UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 2:23-cv-51

PHILIP C. BELLFY, PhD,
Plaintiff,

Hon. Paul L. Maloney
Magistrate Judge Maarten Vermaat

v.

MICHAEL T. EDWARDS and
JOCELYN K. FABRE,
Defendants.

Philip C. Bellfy, PhD
Plaintiff in pro per
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PLAINTIFF BELLFY'S MOTION FOR SUMMARY JUDGMENT UNDER FRCP RULES 56(c) and 26(a)(1)(A)

Rule 56. Summary Judgment

(a) MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT. A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

Rule 26. Duty to Disclose; General Provisions Governing Discovery

(a) REQUIRED DISCLOSURES.

(1) *Initial Disclosure.*

> (A) *In General.* Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:
>
> (i) the name and, if known, the address and telephone number of each individual [like Court Administrator Traci Swan] likely to have discoverable information --along with the subjects of that information-- that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;
>
> (ii) a copy --or a description by category and location-- of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment (emphasis added throughout).

Rule 56 – Motion for Summary Judgment

The plain language of Rule 56(c) cited above mandates the entry of summary judgment, after adequate time for discovery --and/or mandated disclosure under Rule 26-- and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). at 322-23.

Without the hard evidence of the Notice of Hearing, and the hard evidence of the Zoom access email, I am "entitled to a judgment as a matter of law" because the nonmoving party –the two named defendants and their lawyers-- have failed to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof. *Celotex*, 477 U.S.

"Metaphysical doubt as to the material facts is not enough to overcome summary judgment, and a party may not rest upon the mere allegations of his pleading." *Flint v. City of Belvidere*, 791 F.3d 764, 769 (7th Cir. 2015) (internal citations omitted). "[S]urviving summary judgment requires evidence, not assumptions;" "mere speculation or conjecture" is insufficient to create a factual dispute to defeat summary judgment. *Thornton v. M7 Aerospac*e LP, 796 F.3d 757, 768-69 (7th Cir. 2015) (internal citations and quotations omitted). *United States v. Romero*, Case No. 15 C 5607, 2 (N.D. Ill. Jan. 5, 2017)

Metaphysical doubt as to the material facts (or, as I like to call it: "Spectral Evidence" masquerading as "material facts") means that the non-moving party cannot defeat summary judgment by relying on unsupported assertions, bare allegations, or speculation, which is all the Defendants and their lawyers have. In spectral evidence, the admission of victims' conjectures is governed only by the limits of their fears and imaginations, whether or not objectively proven facts are forthcoming to justify them. *State v. Dustin*, 122 N.H. 544, 551 (N.H. 1982).

In *Matsushita,* the Supreme Court embraced the view that a party opposing summary judgment "must do more than simply show that there is some metaphysical doubt [based on 'spectral evidence'] as to the material facts." That the dispute might be factually complex --as the dispute in *Matsushita* certainly was --did not benefit the nonmoving party. Oddly enough, the factual complexity intensified the burden on the opposing parties to "come forward with more persuasive evidence to support their claim than would otherwise be necessary." *Matsushita Elec. Indus. Co.*, 475 U.S. at 586. 32. Id. at 587.

Anderson underscored that a party resisting summary "must present affirmative evidence [not "Spectral Evidence"] in order to defeat a properly supported motion for summary judgment." *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242 (1986) at 257

The burden of proof shifts to the nonmoving party when the moving party makes a *prima facie* showing that there isn't a genuine issue over a material fact, which I have done by providing the Court with email evidence that the Notice of hearing and the Zoom access codes were never sent to me. This *prima facie* showing must be refuted by the nonmoving party by providing substantial evidence –for example, the Notice of Hearing, and the Zoom Access email sought by me through subpoena (sorry for the repetition)-- raising a genuine issue over a material fact. The Defendant must "conclusively negate" a necessary element of the plaintiff's case; in this case (again, sorry for the repetition), by providing the Court with a copy of the Notice of Hearing, and the ZOOM access email.

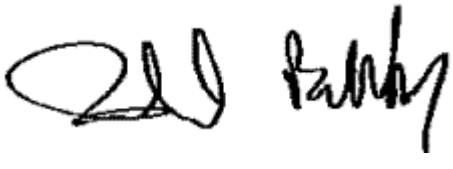
Of course, strict scrutiny of FRCP 26 mandates that the Court acknowledge that the Defendants, and their lawyers, have made a "binding judicial admission" that they do not have ANY "affirmative evidence" due the simple fact that if there was any "substantial evidence" to raise any genuine issue of material fact, the Defendants and their lawyers were required by Rule 26 to disclose that evidence to me and the Court months ago, which they, quite obviously, did not do. A failure to deny an allegation is a binding judicial admission. See, e.g., *Smith v. Chapman*, 436 F.Supp. 58, 62 (W.D.Tex.1977), aff'd, 614 F.2d 968 (5th Cir.1980); *White v. Arco/Polymers, Inc.*, 720 F.2d 1391, 1396 (5th Cir.1983), 720 F.2d at 1396.

Relief Sought

Plaintiff asks the Court to deny the Plaintiff's pending Motion to Dismiss my Complaint and set the date for a jury trial on the remaining issue in this case –compensation for Defendants and their lawyers for conspiring through their willful, knowing, and repeated perjury designed to violate my Constitutional rights to Due Process as well as their liability under the federal Civil Perjury statute 18 U.S.C. §§ 1621 and/or 1623. For the compensation issue, see *Ruby Freeman, et al, v. Rudolph W. Giuliani*. Civil Action No. 21-3354, District of Columbia, District Court (BAH)'

PROOF OF SERVICE (electronically filed)

Philip C. Bellfy, PhD Plaintiff's Signature



Date 10-09-2023

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