

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

CHERI SMITH,)
Plaintiff,)
)
v.) **Chancery No. 53360**
)
WESLEY C. SMITH,)
Defendant)

#49 – PETITION/MOTION FOR RULE TO SHOW CAUSE AGAINST IGOR BAKHIR

A pdf copy of this motion is available at: http://www.liamsdad.org/court_case/

COMES NOW the Defendant, Wesley C. Smith, and under oath, requests this Court issue a Rule against Igor Bakhir requiring him to appear and show cause why he should not be held in contempt, for his failure to comply with a subpoena duces tecum and refusing to answer and knowing giving false answers in a deposition. In support of his PETITION/MOTION the Defendant states as follows:

1. Mr. Bakhir was served on January 15, 2004 with both a subpoena for a deposition as well as a subpoena duces tecum for documents. Mr. Bakhir did attend the deposition but he failed to provide any of the requested documents.
2. During the deposition Mr. Bakhir willfully and repeatedly provided incorrect answers to questions. He also repeatedly refused to answer questions without a legal basis to refuse.
3. A copy of the transcript of the deposition has been filed with the Court.
4. Some of Mr. Bakhir's answers were just unbelievable, such as his having no friends in the U.S., not recalling the reason for his divorce, never going out to lunch, not knowing the last name of friends or co-workers, not knowing that he and the Plaintiff had the same supervisor, that he has no reason to have contact with the Plaintiff, when they worked on projects together.
5. The Defendant is able to prove via documents from Mr. Bakhir's divorce case, from correspondence Mr. Bakhir had with the Plaintiff, writings of the Plaintiff, that several of Mr. Bakhir's answers were intentionally false.
6. The Plaintiff herself has made written and oral statements that contradict sworn testimony by Mr.

Bakhr including on July 12, 2004 under oath in court, testified that Mr. Bakhr had spent the night with her and Liam Smith in October 2003, prior to Mr. Bakhr's deposition.

7. Peter Berty, Mr. Bakhr's supervisor under oath testified that some of Mr. Bakhr's statements were incorrect and "does not see how it is possible" Mr. Bakhr could not know that he was Mrs. Smith's supervisor.

8. Rule 4:12(a)(3) states that "For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer."

9. According to Va. Code § 18.2-434, Mr. Bakhr's false answers are acts of perjury, and Mr. Bakhr's contradictory answers are sufficient evidence of perjury. For example on Page 21 of his deposition he claims to have no friends in the U.S., yet uses interaction with friends as a answer to other questions such as page 65 about his trip to Snowshoe, and page 117, and even names a friend on page 118 but claims not to know his last name.

10. Mr. Bakhr's attempts to invoke the Fifth have been inconsistent, answering a question about Mrs. Smith or Liam Smith in one instance then later taking the Fifth as to all questions about them.

11. Mr. Bakhr's attempt to use the Fifth Amendment is contradicted by case law:

"The Fifth Amendment prohibits only compelled testimony that is incriminating. See *Brown v. Walker*, 161 U. S. 591, 598 (1896) (noting that where "the answer of the witness will not directly show his infamy, but only tend to disgrace him, he is bound to answer"). "A claim of Fifth Amendment privilege **must establish** "reasonable ground to apprehend danger to the witness from his being compelled to answer ... [T]he danger to be apprehended must be real and appreciable, with reference to the **ordinary operation of law in the ordinary course** of things,--not a danger of an imaginary and unsubstantial character, having reference to some **extraordinary and barely possible contingency, so improbable that no reasonable man would suffer it to influence his conduct.**" *Id.*, at 599-600 (quoting *Queen v. Boyes*, 1 Best & S. 311, 321 (1861) (Cockburn, C. J.))." (See *Hibel v Sixth Judicial District Court Of Nevada*, <http://supct.law.cornell.edu/supct/html/03-5554.ZS.html>)

'It was also contended that a bare possibility of legal peril was sufficient to entitle a witness to protection; nay, further, that the witness was the sole judge as to whether his evidence would bring him into danger of the law; and that the statement of his belief to that effect, if not manifestly made mala fide, should be received as conclusive. With the latter of these propositions we are altogether unable to concur. . . . To entitle a party called as a witness to the privilege of silence, the court must see, from the circumstances of the case and the nature of the evidence which the witness is called to give, that there is reasonable ground to apprehend danger to the witness from his being compelled to answer. We indeed quite agree that, if the fact of the witness being in danger be once made to appear, great latitude should be allowed to him in judging for himself of the

effect of any particular question: . . . A question which might appear at first sight a very innocent one might, by affording a link in a chain of evidence, become the means of bringing home an offense to the party answering. Subject to this reservation, **a judge is, in our opinion, bound to insist on a witness answering unless he is satisfied that the answer will tend to place the witness in peril.** (See CHARLES MASON and A. Hanson, Plffs. in Err., v. UNITED STATES <http://laws.findlaw.com/us/244/362.html>)

12. There is no reasonable chance that Mr. Bakhir will be prosecuted for adultery, thus his use of the Fifth Amendment is not warranted by existing law, but is instead a willful attempt to obstruct discovery by the Defendant and help the Plaintiff hide relevant facts from the court.

13. The Defendant still needs accurate responses from Mr. Bakhir in order to properly prove his claims in the pending case.

14. The Court has previously ruled to issue a rule to show cause but in spite of being submitted several times the order has never been signed.

WHEREFORE the Defendant requests the following:

1. Issue a Rule against Mr. Bakhir to appear and show cause why he should not be held in contempt of court.

2. Monetary sanctions for refusing to comply with the subpoenas, including costs for bringing this motion, costs of attorney fees spent on previous subpoenas and deposition, other damages that might be awarded via § 8.01-221, the amount to be determined by the court.

3. An order compelling Mr. Bakhir to immediately provide all documents requested in the subpoena and to supply testimony under oath answering the questions he refused to answer or answered incorrectly in his deposition, and any new questions needed.

4. Such further relief as the nature of the case or the goals of equity require.

**Respectfully Submitted,
Wesley C. Smith**

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing motion was served to Loretta Vardy and Ronald Fahy (GAL) via e-mail and/or fax and/or website, this 13th day of February 2006.

Wesley C. Smith