percent (10%) was also awarded by the Judgment. A true and correct copy of the Judgment is attached hereto as Exhibit "1" to this affidavit and incorporated by reference herein for all purposes.

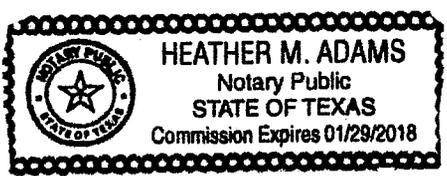
- 3. "There is no outstanding and unreturned execution on the Judgment.
- 4. "All payments made, credits, and offsets have been credited to the Judgment.
- 5. "The Judgment has not been paid or otherwise settled or compromised.
- 6. "There are no counterclaims or set-offs in favor of Judgment Debtor.
- 7. "As of June 1, 2014, there remains due and owing on the Judgment by the Judgment Debtor, damages in the amount of \$62,885.00. Post-judgment interest at the rate of ten percent (10%) was also awarded by the Judgment and remains due and owing.
- 8. "This Affidavit is made and filed for the purpose of reviving the Judgment in the manner and for the period prescribed by law."

FURTHER AFFIANT SAYEHT NOT.

SIGNED this 20th day of June, 2014.

Christina Westfall
CHRISTINA WESTFALL

SUBSCRIBED AND SWORN TO BEFORE ME on this 20th day of June, 2014.



Heather M. Adams
Notary Public, State of Texas

the supposed "judgment" is in fact titled "ORDER ON MOTION FOR SANCTIONS"!

Order

total sum of \$62,885.00. Post-judgment interest at the rate of ten percent (10%) was also awarded by the Judgment. A true and correct copy of the Judgment is attached hereto as Exhibit "1" to this affidavit and incorporated by reference herein for all purposes.

Order

Order

Order

3. "There is no outstanding and unreturned execution on the Judgment.

4. "All payments made, credits, and offsets have been credited to the Judgment.

5. "The Judgment has not been paid or otherwise settled or compromised.

Order

6. "There are no counterclaims or set-offs in favor of Judgment Debtor.

Order

Order

7. "As of June 1, 2014, there remains due and owing on the Judgment by the Judgment

Debtor, damages in the amount of \$62,885.00. Post-judgment interest at the rate of ten percent (10%) was also awarded by the Judgment and remains due and owing.

Order

8. "This Affidavit is made and filed for the purpose of reviving the Judgment in the manner and for the period prescribed by law."

FURTHER AFFIANT SAYEHT NOT.

SIGNED this 20th day of June, 2014.

Stefani Podvin
STEFANI PODVIN

SUBSCRIBED AND SWORN TO BEFORE ME on this 20th day of June, 2014.



Heather M. Adams
Notary Public, State of Texas

It is therefore, **ORDERED, ADJUDGED and DECREED** that the Counter-Defendants, Christina Westfall and Stefani Podvin are awarded damages as a sanction against and to be paid by defendant, Udo Birnbaum, to Christina Westfall and Stefani Podvin as follows:

- A. Christina Westfall and Stefani Podvin are awarded jointly and severally the amount of \$50,085.00 as reimbursement for their joint attorney's fees.
- B. Christina Westfall is awarded actual damages for her personal inconvenience in the amount of \$1,000.00, and she is further awarded punitive damages for the harassment caused to her in the amount of \$5,000.00.
- C. Stefani Podvin is awarded actual damages for her personal inconvenience in the amount of \$1,800.00, and she is further awarded punitive damages for the harassment caused to her in the amount of \$5,000.00.
- D. The Court denies the request for a finding of any sanctions to be awarded in favor of G. David Westfall, individually.
- E. The Court denies the request for a finding of any sanctions to be awarded in favor of Udo Birnbaum.

IT IS FURTHER ORDERED THAT the judgment here rendered shall bear interest at the rate of ten percent (10%) from July 30, 2002, until paid.

All other relief regarding any motions for sanctions on file in this matter not expressly granted in this order is hereby denied.

Here is the FRAUD: cannot "award" judgment to someone who is NOT a PLAINTIFF!!!

THIS **JUDGMENT** RENDERED ON JULY 30, 2002, AND SIGNED THIS 9 day of August, 2002.

Other FRAUD: this was a JURY cause. This was all done WITHOUT a JURY!

Paul Fleming
JUDGE PRESIDING

clearly all written up by lawyer Fleming

156/835

FILED FOR FILING
02 AUG 21 11 59 AM
CLERK OF COURT

Application should be granted and that the Sanctions Judgment revived for the period of time proscribed by law.

IT IS HEREBY, ORDERED, ADJUDGED, AND DECREED, that the Sanctions Judgment (a true and exact copy of which is attached hereto as Exhibit 1 and made a part of this Order as if fully set forth at length) rendered in the above-entitled and numbered cause on July 30, 2002 and signed on August 9, 2002, is hereby revived in all respects against defendant/counter-plaintiff Udo Birnbaum;

IT IS FURTHERED ORDERED that execution on the revived Sanctions Judgment may immediately issue; and

IT IS FURTHER ORDERED that all costs are taxed against the Defendant, Udo Birnbaum.

All relief requested, not granted herein, is expressly denied.

SIGNED this 14 day of November, 2014

Paul B.
JUDGE PAUL BANNER, PRESIDING

ALL FRAUD!
In a JURY case - "judgment" was done WITHOUT A JURY!
And "awarded" to someone who had been "out" by summary judgment long ago - and NEVER WAS A PLAINTIFF!
Also plum UNLAWFUL punishment for exercising a First Amendment Right to make a COUNTER-CLAIM! (see "Findings")
Official Oppression per se!

PAUL BANNER
Senior Judge Presiding by
Assignment

NOTE: This page is part of the Nov. 14, 2014 ORDER REVIVING JUDGMENT (above).

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I certify this to be a true and exact copy of the original on file in the District Clerk's Office, Van Zandt County, Texas.

Candi Scott

No. 00-00619

IN THE DISTRICT COURT

THE LAW OFFICES OF
G. DAVID WESTFALL, P.C.

Plaintiff

v.

UDO BIRNBAUM

Defendant/Counter-Plaintiff

G. David Westfall, Christina Westfall, and
Stefani Podvin,

Counter-Defendants

294th JUDICIAL DISTRICT

Was a JURY trial - with a VERDICT and judgment "rendered" on April 11, 2002. Yet here we are - three months later - WITHOUT A JURY!

Also note - NOWHERE does Judge Paul Banner state WHY he PUNISHED ME!

VAN ZANDT COUNTY, TEXAS

ORDER ON MOTIONS FOR SANCTIONS

On July 30, 2002, came on to be heard, Motions for Sanctions filed by G. David Westfall, Christina Westfall, and Stefani Podvin, as well as to be heard Motions for Sanctions filed by Udo Birnbaum. The plaintiff, The Law Office of G. David Westfall, P.C. (the "Plaintiff"), appeared in person by representative and by attorney of record. The defendant, Udo Birnbaum, appeared in person, pro se. The counter-defendant, G. David Westfall, appeared by representative and by attorney of record. The counter-defendants, Christina Westfall and Stefani Podvin appeared in person and by attorney of record. All parties announced ready for a hearing on all the pending motions for sanctions currently on file in this matter at the time of the hearing.

Based upon the pleadings of the parties, the evidence presented at trial and the evidence presented at the sanctions hearing, and the arguments of counsel and by the pro se defendant, the Court is of the opinion that the Movants, Christina Westfall and Stefani Westfall are entitled to prevail on their claim for sanctions against the Defendant, Udo Birnbaum.

156/834

432

It was a JURY case - and ONLY the jury can award "damages". There was NO JURY making this AWARD!

It is therefore, **ORDERED, ADJUDGED and DECREED** that the Counter-Defendants, Christina Westfall and Stefani Podvin are **awarded damages** as a sanction against and to be paid by defendant, Udo Birnbaum, to Christina Westfall and Stefani Podvin as follows:

A. Christina Westfall and Stefani Podvin are **awarded** jointly and severally the amount of **\$50,085.00** as reimbursement for their joint attorney's fees.

Got to be a PLAINTIFF to get JUDGMENT!

B. Christina Westfall is **awarded** actual damages for her personal inconvenience in the amount of **\$1,000.00**, and she is further **awarded** punitive damages for the harassment caused to her in the amount of **\$5,000.00**.

Got to be a PLAINTIFF to get JUDGMENT!

C. Stefani Podvin is **awarded** actual damages for her personal inconvenience in the amount of **\$1,800.00**, and she is further **awarded** punitive damages for the harassment caused to her in the amount of **\$5,000.00**.

Got to be a PLAINTIFF!

Got to be a PLAINTIFF!

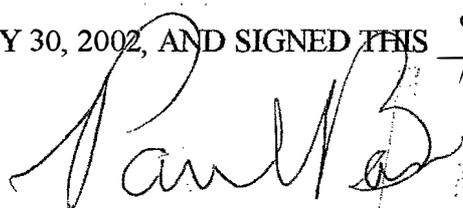
D. The Court denies the request for a finding of any sanctions to be awarded in favor of G. David Westfall, individually.

E. The Court denies the request for a finding of any sanctions to be awarded in favor of Udo Birnbaum.

IT IS FURTHER ORDERED THAT the judgment here rendered shall bear interest at the rate of **ten percent (10%)** from July 30, 2002, until paid.

All other relief regarding any motions for sanctions on file in this matter not expressly granted in this order is hereby denied.

THIS JUDGMENT RENDERED ON JULY 30, 2002, AND SIGNED THIS 9 day of August, 2002.



JUDGE PRESIDING

FILED RECEPTION
02 AUG 21 AM 9:59
U.S. DISTRICT COURT
WESTFALL, ARIZONA

156/835

THIS is the document - and the ONLY document - upon which judgments of \$85,000, another for \$65,000, and yet another for \$125,000, all plus 10% interest since 2002 - all in the SAME case - were assessed against Mr. Birnbaum.
Total TODAY - \$500,000 or so.

ALL fraudulent legal fees - and fraudulent legal fees - for collecting on fraudulent legal fees. "Smoke OLD MOLD - the ONLY cigarette - that is ALL filter"

LAW OFFICES OF
G. DAVID WESTFALL, P.C.
A Professional Corporation
714 JACKSON STREET
700 RENAISSANCE PLACE
DALLAS, TEXAS 75202

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Telephone: (214) 741-4741
Fax: (214) 741-4746

May 5, 1999

Mr. Udo Birnbaum
Route 1 Box 295
Eustace, Texas 75124

This "agreement" is the ONLY agreement ever between the parties.

It was upon THIS agreement that G. David Westfall brought a SWORN suit claiming an additional \$18,000 due on an unpaid "OPEN ACCOUNT". (above the \$20,000 PREPAID non-refundable "retainer-fee".
FRAUD - right out of the chute.

RE: Birnbaum v. Ray, et al.

Dear Mr. Birnbaum:

This is clearly NOT an "open account" - but merely a prepaid "non-refundable retainer fee".

You have requested that I act as your attorney in the above referenced suit pending in the U.S. District Court for the Northern District of Texas. This letter sets forth the agreement concerning our representation of you. This agreement shall become effective upon our receipt of a counter-signed copy of this agreement and upon the payment of the retainer.

More next pages

You agree to pay our firm a **retainer fee** of \$20,000.00, which is **non-refundable**. This retainer is paid to us for the purpose of insuring our availability in your matter. The retainer will be credited against the overall **fee** in your matter.

We have agreed to handle this matter on an hourly basis at the rate of \$200.00 per hour for attorney time and \$60.00 per hour for paralegal time. In addition, we have agreed that you will reimburse us for expenses incurred on your behalf, such as, but not limited to, filing fees, deposition expenses, photocopy expenses, travel expenses, and employment and testimony of expert witnesses, if necessary. I will not obligate you for any large expense without your prior approval. I would ask and you have agreed to pay **expenses** as they are incurred.

After the \$20,000.00 has been expended in time we will then operate on a hybrid type of agreement wherein we will lower our hourly rate to \$100.00 for

Mr. Birnbaum
May 5, 1999
Page two

does NOT use the phrase "IS DUE" as is used for BILLING on an "Open Account" - or for that matter - ANY account!

This is the ONLY "right" retained for "non-payment". "expressio unius est exclusio alterius" (to name one is to exclude all others)

attorney's time and \$30.00 an hour for paralegal time, but then charge as an additional fee a 20% contingency of the gross recovery in this case.

You will be billed monthly for the time expended and expenses incurred. Payment of invoices is expected within 10 days of receipt unless arrangements are made in advance. We reserve the right to terminate our attorney-client relationship for any of the following reasons:

clearly NOT "open account"

1. Your non-payment of fees or costs;
2. Your failure to cooperate and comply fully with all reasonable requests of the firm in reference to your case; or
3. Your engaging in conduct which renders it unreasonably difficult for the firm to carry out the purposes of its employment.

Fees and costs, in most cases, may be awarded by the Judge against either party. Sometimes, the court makes no order for fees or costs. Because fees and costs awards are totally unpredictable, the court's orders must be considered merely "on account" and the client is primarily liable for payment of the total fee. Amounts received pursuant to any court order will be credited to your account.

You have represented to me that the purpose of this litigation is compensation for damages sustained and that you are not pursuing this matter for harassment or revenge. In this regard, if settlement can be reached in this case whereby you will be reimbursed for all actual damages and I will be paid for my services, you agree to accept the settlement. Notwithstanding this agreement, however, I will not settle this cause of action without your prior approval and any settlement documents must bear your signature.

Inasmuch as I am a solo practitioner, we have agreed that I at my sole discretion may hire such other attorneys to assist in the prosecution of this matter as may be reasonably necessary.

Mr. Birnbaum
May 5, 1999
Page three

Ever wonder what is wrong with our courts?
*
Just read this stuff - UNBELIEVABLE - but real.

FRAUD - right out of
the chute - and ever
after!

I will keep you informed as to the progress of your case by sending you copies of documents coming into and going out of our office. Every effort will be made to expedite your case promptly and efficiently. I make no representations, promises or guarantees as to the outcome of the case other than to provide reasonable and necessary legal services to the best of my ability. I will state parenthetically, from what you have told me, you have a very good case. Various county officials and others involved in this matter should never have done what they apparently did. I will explain in detail the ramifications and affect of Section 1983 and Civil Rico when we next meet.

Please retain a copy of this letter so that each of us will have a memorandum of our understanding concerning fees and expenses.

A "memorandum of our understanding" - regarding a "retainer agreement" for a lawyer - regarding "expectations" - does NOT constitute the opening of a commercial "OPEN ACCOUNT" for the purpose of dealing with systematic "SALE AND DELIVERY" of "GOODS OR SERVICES"!

Sincerely yours,

Accepted: Udo Birnbaum
Udo Birnbaum

Date: 5-5-99

Ever wonder what is wrong with our courts?

www.OpenJustice.US

No. 00-00619

THE LAW OFFICES OF
G. DAVID WESTFALL, P.C.

vs.

"The Law Offices"

UDO BIRNBAUM

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)
)
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)

IN THE DISTRICT COURT

294th JUDICIAL DISTRICT

VAN ZANDT COUNTY, TEXAS

FILED FOR RECORD
00 SEP 21 PM 4:08
NANCY YOUNG
DIST. CLERK VAN ZANDT CO. TX
DEP

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, THE LAW OFFICES OF G. DAVID WESTFALL, P.C., Plaintiff,
complaining of UDO BIRNBAUM, hereinafter referred to as Defendant, and for cause of action
would respectfully show the court the following:

Birnbaum was retaining attorney G. David Westfall. That "Law Offices" mumbo-jumbo in the "retainer" - was already intent to harm Birnbaum by a fraudulent "open account" suit!

I.

Plaintiff is a professional corporation with its principle office and place of business in Dallas, Dallas County, Texas.

principal

Defendant is an individual whose residence is in Eustace, Van Zandt County, Texas and may be served with process at Route 1, Eustace, Texas.

"sale and delivery" of "goods or services"

ABSOLUTE FRAUD - retained G David Westfall. One CANNOT retain a "LAW OFFICE"!

II.

On or about May 5, 1999, Defendant retained Plaintiff to perform legal services in a civil matter in Cause No. 3:99-CV-0696-R in the United District Court for the Northern District of Texas in Dallas, Dallas County, Texas.

the attorney retainer agreement has NO SUCH WORDS- only "we reserve the right to terminate for non-payment"

watch the wording

III.

The legal and/or personal services were provided at the special instance and requested of Defendant and in the regular course of business. In consideration of such services, on which systematic records were maintained, Defendant promised and became bound and liable to pay Plaintiff the prices charged for such services and expenses in the amount of \$18,121.10, being a reasonable charge for such services. A true and accurate photostatic copy of the accounts for services rendered are attached hereto by reference for all purposes as Exhibit "A". Despite Plaintiff's demands upon Defendant for payment, Defendant has refused and failed to pay the

this is legal wording for "open account"

"prices charged" - sounds like a lumber yard - charging for the stuff sent to a builder - on "OPEN ACCOUNT. "you order - we send - and put it on your bill! "SALE AND DELIVERY OF GOODS"

again, no such right established by the lawyer "retainer agreement"

standard "open account" wording

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account to Plaintiff's damage in the total amount of \$18,121.10. All just and lawful offsets, payments and credits have been allowed.

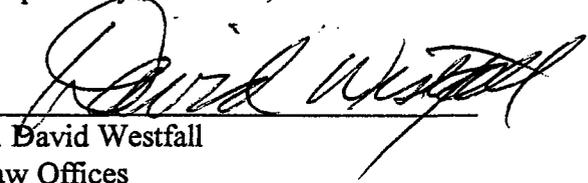
IV.

Plaintiff is entitled to recover reasonable attorney's fees incurred in the filing of this suit. Demand for payment from Defendant has been made. Plaintiff requests reasonable attorney's fees as determined by the trier of fact.

WHEREFORE PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer and upon final hearing, Plaintiff have judgment against Defendant for \$18,121.10 plus prejudgment and postjudgment interest at the highest rate allowed by law, attorney's fees, costs of court and for such other and further relief, both at law and equity, to which Plaintiff may show himself to be justly entitled.

Cause clearly brought as an "open account".
The "elements" of an "open account":
1. That an open account indeed existed
2. That there was indeed "sale and delivery of goods or services"
3. That the goods or services had "worth".
*
NONE of this was submitted to the jury!
Judge Paul Banner - over objection by Birnbaum - instead POISONED the jury:
*
QUESTION 1: "How much does Birnbaum owe by his FAILURE TO ABIDE by the agreement?" (my paraphrase - details in later documents)
Intentionally defrauded the jury. FRAUD UPON THE COURT - BY THE COURT

Respectfully submitted,



G. David Westfall
Law Offices
714 Jackson Street
Suite 217
Dallas, Texas 75202
(214) 741-4741
Facsimile (214) 741-4746

Ever wonder what is wrong with our courts? KEEP LOOKING