

DAWN NETTLES,	§	IN THE DISTRICT COURT OF
<i>Petitioner</i>	§	
	§	
VS.	§	TRAVIS COUNTY, TEXAS
	§	
THE TEXAS LOTTERY COMMISSION	§	
AND GTECH CORPORATION,	§	
<i>Respondents</i>	§	345 th JUDICIAL DISTRICT

GTECH CORPORATION'S ORIGINAL RESPONSE

Respondent GTECH Corporation ("GTECH") files this Original Response to Petitioner Dawn Nettles' ("Nettles" or "Petitioner") Petition to Take Deposition Before Suit ("Petition") and respectfully shows as follows:

I. SUMMARY

1. Requests to take depositions by oral examination to obtain testimony to investigate a potential claim are *not* requests automatically granted as a matter of course. The Texas Supreme Court has specifically admonished that pre-suit depositions are not intended for routine use and that courts are to "strictly limit and carefully supervise" them to prevent abuse. *See In re Jorden*, 249 S.W.3d 416, 423 (Tex. 2008). Strict limitation and careful supervision of the facts alleged by Petitioner Nettles' demonstrate that a deposition upon written questions would be more appropriate and efficient (than oral depositions) under the circumstances.

2. Nettles runs a lottery reporting website¹ that serves as a platform for her airing of alleged grievances against the Texas Lottery – most recently, against a scratch-off ticket known as "Fun 5's." From the facts alleged in Nettles' Petition there is no potential cause of action for her to investigate. Nettles is transparent about what she seeks: "Someone," she says, "has created the appearance of impropriety." But even if Nettles' allegation were true, this would not represent a viable cause of action for her to assert. The potential for abuse of the pre-suit

¹ See Petition at ¶ 15; see also <http://lottoreport.com>.

discovery process is at its highest where, as here, the petitioner's interest does not connect to any cognizable claim. The "benefit", if any, of allowing petitioner to take the requested depositions to "investigate a potential claim" do not outweigh the burden or expense of the procedure. For this reason alone, the court should deny Nettles' Petition.

3. Nettles' Petition for oral pre-suit depositions should be denied because: (1) the benefit of allowing Nettles to take oral pre-suit depositions is outweighed by the thousands of dollars in avoidable expenses that would be incurred and (2) the burden of allowing Nettles to take oral pre-suit depositions is excessive given the existence of less invasive and more efficient alternatives under the Texas Rules – such as depositions upon written questions.

II. BACKGROUND

4. Nettles alleges that she purchased a "Fun 5's" ticket that was a winner based on "standard sentence construction and the plain meaning" of the following instruction:

Reveal three "5" symbols in any one row, column or diagonal win prize in prize box. Reveal a money bag symbol "\$" in the 5x box, win five times that prize.

Nettles does not elaborate on her interpretation but alleges that the first and second sentences describe two mutually independent ways of winning.

5. The TLC owns and operates the Texas Lottery, which issued the lottery tickets at issue. *See* 16 TEX ADMIN. CODE § 401, et seq. (2003).

6. On the back of each lottery ticket the TLC has included the following statement and rules applicable to anyone who plays the Texas Lottery:

"All tickets, winners and transactions are subject to Lottery rules, regulations, procedures and State Law."

7. GTECH has never had any sort of contractual or licensing relationship with any Lottery retailer of scratch off tickets to sell tickets.

8. GTECH has never had any contract, license or any other type of relationship with Plaintiff Nettles.

9. GTECH made no warranty, guarantee, promise, representation or misrepresentation to Plaintiff Nettles regarding the scratch off tickets at issue in this lawsuit.

10. GTECH does not issue the award of lottery scratch off tickets.

11. Pursuant to Texas Government Code section 466.252, GTECH had no contact with Plaintiff Nettles.

12. All rules, regulations and operations regarding Texas lottery tickets and cash awards for winning lottery tickets are owned, controlled, promulgated, implemented and determined by the TLC.

13. The TLC alone promulgates and implements the rules and regulations governing lottery tickets.

14. At no time has GTECH ever sold any lottery tickets.

15. The Court should not allow her to use pre-suit depositions in pursuit of publicity or public media ends.

III. ARGUMENT

A. LAW APPLICABLE TO PRE-SUIT DISCOVERY

16. Rule 202.1(b) of the Texas Rules of Civil Procedure provides that:

A person may petition the court for an order authorizing the taking of a deposition on oral examination **or written questions** [...] to investigate a potential claim or suit.

(emphasis added).

17. The Texas Supreme Court has cautioned that pre-suit depositions are not intended for routine use and has held that courts are to “strictly limit and carefully supervise” them to prevent abuse. *See In re Jorden*, 249 S.W.3d 416, 423 (Tex. 2008); *see also In re Wolfe*, 341 S.W.3d 932, 933 (Tex. 2011). Accordingly, the burden is on the party requesting the pre-suit deposition to demonstrate that the likely benefit of allowing the pre-suit deposition outweighs the burden or expense of the same. *See Jorden*, 248 S.W.3d at 423.

B. NETTLES HAS NOT MET HER BURDEN

18. Nettles was required to include sufficient explanatory material in her Petition regarding the anticipated suit or potential claim to allow the Court to determine the scope of discovery. *See In re Reassure America Life Ins. Co.*, 421 S.W.3d 165, 174 (Tex. App.—Corpus Christi 2013). Yet Nettles’ Petition fails to provide or identify the potential claim or claims she is allegedly investigating. Moreover, Nettles does not even explain how she *could* have a claim against each of the parties that she identifies.

19. Specifically, Nettles fails to explain how she could have a claim against GTECH. Nettles does not allege that she was in contractual privity with any of the parties mentioned in her Petition and nothing within it suggests breach of a legal duty by GTECH (or any of the other parties vaguely mentioned) that would entitle Nettles to relief.

20. There is also the fact that the purported benefit of a pre-suit deposition – to reduce the field of defendants, according to Nettles – is outweighed by the expensiveness and invasiveness of an oral deposition spanning a dozen topics and serving only media-driven ends. Preparing for and participating in such a forced “exclusive interview” with Nettles would cost thousands of dollars in legal fees. Pre-suit discovery was never intended to be a tool in a reporter’s arsenal. Nettles’ request should accordingly be denied.

C. A LESS BURDENSOME AND LESS EXPENSIVE EFFICIENT ALTERNATIVE EXISTS

21. Respondent GTECH contends that if this court should order any pre-suit deposition, it should be conducted as a deposition on written questions, rather than through oral examination.

22. In her Petition, Nettles has alleged that it *could* sue five different defendants to “learn the identify of the persons or entities responsible for drafting the language in question, interpreting the language, creating tickets that do not match the official game rules, and creating the computer programs that rejected winning tickets as losers”.² Instead Nettles has unilaterally chosen two entities to depose in order to “determine which party or parties are responsible.”³

23. Assuming that arbitrarily selecting two Parties (i.e. GTECH and the Texas Lottery Commission) to shoulder the burden of a discovery process that could potentially relate to multiple third-parties were proper, such a procedure would still be unnecessary in this circumstance. First, because there is no risk that personnel from GTECH will not be available at the time of a potential trial to testify.

24. Further, pre-suit oral depositions are unnecessary because Nettles has specifically identified the thirteen (13) questions⁴ which she purports to ask the Texas Lottery Commission and GTECH. The nature of the subject matter and questions enumerated by Petitioner make a deposition on written questions the most efficient and least burdensome mechanism to address the questions raised. Rather than expend the time, travel, resources, and preparation costs, associated with oral depositions, Petitioners’ questions could be easily propounded to the Parties thereby streamlining costs, an alleviating some of the burdens imposed upon Respondents.

² See Petition at ¶ 20.

³ See Petition at ¶ 21.

⁴ See Petition at ¶¶ 19.

D. SHOULD PRE-SUIT DISCOVERY BE ALLOWED, GTECH REQUESTS THAT A PROTECTIVE ORDER BE APPLIED

25. The operation of the lottery inherently involves security issues. In order to ensure that security is maintained, a protective order is required. A protective order is necessary and appropriate to protect GTECH given the probability that the disclosure of certain information requested by Petitioner would cause immediate and irreparable injury. The information sought by Petitioner is comprised of confidential, proprietary, financial, trade and competitive secrets. As such, the disclosure of confidential and proprietary information will forever harm the value of the proprietary and confidential information which GTECH has worked so hard to foster and develop, and which would be forever lost or diminished once disclosed to third-parties.

E. SHOULD PRE-SUIT DISCOVERY BE ALLOWED, GTECH REQUESTS THAT ORAL DEPOSITIONS BE OF LIMITED DURATION

26. Finally, if the court should order any pre-suit deposition, time limits should be imposed to protect GTECH.

IV. GENERAL DENIAL

27. Respondent, GTECH, denies generally every allegation in petitioner's original petition and demands strict proof by a preponderance of the credible evidence.

V. PRAYER

Respondent GTECH Corporation respectfully requests that the Court deny Petitioner Dawn Nettles' Petition to Take Deposition Before Suit. In the alternative, if the court should order a pre-suit deposition, Respondent GTECH Corporation requests any such pre-suit deposition be conducted upon written questions to reduce the burden and expense of the pre-suit discovery process. Moreover, if the court should order a pre-suit deposition, Respondent GTECH Corporation requests that any pre-suit deposition be taken pursuant to court order

providing for a protective order. Respondent also requests such further and other relief to which it may in law or equity be entitled.

Respectfully submitted,

REED SMITH, LLP

By: /s/ Kenneth E. Broughton

Kenneth E. Broughton

State Bar No. 03087250

Francisco Rivero

State Bar No. 24046725

BG Group Place

811 Main Street, Suite 1700

Houston, Texas 77002-6110

Tel: 713.469.3819

Fax: 713.469.3899

kbroughton@reedsmith.com

frivero@reedsmith.com

ATTORNEYS FOR DEFENDANT
GTECH CORPORATION

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been sent to all counsel of record by ECF-service, facsimile, hand-delivery, electronic mail, and/or certified mail, return receipt requested, on this 3rd day of November, 2014, pursuant to the TEXAS RULES OF CIVIL PROCEDURE.

Richard L. LaGarde
Mary Ellis LaGarde
LAGARDE LAW FIRM, P.C.
3000 Wesleyan, Suite 380
Houston, Texas 77027
richard@lagardelaw.com
mary@lagardelaw.com

Manfred Sternberg
MANFRED STERNBERG & ASSOCIATES, P.C.
4550 Post Oak Place Dr., Suite 119
Houston, Texas 77027
manfred@msternberg.com

Gaston Broyles
Jason Godley
Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
OF TEXAS
Post Office Box 12548
Austin, Texas 78711-2548
Gaston.Broyles@texasattorneygeneral.com

/s/ Kenneth E. Broughton

Kenneth E. Broughton

VERIFICATION

STATE OF TEXAS

§

§

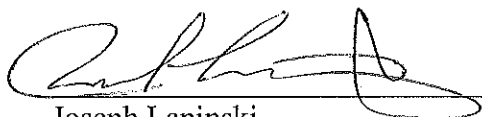
COUNTY OF HARRIS

§

Before me, the undersigned notary, on this day, personally appeared Joseph Lapinski, a person whose identity is known to me. After I administered an oath to him, upon his oath, he said:

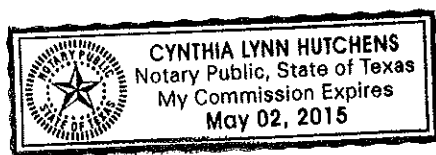
"My name is Joseph Lapinski. I am the Account Development Manager for GTECH Corporation. I have read the foregoing instrument and its contents and hereby attest that the facts stated therein are true and correct and within my personal knowledge and the same are incorporated herein by reference.

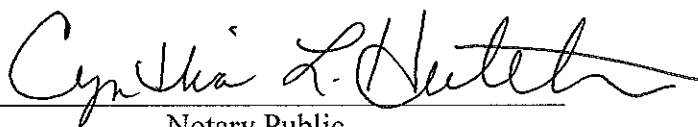
Further affiant sayeth not.



Joseph Lapinski

SUBSCRIBED AND SWORN TO BEFORE ME on 11/03, 2014.





Notary Public
in and for the State of Texas

(SEAL)