

App. 6

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA

DGP PRODUCTS INC., d/b/a,
NUMERIC RACING

Plaintiff,

Vs.

CASE NO: 2020-CA-0889 CCAX WS

FAITH ELYZABETH ANTONIO,
Defendant.

**FAITH ANTONIO’S VERIFIED MOTION TO DISMISS FOR FAILURE TO STATE A
CAUSE OF ACTION, MOTION TO DISMISS FOR FAILURE TO COMPLY WITH
CONDITION PRECEDENT AND LACK OF STANDING, AND
MOTION TO STRIKE SHAM PLEADING**

COMES NOW, the Defendant, FAITH ANTONIO, by and through the undersigned attorney, pursuant to Florida Rules of Civil Procedure and precedent case law, hereby moves to dismiss the Complaint, stating as follows:

MOTION TO DISMISS FOR FAILURE TO STATE A CAUSE OF ACTION

1. Plaintiff’s Complaint fails to meet the minimum pleading requirements of Florida Rule of Civil Procedure 1.110(b)(2), which states that to state a cause of action “a short and plain statement of the ultimate facts showing that the pleader is entitled to relief” must be alleged.

2. Plaintiff fails to allege that it has complied with conditions precedent, a fatal flaw. See Nguyen v. Roth Realty, Inc., 550 So. 2d 90 (Fla 5th DCA 1989).

3. Plaintiff’s Complaint contains a count for Civil Theft pursuant to Florida Statute Section 772.11, which provides:

Before filing an action for damages under this section, the person claiming injury must make a written demand for \$200 or the treble damage amount of the person liable for damages under this section.

See Florida Statute Section 772.11(a). (Emphasis provided).

**MOTION TO DISMISS FOR FAILURE TO COMPLY WITH CONDITION
PRECEDENT AND LACK OF STANDING**

4. Furthermore, the letter attached to Plaintiff’s Complaint as Exhibit C was never

received by FAITH ANTONIO, and it admits that such a letter is a “condition precedent.”

5. In fact, Plaintiff lists 5 different email addresses and states that the letter was sent by U.S. Mail and email, but Defendant never received this letter.

6. Because Florida Statute Section 772.11(a) provides 30 days from receipt of such a demand letter within which the recipient has the right to meet the demand after which a written release from civil liability must be provided for the specific act of theft, FAITH ANTONIO was not provided this important statutory right from the date of receipt of the letter before this lawsuit was filed.

7. The Complaint at paragraph 6 alleges that the Plaintiff, DGP Products Inc. is a Florida Corporation and that (at paragraph 86), FAITH ANTONIO’s purchases constitute theft from Plaintiff. At paragraph 87, Plaintiff alleges that it “has suffered economic losses based on Defendant’s wonton [sic] disregard.” However, the letter attached as Exhibit C directly conflicts with these allegations in stating that “Geberth is demanding repayment of damages suffered as a result of your actions.” It goes on to state that “[a]ccordingly, this letter serves as Geberth’s statutory demand under section 772.11,” and that a release “would include a release of your exposure to pay Geberth’s attorney’s fees and costs as they relate to any claim of civil theft.”

8. The complaint’s allegations that Plaintiff, a Florida corporation, has suffered economic losses is in direct conflict with the “statutory demand” letter attached as Exhibit C in that the Complaint clearly alleges that the Plaintiff (DGP Products Inc. d/b/a Numeric Racing) at paragraph 103, “is entitled to treble damages in the minimum amount of \$300,000 for theft,” and Exhibit C refers to “Geberth” as being owed money for the same alleged conduct.

9. As a result of this direct conflict between the allegations of the Complaint and Exhibit C, the Complaint is subject to dismissal. See Blue Supply Corp. v. Novos Electro Mech.,

Inc., 990 So.2d 1157, 1159 (Fla. 3d DCA 2008).

10. Because the exhibits control over the allegations of the complaint when there is such a conflict and inconsistency, according to Exhibit C, “Geberth” has standing to bring this action, not Plaintiff corporation. See Hunt Ridge at Tall Pines, Inc. v. Hall, 766 So.2d 399, 401 (Fla. 2d DCA 2000). See also Fladell v. Palm Beach County Canvassing Board, 772 So.2d 1240 (Fla. 2000)

11. Plaintiff lacks standing and is not the real party in interest pursuant to Fla. R. Civ. P. 1.210. Standing is something that must exist on the date of filing the Complaint, and it cannot not relate back to the date of filing simply by amending the Complaint. See Progressive Express Insurance v. McGrath, 913 So.2d 1281 (Fla. 2d DCA 2005). As such, Plaintiff’s action must be dismissed.

MOTION TO STRIKE SHAM PLEADING

12. Pursuant to Florida Rule of Civil Procedure 1.150, FAITH ANTONIO moves to strike Plaintiff’s Complaint as a sham pleading as a dispositive motion for which she requests summary judgment and an evidentiary hearing.

13. Fla. R. Civ. P. 1.150(a) provides that “the court shall hear the motion, taking evidence of the respective parties, and if the motion is sustained, the pleading to which the motion is directed shall be stricken...summary judgment on the merits may be entered at the discretion of the Court.” (Emphasis provided).

14. FAITH ANTONIO and the individual listed on Exhibit C, “Geberth,” had a personal, dating relationship from May 26, 2014 to November of 2019 as Mr. Geberth’s girlfriend. FAITH ANTONIO was never an employee of Plaintiff’s; Mr. Geberth had an “on again” and “off again” relationship of a personal nature.

15. FAITH ANTONIO never received pay in exchange for work from Plaintiff, and

FAITH ANTONIO never had any job duties or a work schedule, as she was never “employed” by Plaintiff, as it falsely alleges in its Complaint.

16. Mr. Geberth filed a criminal complaint in Pasco County, and an investigation conducted by the Pasco County Sheriff’s Office determined the same allegations in this case were “unfounded,” that the lengthy Facebook posts of Mr. Geberth that are quoted therein, and Deputy W.F. Duncan (5010) states that they “clearly indicate Faith was considered a girlfriend and not an employee. It also shows (Mr. Geberth) was more than generous with buying lavish gifts and spending large amount of money on Faith and her children.” Deputy Duncan further writes that “I determined neither party has any independent or conclusive indication to show transactions were either authorized or not.”

17. Thus, the Pasco County Sheriff’s Office, in January of 2020, found through its investigation by looking at all of the transactions listed by Plaintiff in this case and taking the full statements of both parties about the financial transactions that there was no probable cause for an arrest.

18. Where there is no probable cause for an arrest, there certainly cannot be evidence sufficient enough to meet the “clear and convincing evidence” burden of Civil Theft as stated in Florida Statute Section 772.11 or even a “preponderance by the evidence” standard, both of which are higher evidentiary burdens than probable cause for an arrest that Plaintiff must meet to prevail but clearly cannot come close to meeting these evidentiary burdens.

19. In another criminal complaint reported by Mr. Geberth to the Pasco County Sheriff’s Office, after being served with the dating violence injunction attached as Exhibit A and having his guns retrieved, he became curious about what else FAITH ANTONIO might have done. Mr. Geberth reported to the police that his computer was missing a hard drive and showed the

officer the missing slot where the hard drive would be. The officer determined that the computer ran on a solid-state drive in lieu of a hard drive, and Mr. Geberth was not missing any files or other property on the computer as Mr. Geberth had believed. Mr. Geberth then complained a “graphics card” was missing, but he later called the Pasco Sheriff’s Office to report that he realized the “graphics card” was in fact in the computer.

20. This lawsuit is a pretense to harass and bully FAITH ANTONIO for severing her relationship with Mr. Geberth. FAITH ANTONIO obtained a Final Injunction Against Dating Violence against Mr. Geberth who was represented by the same counsel in this case as was representing him at the injunction return hearing for the Injunction attached hereto as Exhibit A.

21. On December 24, 2019, Mr. Geberth left a voicemail on FAITH ANTONIO’s cell phone in which he threatens to communicate FAITH ANTONIO’S address and phone numbers to her rapist, referring to him as a “fake rapist,” who only lives a 10-hour-drive away from FAITH ANTONIO.

22. Mr. Geberth goes on to threaten FAITH ANTONIO with a civil suit, to have her “thrown in jail,” to play “really...hard ball,” and to “fuck you over, that’s a fucking guarantee” if FAITH ANTONIO did not comply with his demand for a Jacuzzi.

23. The factual allegations in the voicemail seems to be referring to a Jacuzzi brand sauna owned by FAITH ANTONIO that was purchased for her by her mother on her mother’s credit account that was, in turn, paid off by her father.

24. This voicemail shows Mr. Geberth’s intent to “cost” FAITH ANTONIO money in attorney’s fees that she does not have, and while the letter attached as Exhibit C to Plaintiff’s Complaint identifies Mr. Geberth as the real party in interest, he is motivated to bully, harass and imbue FAITH ANTONIO with fear of further physical harm from her rapist who has a history of

violent criminal offenses from multiple states (of which Mr. Geberth is aware from his own research).

25. Notably, the letter attached as Exhibit C to Plaintiff's Complaint on Plaintiff's lawyer's letterhead also discloses phone numbers that at one time did belong to FAITH ANTONIO, a letter that was not ever emailed to the emails listed thereon (as they were never received) but were intended to, again, disclose FAITH ANTONIO's personal contact information in a court filing that would become a public record. This is the epitome of bullying and filing documents and a pleading for the sole purpose of harassment.

26. As another example, on December 22, 2019, Mr. Geberth sent FAITH ANTONIO an email in which he evinces the same intent to harass FAITH ANTONIO by "sending her to jail" for things she did not do, to make her life "difficult and stressful," to let her rapist know "exactly where you live and all your phone numbers. He is just a 10hr drive from you."

27. FAITH ANTONIO did not respond to this December 22, 2019 communications or any others like it, of which there are several.

28. Plaintiff's Exhibit B attached to its complaint appears to be a list promulgated or created for purpose of this case, for the purpose of accusing FAITH ANTONIO of theft that did not occur, purchases she did not make, purchases during a time FAITH ANTONIO was not dating or in a relationship with Mr. Geberth (e.g. June of 2015 – when FAITH ANTONIO was not allowed to make regular purchases on Mr. Geberth's accounts until the middle of 2016), purchases that she did make with Geberth's permission, or are purchases on Mr. Geberth's account on which she had an "authorized user" card because she was his girlfriend. FAITH ANTONIO made purchases on Mr. Geberth's accounts at his behest, for his benefit or as gifts while they were in a dating relationship.

29. FAITH ANTONIO, while in a dating relationship with Mr. Geberth, had her own residence where her own children resided with her, but she also helped Mr. Geberth with his household, including helping take care of his minor daughter.

30. Mr. Geberth used Plaintiff's business accounts for litany of personal purchases for his personal benefit (e.g. a \$5,000 massage chair for his home that he described in QuickBooks as office furniture, new floors for his home and other home repairs, car repairs and expenses, meals with family and friends), or even has personal gifts to FAITH ANTONIO and her family. For example, Plaintiff's Exhibit A attached to its complaint lists a purchase for \$8,337 on a Capitol One Auto account was the purchase of a car for FAITH ANTONIO's minor son, which Mr. Geberth has stated in emails as buying this vehicle for him.

31. FAITH ANTONIO, for example, never filled out a W-4 or W-9 and was never paid W-2 wages (i.e. a paycheck) because she was never employed by Plaintiff. FAITH ANTONIO helped Mr. Geberth with his business from time to time while they were in a dating relationship as people in relationships normally do.

32. Mr. Geberth reconciled his own accounting in QuickBooks, FAITH ANTONIO did some data entries for Mr. Geberth to help him as a girlfriend, his mother Francis Price helped Mr. Geberth with his QuickBooks, Mr. Geberth worked on his own QuickBooks, and his accountant (Ashana Ramdial, CPA of Cohen & Grieb) also regularly helped maintain Plaintiff's QuickBooks.

33. However, in January of 2020, FAITH ANTONIO received an email from Plaintiff's lawyer requesting her social security number for tax purposes for 2019.

34. After having a dating relationship spanning from May of 2014 to November of 2019, this was the first time FAITH ANTONIO ever heard an indication that Plaintiff would attempt to transfer a tax liability onto her when she neither was employed by Plaintiff or had any

ownership interest in Plaintiff such that a tax liability would arise.

35. In February of 2020, FAITH ANTONIO received from Plaintiff in the mail 1099s for 2018 (\$75,935.42) and 2019 (\$65,484.56) without her social security numbers on them. There is no legal reason for her to receive these documents, as FAITH ANTONIO never received these funds for employment or otherwise. Rather, they are being used to harass FAITH ANTONIO, not for the purpose for which they are intended, to wit: report payments made to an independent contractor.

36. In March of 2020, FAITH ANTONIO received from Plaintiff in the mail a 1099 for 2017 (\$83,397.98) with her social security number on it.

37. In June of 2020, FAITH ANTONIO received a 1099 for 2016 (\$53,149.42) via Plaintiff's counsel to the undersigned counsel with her social security number on it.

38. FAITH ANTONIO never provided her social security number to Plaintiff for any reason, as she was never employed by it. These 1099s necessarily would have had been done when the tax return for Plaintiff was filed each year by its accountant, but because FAITH ANTONIO was never employed by Plaintiff, they were not.


39. If these returns of Plaintiffs were even amended to falsely state that FAITH ANTONIO were ever employed by Plaintiff, it cannot be done retroactively beyond 3 years.

40. Most importantly, this would raise a more serious question of Plaintiff illegally avoiding a tax liability, as FAITH ANTONIO was never employed by Plaintiff for any purpose.

41. This behavior, bullying FAITH ANTONIO, is a manifestation of Mr. Geberth's intent in filing this lawsuit, to use a court process for reasons other than for which it was intended, to harass FAITH ANTONIO financially, psychologically, and physically.

WHEREFORE FAITH ANTONIO respectfully requests an Order striking Plaintiff's Complaint as a sham pleading without leave to amend, that Plaintiff's complaint should be dismissed without leave to amend, FAITH ANTONIO's attorney's fees be awarded pursuant to Florida Statute Section 559.715(1) and (4) where applicable and 772.11(1), court costs and such other relief as this Court deems just and equitable.

I HEREBY SWEAR UNDER PENALTY OF PERJURY that all of the above stated facts are true and correct.



FAITH ANTONIO

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via eservice to all persons entitled to receive eservice on this on this 1st day of July, 2020.

Respectfully submitted,

STEWART & RILEY

/s/ BRENDAN R. RILEY

Florida Bar # 87954

5435 Main Street

New Port Richey, Florida 34652

(727) 312-3748

BRR@BetterCallBrendan.com



Faith Antonio [REDACTED]

Fwd: SERVICE OF 57.105(4) 21-DAY LETTER IN 512020CA000889CAAXWS DGP PRODUCTS INC. VS ANTONIO, FAITH ELYZABETH

28 messages

Brendan R. Riley, Esq. <BRR@bettercallbrendan.com>
To: Faith Antonio [REDACTED]

Tue, Jul 7, 2020 at 11:41 PM

They sent over an email asking to take your deposition.
I already told them that I am going to file a motion for protective order and set it for hearing.
Then I decided I would send them over this letter and motion for sanctions.
My feeling is that the attorney thinks everything is a joke, has not learned things like this will have consequences when met with the wrong people.

I could just see his demeanor at a deposition, but as soon as it goes anywhere that is not relevant and is just harassing, we will end it.
Normally the party could be present during a deposition, but his client will not be because of the injunction. That's one bonus.

By the way, the \$2,700 is spent. I need another \$3,000 to continue at the rate this is going.
We did a lot of work on the front end that I think will eventually get results.
The day after will filed motion to dismiss etc, he was asking about settlement.
It's like they have too much pride to just ask "how about we dismiss and you don't sue, etc."

Brendan R. Riley, Esq.
[Stewart & Riley](#)
[5435 Main Street](#)
[New Port Richey, Florida 34652](#)
Florida Bar Number 87954
727-312-3748 (Office)
727-350-9848 (Facsimile)
www.BetterCallBrendan.com

----- Forwarded message -----

From: **Brendan R. Riley, Esq.** <BRR@bettercallbrendan.com>
Date: Tue, Jul 7, 2020 at 11:35 PM
Subject: SERVICE OF 57.105(4) 21-DAY LETTER IN 512020CA000889CAAXWS DGP PRODUCTS INC. VS ANTONIO, FAITH ELYZABETH
To: <jessica@lawbernstein.com>, <derek@lawbernstein.com>

The 21-day letter is attached with the incorporated Motion to Dismiss for Lack of Standing and Failure to Comply with Condition Precedent and Motion to Dismiss Sham Pleading. The Motion for Sanctions is being sent herewith but is not being filed until after the 21-days has expired.

Brendan R. Riley, Esq.
[Stewart & Riley](#)
[5435 Main Street](#)
[New Port Richey, Florida 34652](#)
Florida Bar Number 87954
727-312-3748 (Office)
727-350-9848 (Facsimile)
www.BetterCallBrendan.com

3 attachments**050****050**

Faith

[Quoted text hidden]



Subpoena to Quickbooks.pdf

152K

Brendan R. Riley, Esq. <BRR@bettercallbrendan.com>

Sun, Jul 12, 2020 at 5:28 PM

To: Faith Antonio [REDACTED]

neither of those have gone forward. to subpoena quickbooks he as to file notice providing 15 days to object. He didn't do that bit asked if I would have any objection. I just said I had objections. If he files notice, I would file objection then, and it mus be heard before the subpoena can go out. If he tries to set your deposition I will file motion for protective order to stop it until motion is heard.

Brendan R. Riley, Esq.

please excuse typos sent on galaxy note 10+

[Quoted text hidden]