

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**JAMES G. TEMME, and
STEWARDSHIP FUND, LP,**

Defendants,

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: Civil Action No.
: **4:11-CV-00655-MHS**
: (Judge Clark/Mazzant)
: ECF
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**PLAINTIFF’S REPLY IN SUPPORT OF ITS OBJECTION TO AND MOTION TO
STRIKE PORTIONS OF THE DECLARATION OF KEITH WILLINGHAM**

COMES NOW the Securities and Exchange Commission (the “Commission”) and submits this Reply in Support of its Objection to and Motion to Strike Portions of the Declaration of Keith Willingham.

In an attempt to create a fact question where none exists, Defendant James Temme submitted a declaration from Keith Willingham. As detailed in the Commission’s objection to and motion to strike portions of that declaration, it is fatally vague, irrelevant, and, on the pertinent issues, speculation not based on personal knowledge. Rather than reiterate the arguments raised in the initial objections and motion to strike, this reply will briefly address the fact that Temme’s response to those objections, rather than curing them, only confirms that the sections at issue are inadmissible. Moreover, his response further demonstrates that, even if it is admissible, the declaration cannot defeat the Commission’s motion for summary judgment.

For example, Temme states that Paragraph 4 of Mr. Willingham’s declaration is relevant to address statements from the Receiver that there are no records indicating that a certain transaction regarding a company known as Home Shield occurred. But it is clear from both the

Willingham Declaration and from Temme's response that Mr. Willingham had nothing at all do with that transaction and does not have any personal knowledge about it. In other words, Mr. Willingham is merely speculating that something "might" have happened. For the reasons explained in the Commission's objections and motion to strike, that is not admissible evidence for purposes of defeating the Commission's motion for summary judgment. Accordingly, the Commission asks the Court to disregard Paragraph 4 of the Willingham Declaration.

Similarly, Temme's attempt to defend Paragraph 5 of the Declaration only confirms that it is inadmissible. In essence, Mr. Willingham, without describing how he knows such information, attempts to suggest that certain "facts" are typical in the industry. Temme then hopes to use that putative generality to manufacture a fact question about a specific transaction about which there is specific evidence. Notably, Mr. Willingham does not address that evidence at all. And contrary to Temme's assurances, that is not surprising, since it is clear that he has no knowledge related to the transactions at issue in this case.

It is also notable that, the testimony found in Paragraph 5, as clarified by Temme in his response, is irrelevant. It appears that Temme hopes to use the Willingham Declaration to suggest that Stewardship Fund owned certain assets because if it did not, according to Temme, Stewardship Fund would not possess certain information about the assets. Even if this argument, as a general practice, is accurate, it is irrelevant. For example, taking his speculative and unsupported testimony at face value, Mr. Willingham is silent on when Stewardship Fund may have acquired the assets (thus, according to Willingham, obtaining certain information about the underlying property) or whether (as demonstrated by the Commission's evidence) it then re-sold the asset, double pledged or otherwise made misrepresentations about it.

Finally, to defend Paragraph 3 of the Willingham Declaration, Temme ignores that testimony's main defect. Temme asks this Court to ignore the specific evidence articulated by the Receiver in this matter because Mr. Willingham conducted "due diligence" in connection with a transaction. But Mr. Willingham does not offer a single step he took in as part of this claimed "due diligence." If he actually conducted real due diligence, as opposed to relying on inadmissible hearsay, presumably he would have set such steps out. This silence is particularly notable here because the likely source of information, Mr. Temme, has refused to participate in discovery and has instead invoked his Fifth Amendment privilege.

Because of the defects noted above and set out in the Commission's objections to and motion to strike, the Commission respectfully asks the Court to strike Paragraphs 3, 4, and 5 of the Declaration of Keith Willingham.

Respectfully submitted,

/s/ David B. Reece

DAVID B. REECE

Lead Attorney

Texas Bar No. 24002810

SECURITIES AND EXCHANGE COMMISSION

Fort Worth Regional Office

801 Cherry Street, 19th Floor

Fort Worth, Texas 76102

(817) 978-6476

(817) 978-4927 (fax)

reeced@sec.gov

CERTIFICATE OF SERVICE

I certify that on October 22, 2013, I electronically filed the foregoing *Plaintiff's Reply in Support of Its Objection to and Motion to Strike Portions of the Declaration of Keith Willingham* with the Clerk of the Court for the Eastern District of Texas, Sherman Division, using the CM/ECF system. The electronic case filing system will send a "Notice of Electronic Filing" to all counsel of record who has consented in writing to accept service of this document by electronic means.

/s/ David B. Reece
David B. Reece