

P-9
VEXAD

NO. 2015-45473

PROPHET RONALD DWAYNE
WHITFIELD,
Plaintiff

vs.

FIRST SERVICE CREDIT UNION and
BIG STAR HONDA,
Defendants

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

FILED

Chris Daniel
District Clerk

295th JUDICIAL DISTRICT

MAR 30 2016

Time: 12:35 p.m.
Harris County, Texas

By: [Signature]
Deputy

ORDER

On August 7, 2015, the Plaintiff, Ronald Dwayne Whitfield (Whitfield) a/k/a Prophet Ronald Dwayne Whitfield, filed a petition in *propria persona* in which he asserts claims against Defendants, First Service Credit Union (First Service) and Big Star Honda (Big Star), for “Unlawful Breach of Contract and for legal Torts and Legal Personal Injuries.” Included in his petition was an affidavit of indigency.

Several months earlier, on February 17, 2015, Mr. Whitfield had filed a similar cause of action dealing with the same parties and subject matter in the 295th District Court as *Whitfield v. Big Star Honda*, trial court cause number 2015-08974. Accordingly, on First Service’s motion, the above matter was transferred from the 133rd District Court to the 295th District Court on October 22, 2015. On September 28, 2015, before the matter was transferred, Big Star filed a motion to declare Mr. Whitfield a vexatious litigant and on October 21, 2015, it filed a supplement to that motion. After appropriate notice to all the parties, a hearing on First Credit’s motion to dismiss pursuant to Rule 91a of the Texas Rules of Civil Procedure and Big Star’s motion to declare Mr. Whitfield a vexatious litigant began on November 19, 2015; the hearing was continued until December.

On December 7, 2015, the Court resumed the hearing on First Service Credit Union’s motion to dismiss Mr. Whitfield’s causes of action under Rule 91a of the Texas Rules of Civil Procedure and Big Star’s motion to declare him a vexatious litigant. At the conclusion of the hearing, the Court granted First Service Credit Union’s Rule 19a motion and entered an Order dismissing with prejudice Mr. Whitfield’s claims for (1) breach of contract; (2) injunctive relief;

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RECORDER'S MEMORANDUM
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(c) declaratory relief; (d) fraud by concealment; and (e) an unidentified “tort.” The Court further awarded to First Service \$1,750.00 in attorney’s fees to be paid no later than January 6, 2016. At that time, the Court orally granted Big Star’s motion to declare Mr. Whitfield a vexatious litigant, but did not sign a written order.

Instead of paying the ordered fees by January 6, 2016, Mr. Whitfield file a notice of appeal on December 11, 2015 and the case was docketed by the Fourteenth Court of Appeals as 14-15-1077-CV, styled *Whitfield v. First Service Credit Union*. As of this date, the appeal is still before the appellate court and the remainder of the case is still pending before the Court.

BACKGROUND

Mr. Whitfield argues that Big Star, through its representative, contacted him and invited him to buy a car. It appears from Mr. Whitfield’s pleadings that he signed a contract for the purchase of a 2014 Honda and Big Star took possession of Mr. Whitfield’s 2008 Mazda as a trade in. Mr. Whitfield signed a loan application to purchase the Honda and Big Star then attempted to get Mr. Whitfield approved for a loan to buy the Honda and Mr. Whitfield signed a loan application. The next day, Big Star asked Mr. Whitfield to return to the dealership with his payroll stubs to finalize the car loan.

On January 16, 2015, Mr. Whitfield returned to the dealership. Arguing that the sales contract he had signed was not valid, Mr. Whitfield claims he attempted to return the Honda and retrieve his trade in. Big Star’s sales representative declined to honor Mr. Whitfield’s requests.

Later, Mr. Whitfield received notice that he had not been approved for a loan. Mr. Whitfield claims that First Service engaged in deception because the document he signed was not a “Loan Application”, but a “Consumer Lending Plan” and a binding contract. The rest of Mr. Whitfield’s claims concerning this contract language consist of novel, highly technical, pseudo-legal arguments.

After he was not approved for a loan, Big Star asked Mr. Whitfield to return the 2014 Honda and informed him that it would return his 2008 Mazda. Mr. Whitfield’s pleadings indicates that he declined Big Star’s request.

Mr. Whitfield’s petition requests that the Court grant him injunctive relief and a declaratory judgment on claims for “breach of contract,” an unspecified “legal tort,” and “a legal

personal injury [sic]”. Specifically, he asks the Court to enter a judgment against First Service Credit Union “in the amount of four million dollars for compensation and actual damages suffered from lost [sic] of property, embarrassment, loss of enjoyment of life, mental anguish and distress, [and] economical [sic] loss.” He also demands that the Court to award him court costs.

Arguing that the transaction that is the gravamen of this suit is subject to an arbitration agreement, Honda filed a motion in 2015-45473 and 2015-08974 asking the Court to submit the disagreement to arbitration pursuant to the Arbitration Agreement signed by both parties. On April 29, 2015, the Court granted “Honda’s Motion to Compel Arbitration and Stay Litigation of Defendant Big Start Honda” in 2015-08974. It remains pending in this case

On May 8, 2015, Mr. Whitfield filed “notice of appeals” in both cases which the appellate court construed as writs of mandamus. Mr. Whitfield asked the appellate court to order the trial court to vacate its order compelling arbitration and staying the underlying litigation. On May 15, 2015, Mr. Whitfield filed a motion to prosecute his appeal as an indigent. The Harris County District Clerk (Harris County) filed a contest to his claims of indigency, which this Court sustained. On September 1, 2015, the First Court of Appeals denied Mr. Whitfield’s writ. On October 22, 2015, this case was transferred from the 133rd District Court to this Court.

On November 5, 2015, Mr. Whitfield filed “Motions for Contempt of Court, Motions for Recusal of Judge Baker, & for Order that Defendant[,] Big Star Honda and her [sic], Attorney Show Legal Cause Why Both Should Not Be Held in Contempt and for Orders of Transfer to Neighboring County for Contempt of Court Hearing In Another Court Other than the Offending Court.” The trial judge declined to recuse and the matter was referred to the Honorable Olen Underwood, Presiding Judge of the Second Administrative Judicial Region. Judge Underwood denied Mr. Whitfield’s motion on November 17, 2015.

On December 7, 2015, the Court granted First Service Credit Union’s motion to dismiss Mr. Whitfield’s causes of action under Rule 91a of the Texas Rules of Civil Procedure. Specifically, the Court dismissed with prejudice Mr. Whitfield’s claims for (1) breach of contract; (2) injunctive relief; (c) declaratory relief; (d) fraud by concealment; and (e) an unidentified “tort.” The Court further awarded to First Service \$1,750.00 in attorney’s fees to First Service Credit Union by January 7, 2016. Instead, Mr. Whitfield file a notice of appeal on

December 11, 2015, and an affidavit of indigency on appeal on February 23, 2016. The remainder of the case remains pending before the Court.

THE VEXATIOUS LITIGANT STATUTE

Chapter 11 of the Texas Civil Practice and Remedies Code governs suits brought by vexatious litigants and specifies that a Court may, on defendant's motion or *sua sponte*, designate a party as a vexatious litigant. *See* TEX. CIV. PRAC. & REM. CODE § 11.101.

A Court may declare a party to be a vexatious litigant if there **is not** a reasonable probability that he will prevail in litigation **and** the party has a history of filing or repeatedly re-litigating unsuccessful or frivolous suits. TEX. CIV. PRAC. & REM. CODE § 11.054. Specifically, during the seven year period immediately preceding the date the defendant files its motion to declare the plaintiff a vexatious litigant, the plaintiff has "commenced, prosecuted, or maintained at least five litigations as a pro se litigant" that have been "finally determined adversely to the plaintiff" or have been determined "by a trial or appellate court to be frivolous or groundless under state or federal law or rules of procedure." *See Id.* Finally, a court may find a plaintiff to be a vexatious litigant if the party has previously been declared to be a vexatious litigant by state or federal in an action or proceeding based on the same or substantially similar facts, transaction, or occurrence. *See Id.*

NO REASONABLE PROBABILITY OF PREVAILING IN THE CAUSE OF ACTION

After reviewing the pleadings and evidence in the case, the Court **FINDS** there is no reasonable probability that Mr. Whitfield will prevail in this case. As noted above, the Court has granted First Service Credit Union's motion to dismiss Mr. Whitfield's causes of action under Rule 91a of the Texas Rules of Civil Procedure. Specifically, the Court dismissed with prejudice Mr. Whitfield's claims for (1) breach of contract; (2) injunctive relief; (c) declaratory relief; (d) fraud by concealment; and (e) an unidentified "tort." The Court further awarded to First Service \$1,750.00 in attorney's fees to First Service Credit Union by January 7, 2016.

The Court further **FINDS** there is no reasonable probability that Mr. Whitfield will prevail on his breach of contract claim or fraud claims against a Big Star. The evidence before the Court indicates that Mr. Whitfield failed to pay Big Star for the 2014 Honda that is part of the subject matter of the controversy. The Court **FINDS** that Mr. Whitfield not filed any pleadings or

presented the Court with any evidence that would support fraud claims against Big Star. A review of the Court's records reveals no pleading or evidence indicating that Big Star knowingly or recklessly made any false material representation to Mr. Whitfield that he relied on and caused him injury.

Accordingly, the Court **FINDS** that Mr. Whitfield's claims appear to have no basis in law or fact.

PLAINTIFF'S LITIGATION HISTORY

A review of court records and Westlaw reveals that Ronald Dwayne Whitfield has a long history of filing pro set litigation in state and federal courts throughout Texas.

Federal Litigation History. In 2008, when considering Mr. Whitfield's "Emergency Motion for Injunction," Judge Janis Graham Jack of the Southern District of Texas, Corpus Christi Division noted as follows:

Movant [Ronald Dwayne Whitfield] is an abusive litigant who has filed over sixty actions in federal district court. *See In re: Ronald Dwayne Whitfield*, No. 2:07-cv-114 (S.D. Tex. Oct. 9, 2007 Order at 2) ("A recent review of Whitfield's litigation history shows that he has filed more than sixty (60) civil actions in federal district court."). Movant's conduct has resulted in repeated and significant monetary sanctions. *See, e.g., In re Whitfield*, No. 97-00454 (5th Cir. Oct. 30, 1997 Order) (\$100); *Whitfield v. Johnson*, No. 4:94-cv-02767 (S.D. Tex Mar. 5, 2001 Order Striking Pleadings and May 12, 2000 Order Striking Pleadings and Imposing Sanction) (\$1500); *Whitfield v. Ott*, No. 4:00-cv-2367 (S.D. Tex. July 14, 2000 Order) (\$200); *Whitfield v. Johnson*, No. 4:97-cv-3148 (S.D. Tex. April 22, 1999 Order on Motion) (\$200); *Whitfield v. Webb*, No. 4:94-cv-4191 (S.D. Tex. Sept. 20, 1996 Order) (\$25); *Whitfield v. Collins*, No. 4:94-cv-2630 (S.D. Tex. Jan. 9, 1996 Order) (\$50); *Whitfield v. State of Texas, et al.*, No. 1:95-cv-023 (N.D. Tex. Feb. 13, 1995 Order) (\$250). *In In re Whitfield*, No. 97-00454 (5th Cir. Oct. 30, 1997 Order), the Fifth Circuit stated as follows:

We impose upon Whitfield a sanction in the amount of \$100, payable to the Clerk of this court. Until such sanction is paid in full, the Clerk of this court is directed to accept no further notices of appeal, motions, or other pleadings filed by Whitfield. Even after the sanction is paid, the Clerk of this court is directed to accept no further notices of appeal, motions, or other pleadings from Whitfield unless Whitfield has obtained permission to file them from a judge of this court.

Furthermore, in *Whitfield v. Prasifka, et al.*, No. 2:03-cv-001 (S.D. Tex. Feb. 11, 2003 Order), this Court stated as follows: "[I]t is ORDERED that Plaintiff [Ronald Dwayne Whitfield] is ... barred from filing any pleadings in this division

until such time as he can demonstrate that prior financial sanctions [i.e., the sanctions listed above] have been paid in full, except upon written leave of court.”

Finding Mr. Whitfield had not provided evidence that he had paid any of his federally ordered sanctions, that court denied his “Emergency Motion.” *See In re Whitfield* 2008 WL 694713 (U.S. Dist. Ct. for the Southern Dist. Of Texas)

Recent State Litigation History. Currently Mr. Whitfield has at least five cases pending before Harris County District Courts:

- (1) This case, which he filed on August 7, 2015, as trial court cause number 2015-45473, is styled *Prophet Ronald Dwayne Whitfield v. First Service Credit Union and Big Star Honda*. As noted earlier, he is suing for breach of contract, fraud, unspecified torts and personal injuries.
- (2) February 17, 2015, he filed *Prophet Ronald Dwayne Whitfield v. Big Star Honda, et al.* in trial court cause number 2015-08974. In that suit, Mr. Whitfield claims “civil fraud,” breach of contract, and asks the Court for declaratory judgment, injunctive relief, and a restraining order;
- (3) *Prophet Ronald Dwayne Whitfield v. Honda, the Owner of the Name World-Wide, Big Star Honda, Russell and Smith, and all Other Car Dealership[s] Privately Owned Operating Under Said Name Subject to the Jurisdiction of the United States of North American, and the Reynolds and Reynolds Company, (trial court cause number 2015-19565, 295th District Court)*. This case includes many of the same parties and the underlying facts are similar to those in cause numbers 2015-45473 and 2015-08974. In his petition, Mr. Whitfield appears to claim Honda and the printer of the sales agreement form, Reynolds and Reynolds, are defrauding the American people because the sales contract “is designed to deceive them by failing to disclose that the forms/contracts contain an arbitration clause / agreement. He asks the Court for 30 million dollars in damages, court costs, and attorney’s fees.
- (4) *Ronald Dwayne Whitfield v. Central Houston Nissan*, which he filed on April 21, 2015, he filed as trial court cause number 2015-22882 in the 311th District Court.

In that suit, he accuses Central Houston Nissan for breach of contract, false advertising, and mail fraud; and

- (4) Finally, *Ronald Dwayne Whitfield v. Clear Lake Nissan and Santander Consumer U.S.A.*, trail court cause number 2015-22666, filed on April 20, 2015 in the 333rd District Court. In this suit, Mr. Whitfield claims damages from Clear Lake Nissan and Santander Consumer USA for breach of contract and consumer fraud.

As in the federal system, Mr. Whitfield has a pattern of filing suits that state courts have been found to be meritless and frivolous. While the following list may not be complete, a cursory review of TAMES and DEEDS records indicate that since 2008, Mr. Whitfield has had following litigation decided against him:

- (1) *In re Whitfield*, 14-08-00914-CV, 2008 WL 42527699 (Tex. App. – Houston [14th Dist.] Oct. 9, 2008)(original proceeding)(mem. op., not designated for publication). Mandamus denied.
- (2) *In re Whitfield*, 14-08-00915-CV, 2008 WL 42527699 (Tex. App. – Houston [14th Dist.] Oct. 9, 2008)(original proceeding)(mem. op. not designated for publication). Mandamus denied.
- (3) *In re Whitfield*, 14-08-00916-CV, 2008 WL 42527699 (Tex. App. – Houston [14th Dist.] Oct. 9, 2008)(original proceeding) (mem. op. not designated for publication). Mandamus denied.
- (4) *In re Whitfield*, 14-08-00917-CV, 2008 WL 42527699 (Tex. App. – Houston [14th Dist.] Oct. 9, 2008)(original proceeding) (mem. op. not designated for publication). Mandamus denied
- (5) *In re Whitfield*, 14-09-00347-CR, 2009 WL 1150180 (Tex. App. – Houston [1st Dist.] Apr. 30, 2009) (mem. op. not designated for publication). (original proceeding). Mandamus denied.
- (6) *In re Whitfield*, 10-10-00088-CR, 2010 WL 966416 (Tex. App. – Waco March 10, 2010) (original proceeding) (mem. op. not designated for publication). Mandamus petition denied.

- (7) *In re Ronald Dwayne Whitfield*, 01-15-00657-CV, 2015 WL 5136805 (Tex. App. – Houston [1st Dist.] Sept. 1, 2015) (original proceeding) (mem. op. not designated for publication). Mandamus denied. (Arising from *Whitfield v. Big Star Honda*, 295th Dist. Ct. tc# 2015-08974)
- (8) *In re Ronald Dwayne Whitfield*, 01-15-00658-CV, 2015 WL 5136805 (Tex. App. – Houston [1st Dist.] Sept. 1, 2015)(original proceeding) (mem. op. not designated for publication). Mandamus denied. (Arising from *Whitfield v. Clear Lake Nissan*, 333rd Dist. Ct. tc# 2015-22666)
- (9) *Whitfield v. Big Star Honda*, 01-15-00448-CV, 2015 WL 7300349 (Tex. App. – Houston [1st Dist.] Nov. 19, 2015) (mem. op. not designated for publication) (mem. op. not designated for publication). Dismissed for want of jurisdiction. (Arising from - *Whitfield v. Big Star Honda*, 295th Dist. Ct. tc# 2015-08974).
- (10) *Whitfield v. Clear Lake Nissan*, 01-15-00645-CV, 2015 WL 7300323 (Tex. App. – Houston [1st Dist.] Nov. 19, 2015) (mem. op. not designated for publication). Dismissed for want of jurisdiction. (Arising from - *Whitfield v. Clear Lake Nissan*, 333rd Dist. Ct. tc# 2015-22666).

FINDINGS

After hearing all the evidence presented, reviewing Big Star’s motions, the record, Mr. Whitfield’s pleadings, and the pertinent authorities, the Court **FINDS** Ronald Dwayne Whitfield meets the requirements of a vexatious litigant as detailed in Chapter 11 of the Texas Civil Practice and Remedies Code.

Specifically, the Court **FINDS** as follows:

- (1) There **is not** a reasonable probability that Mr. Whitfield will prevail in the current litigation.
- (2) Mr. Whitfield has a history of filing or repeatedly re-litigating unsuccessful or frivolous suits.
- (3) During the past seven year period Mr. Whitfield has “commenced, prosecuted, or maintained at least five litigations as a pro se litigant” that have been “finally determined adversely to him.”

- (4) In an Order issued October 30, 1997, the United States Court of Appeals for the Fifth Circuit sanctioned Mr. Whitfield for filing a frivolous appeal and issued a preclusion order directing the clerk of that court “to accept no further notices of appeal, motions or other pleadings from Whitfield” unless he obtained permission to file them from a judge of that court. *In re Whitfield*, No. 97-00454 (5th Cir. Oct. 30, 1997 Order).¹
- (5) Ronald Dwayne Whitfield meets the criteria for finding a plaintiff a vexatious litigant.

Accordingly, the Court **ORDERS** Ronald Dwayne Whitfield a/k/a Prophet Ronald Dwayne Whitfield adjudicated to be a vexatious litigant.

The Court **ORDERS** that Ronald Dwayne Whitfield is prohibited from filing new litigation in a state court without first obtaining permission from the appropriate local administrative judge. *See* TEX. CIV. PRAC. & REM. CODE §11.101. Permission to file new litigation shall be granted only if the litigation appears to have merit and is not filed for purposes of harassment or delay; such permission may also be conditioned on the furnishing of a security.

The Court **ADMONISHES** Ronald Dwayne Whitfield that if he fails to obey this order, he may be punished by sanctions or found in contempt.

The Court **ORDERS** the Harris County District Clerk to refuse the filing of any **new litigation** by Ronald Dwayne Whitfield unless he first obtains written permission from the appropriate local administrative judge.

The Court further **ORDERS** the Harris County District Clerk to forward a copy of this Order to the Office of Court Administration. *See* TEX. CIV. PRAC. & REM. CODE §11.104(a).

Signed: March 30, 2016. Caroline Baker
 Caroline Baker
 Judge, 295th District Court
 Harris County, Texas

¹ Federal preclusion orders are the functional equivalent of a state order declaring an individual to be a vexatious litigant.



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this March 31, 2016

Certified Document Number: 69613928 Total Pages: 9

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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