

IN THE SUPREME COURT OF MISSISSIPPI

BARRY POPE

APPELLANT

v.

CAUSE NO. 2005-CA-02338

BRIAN SORRENTINO, ET AL

APPELLEES

**BRIEF OF APPELLEES BRIAN SORRENTINO, DALE HILL,
KEMPER PRESSURE TREATED FOREST PRODUCTS, INC., LIFE2K.COM, INC.,
ALGONQUIN ACQUISITION CORP., GENERATION
ACQUISITION CORP., AND SYNDICATION NET.COM, INC.**

ON APPEAL FROM THE CIRCUIT COURT OF
MADISON COUNTY, MISSISSIPPI

ORAL ARGUMENT NOT REQUESTED

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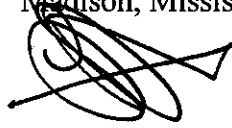
CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal:

1. Honorable L. Breland Hilburn, Special Circuit Court Judge by Assignment;
2. Appellant Barry Pope;
3. Clarence McDonald Leland, attorney for Appellant Barry Pope;
4. Appellee Castle Securities Corporation;
5. H. D. Granberry, III, attorney for Appellee Castle Securities Corporation;
6. Guy N. Rogers, Jr., attorney for Appellee Castle Securities Corporation;
7. Appellees Brian Sorrentino, Dale Hill, Kemper Pressure Treated Forest Products, Inc., Life2K.Com, Inc., Algonquin Acquisition Corp., Generation Acquisition Corp., and Syndication Net.Com, Inc.
8. Sam S. Thomas, attorney for Appellees Brian Sorrentino, Dale Hill, Kemper Pressure Treated Forest Products, Inc., Life2K.Com, Inc., Algonquin Acquisition Corp., Generation Acquisition Corp., and Syndication Net.Com, Inc.

CERTIFIED, this the 20th day of June, 2007.

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A handwritten signature in black ink, appearing to be "S. Thomas", written over a horizontal line.

Sam S. Thomas, MBN 8307

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STATEMENT REGARDING ORAL ARGUMENT

Appellees Brian Sorrentino, Dale Hill, Kemper Pressure Treated Forest Products, Inc., Life2K.Com, Inc., Algonquin Acquisition Corp., Generation Acquisition Corp., and Syndication Net.Com, Inc., submit, with respect, that the trial court properly entered summary judgment in their favor and that Appellant Barry Pope has not demonstrated, through briefing or otherwise, any right to appellate relief. Accordingly, these Appellees submit oral argument is not warranted and would simply further waste judicial resources and result in further unnecessary expense to these Appellees.

STATEMENT OF THE ISSUE

Whether the trial court properly entered summary judgment in favor of Appellees Brian Sorrentino, Dale Hill, Kemper Pressure Treated Forest Products, Inc., Life2K.Com, Inc., Algonquin Acquisition Corp., Generation Acquisition Corp., and Syndication Net.Com, Inc. (hereafter sometimes, for ease of reference only, and without implying or suggesting any legal relationship between them, the "Sorrentino Appellees").

STATEMENT OF THE CASE

A. Original Complaint

Appellant Barry Pope ("Pope") filed this suit on November 26, 2001. (R. 12). Pope admittedly made no claim under federal law, expressly limiting any attempted claim to the laws of the State of Mississippi. (R. 13). Pope referenced an earlier suit, not involving the Sorrentino Appellees, resolved in May of 1996 by two consent orders. (R. 14). Pope alleged Appellee Sorrentino, during negotiations that resulted in those consent orders, as a representative of Worldwide¹, made false representations to Pope. (R. 15).

Pope alleged Appellee Castle, an entity separate and apart from the Sorrentino Appellees, made certain assurances to him and that he agreed to and executed the consent orders, resolving the prior suit in May of 1996, in reliance on the "material misrepresentations" of Castle. (R. 16). Pope also alleged Appellee Sorrentino, as an alleged representative of Worldwide, omitted material facts to induce Pope to agree to the consent orders and the settlement of the prior suit. (R. 16-17).

As to the prior suit, and as to settlement of the prior suit, Pope alleged the existence of certain contracts between himself and Worldwide. (R. 17-18). He alleged Appellee Hill and Appellee Sorrentino guaranteed those Worldwide contracts, in return for Pope's testimony in yet another suit not involving the Sorrentino Appellees, and that Appellee Sorrentino made promises

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The reference to "Worldwide" is to Worldwide Forest Products, Inc., a Defendant in the trial court, which entity is separate and apart from the Sorrentino Appellees.

to Pope about a future stock deal by Worldwide.² (R. 19-20). He also alleged Appellee Sorrentino continued to make promises or assurances to Pope concerning the future stock deal by Worldwide, and that others also made similar promises or assurances to Pope. (R. 20-21).

Pope alleged he ultimately learned the Worldwide stock deal would not go forward and that he would not receive the value of his alleged Worldwide contracts.³ (R. 21-22). Based on these allegations, Pope asserted negligent supervision claims against the Sorrentino Appellees, suggesting negligence in the supervision of Appellee Sorrentino (R. 22); securities fraud claims under Mississippi law (R. 23-24); general fraud claims (R. 24); negligent misrepresentation claims (R. 24); breach of fiduciary duty claims (R. 24); tortious breach of contract claims (R. 24-25); interference with contract rights claims (R. 25); and civil conspiracy claims against all Appellees⁴ (R. 25).

B. Amended Complaint

An Amended Complaint was filed by Pope on January 6, 2003. (R. 64). It makes agency, *respondeat superior*, vicarious liability and alter ego allegations against Appellee Hill and Appellee Sorrentino. (R. 64-65). It alleges Worldwide owed certain sums to Pope for work Pope performed on Worldwide's behalf and that the earlier suit, not (as noted) involving the

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As the Court shall see, Pope's allegations in this and all other material respects were wholly contradicted by his own deposition testimony, under oath.

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The Court shall also see that Pope admittedly had this knowledge as early as 1993 or 1994. Yet, this suit was not filed until 2001, long after it was time barred as shown by Pope's admissions.

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The original Complaint was filed on Pope's behalf by attorney O. Stephen Montagnet, III. (R. 26).

Sorrentino Appellees, addressed Worldwide's failure to pay those contract obligations to Pope. (R. 66). The Amended Complaint repeats the allegations about resolution of the earlier suit, in May of 1996, by the consent orders, and alleges specifics about the alleged contractual obligations Worldwide allegedly had to Pope. (R. 67). It also alleges Pope performed his obligations to Worldwide and that Worldwide owed Pope certain shares of stock in Worldwide. (R. 67). It then alleges a settlement with Worldwide as to an upcoming, or future, Worldwide stock offering and that representations were allegedly made (as to the alleged future Worldwide stock offering) by Appellee Sorrentino and Appellee Castle. (R. 68).

Even though Pope was represented by counsel and agreed to the settlement of the prior suit, as shown by the consent orders, the Amended Complaint alleges a rescission right, with Pope allegedly being entitled to be reinvested with his contract claims against Worldwide. (R. 68). The Amended Complaint then repeats the allegations about alleged misrepresentations or omissions, in 1996, to induce Pope to agree to the settlement by virtue of the consent orders. (R. 69-75).

All those alleged misrepresentations or omissions allegedly pertained to a future event and/or the future value of Worldwide stock. (R. 69-70). Pope asserted the alleged pivotal event, Worldwide "going public", was supposedly to occur in January 1997. (R. 69). Even though it is difficult to discern whether Pope supposedly relied upon representations of Appellee Sorrentino, or representations of Appellee Castle, all of the representations supposedly relied upon by Pope were alleged representations as to what might (or would) occur in the future. (R. 69-72). Pope specifically alleged that, "if anything went wrong with Worldwide" or he did not receive the "cash value of his Worldwide securities," then the "consent order would be amended to obligate

Worldwide to pay the full value of" Pope's claims in the prior suit.⁵ (R. 69-70). The consent orders, as the record shows, provide for no such obligation on the part of Worldwide.

Additionally, Pope alleged Appellee Sorrentino and Appellee Castle failed to provide him material and relevant information, in March of 1996, that precluded Pope from understanding his settlement of the earlier suit.⁶ (R. 71-72). The Amended Complaint even adds to the list of alleged misrepresentations or omissions, supposedly made by Appellee Sorrentino, including a contention that Appellee Sorrentino and Worldwide "never intended for" Pope to receive any consideration pursuant to the consent orders or the alleged contractual obligations of Worldwide to Pope. (R. 73-74).

The Amended Complaint also contains allegations about Worldwide's alleged obligations to Pope, coupled with allegations about alleged guarantees of those obligations by Appellee Sorrentino.⁷ (R. 75-77). It alleges Appellee Hill and Appellee Sorrentino made guarantees to Pope as to the contractual obligations of Worldwide, in return for Pope's testimony in yet another suit, and that representations or assurances were made to Pope about events to occur in the future and after resolution of that additional suit in federal court. (R. 77-79). It also alleges Appellee

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In this regard, Pope recognized his remedy, if any, lay only with Worldwide and, as noted herein, Pope's deposition testimony confirmed he had no claim against the Sorrentino Appellees.

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If true, this allegation shows Pope had through March of 1999 to sue, but he did not until November of 2001. Also, if the Worldwide deal about "going public" was to occur in January of 1997, as Pope alleged (R. 69), he would have had through January of 2000 to sue when that pivotal event did not occur.

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As noted herein, Pope's allegations in this regard were wholly contradicted by his testimony, under oath, at deposition.

Sorrentino took actions with regard to a corporate entity other than Worldwide, and that Sorrentino, after the separate federal court suit was resolved, again made promises or assurances to Pope with regard to the Worldwide stock deal to take place in the future. (R. 79-80).

The Amended Complaint concludes with allegations that Pope ultimately learned or concluded no stock deal of Worldwide would go forward, with Pope allegedly coming to this realization in 2001. (R. 81). Pope also alleged in the Amended Complaint that all Appellees fraudulently concealed or misled Pope to believe that the Worldwide stock deal would go forward, and Pope alleges his reliance on all Appellees prevented him from learning the truth. (R. 81). He alleges too that he had no choice but to believe the representations of all Appellees as the only way the value of his settlement, of the prior suit, would be realized was through the alleged Worldwide stock deal to take place in the future. (R. 81).

Based on these allegations, Pope attempted to state the same negligent supervision; Mississippi securities fraud; general fraud; negligent misrepresentation; breach of fiduciary duty; tortious breach of contract; other breach of contract; and civil conspiracy claims against all Appellees as were alleged in the original Complaint. (R. 81-89). The Amended Complaint adds allegations/claims for a constructive trust (R. 87-88); negligent and intentional infliction of emotional distress (R. 88); and attorneys fee and punitive damages claim⁸ (R. 88-89).

C. The Settlement of Pope's Prior Suit Against Worldwide

⁸ G. Clark Monroe, II, filed the Amended Complaint on Pope's behalf. (R. 91). Mr. Monroe and Mr. Montagnet, as well as Shawn Harris, who took over the representation of Pope after Mr. Monroe, all ultimately withdrew from Pope's representation.

The Consent Order (R. 93-96) and the Amended Consent Order (R. 97-99), governing resolution of the earlier suit, as the record shows, placed obligations only on Worldwide, and not any of the Sorrentino Appellees, to issue share certificates and warrants to Pope and others upon the date of the first public offering of Worldwide. (R. 93-93). As noted, Pope was represented by counsel in settling the prior suit pursuant to those consent orders. (R. 96 and 99).

D. Other Filings or Submissions

As the Court probably knows, Pope has, on numerous occasions, made filings with or submission to the trial court and/or this Court, either with or without the involvement of Pope's counsel at the time, and usually without copying counsel for the Sorrentino Appellees. An example is Pope's response to the withdrawal motion of Mr. Shawn Harris, one of Pope's long line of attorneys. (R. 115-121). In this, Pope says this "litigation began" on March 14, 1994, when Appellee Sorrentino, who had up to March 14, 1994 "guaranteed [his] contracts" with Worldwide, allegedly told Pope that he would "receive no verdict, and [would] be defrauded out of [his] contracts" with Worldwide. (R. 117). This, according to Pope, is what he was told by Appellee Sorrentino on March 14, 1994. (R. 117). Moreover, while casting aspersions on various members of the Bar and the trial court, and threatening criminal actions against a host of persons, Pope again confirmed that everything he had experienced, as of July 8, 2004, was simply "the continued efforts" of Appellee Sorrentino, that commenced on March 14, 1994, to keep Pope from obtaining a "verdict" on his Worldwide contracts. (R. 115-121).

As noted herein, such statements of Pope, and the deposition testimony of Pope, left the trial court with no option but to grant summary judgment in favor of all Appellees, as Pope did not file this suit until November of 2001. If this "litigation began," in the mind of Pope, in

March of 1994, Pope was obviously way too late with the filing of his original Complaint in November of 2001.

Another such example is also in the record. (R. 126-128). Here, Pope yet again confirms he was told by Appellee Sorrentino, on March 14, 1994, that Pope would be “financially” ruined (R. 127). In the same submission, Pope threatened bar complaints and criminal charges against counsel and parties to this action. (R. 128). These and other ramblings of Pope demonstrate his instability but show, as well, that summary judgment was properly entered by the trial court. Pope’s own words and writings make it clear that he was told in March of 1994 that he would receive no verdict on his alleged Worldwide contracts and that he would be, in his words, “defrauded” out of those contracts. Yet, this suit was not filed until November 26, 2001, long after the applicable limitations period had run.

E. Order on Motions and Trial Setting

On October 26, 2004, the trial court, after a status conference on October 18, 2004, ordered that all motions be filed by November 19, 2004; set a hearing on all motions for November 29, 2004; and set the case for trial on January 18, 2005. (R. 131).

F. Summary Judgment Motions of the Sorrentino Appellees

On November 19, 2004, the Sorrentino Appellees sought summary judgment on any federal law claim of Pope. (R. 244-247). In this regard, the Sorrentino Appellees simply noted Pope, in the governing Amended Complaint, disavowed any such claim and Pope was bound by his own Amended Complaint. (R. 245).

On October 19, 2004, the Sorrentino Appellees sought summary judgment based on the applicable statute of limitations. (Motion to Supplement Record (“MTSR”), Exhibit (“Ex.”) 1 at

1 -35).⁹ This is the summary judgment motion granted by the trial court, resulting in dismissal, with prejudice, of all claims of Pope against the Sorrentino Appellees. By this motion, and based primarily on the deposition testimony of Pope, the Sorrentino Appellees demonstrated, quite clearly, that any and all attempted claims of Pope were barred by the applicable limitations statute. Discussion of the details of the Motion, and of Pope's relevant deposition testimony, is included in the following discussion on the propriety of the trial court's grant of summary judgment in favor of all Appellees.

G. Pope's Response to the Summary Judgment Request of the Sorrentino Appellees

Pope responded to the summary judgment motion of the Sorrentino Appellees. (R. 139-143). He submitted an affidavit with the response. (R. 132-135). By the time of the response, Pope was represented by three new attorneys, being Clarence McDonald Leland, B. Clint Gardner and Michael M. Taylor. (R. 192).

H. Summary Judgment Reply of the Sorrentino Appellees

The Sorrentino Appellees submitted their reply, on November 22, 2004, to Pope's response. (R. 200-243). After recounting what was demonstrated by the summary judgment motion (R. 200-206), the Sorrentino Appellees further demonstrated, again primarily from the

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Pending is a motion to supplement the record to include a certified copy of the Motion for Summary Judgment (filed by the Sorrentino Appellees on October 19, 2004 in the trial court) that was somehow not included in the appellate record.

deposition testimony of Pope, that Pope's response was no barrier to entry of summary judgment as requested.¹⁰ (R. 200-243).

I. The Trial Court's Summary Judgment Order

The trial court entered summary judgment in favor of the Sorrentino Appellees, on January 10, 2005, based on the applicable statute of limitations. (R. 269). The trial court denied a sanctions request of the Sorrentino Appellees, and determined a summary judgment request of the Sorrentino Appellees on the "federal claims" of Pope was moot, as was the motion to strike Pope's affidavit. (R. 270). The trial court granted, in part, a motion by the Sorrentino Appellees for fees and costs against Pope. (R. 270). Yet, the record shows the trial court never ultimately awarded fees and costs against Pope.

J. Pope's Additional Filings

Pope filed, on January 18, 2005, a motion requesting the trial court to make findings of fact, and conclusions of law, or for clarification or other relief. (R. 272-276). On January 19, 2005, Pope filed a reconsideration motion. (R. 277-279). On April 11, 2005, Pope filed a motion to reopen discovery and for relief pursuant to Rule 60(b). (R. 288-291).

K. Response of the Sorrentino Appellees to the Other Filings of Pope

The Sorrentino Appellees responded to the referenced filings of Pope on May 3, 2005. (R. 312-324). The Sorrentino Appellees noted the matter was pending for years but Pope continued to make "frivolous filings." (R. 312). The Sorrentino Appellees demonstrated summary judgment in their favor was based, almost entirely if not entirely, on deposition admissions of Pope. (R.

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The Sorrentino Appellees also moved to strike the affidavit submitted by Pope as part of Pope's summary judgment response. (R. 248-258).

313). The Sorrentino Appellees demonstrated, under the law, the baseless nature of Pope's reconsideration motion (R. 316-317), and the Sorrentino Appellees demonstrated any supposed "new evidence," as referred to by Pope, was available to Pope long before and at the time of the summary judgment motion of the Sorrentino Appellees. (R. 318-319). The Sorrentino Appellees also demonstrated as meritless Pope's efforts to supplement the record, or obtain relief, pursuant to any of the filings of Pope. (R. 318-324).

L. Amended Judgment of the Trial Court

On July 8, 2005, the trial court filed an amended judgment. (R. 325-327). Pursuant to the amended judgment, the trial court ruled this litigation was a result of the failure of Worldwide to comply with the prior settlement (R. 325); that Miss. Code Ann. § 15-1-49 supplied the governing limitations statute (R. 325); that the earlier suit of Pope was resolved no later than June 28, 1996 (R. 326); that the evidence presented clearly established that Pope knew of any breach of the terms of the earlier settlement by November 4, 1996 (R. 326-327); that the evidence established Pope was a person of knowledge in the securities industry who was charged with notice of noncompliance with the earlier settlement (R. 3278); that Pope acknowledged, as early as 1994, his knowledge and awareness that there would be no compliance with the earlier settlement (R. 327); and that, therefore, all claims of Pope were barred by the three year limitations period (R. 327). The trial court noted these findings were made as "an addendum" to the summary judgment entered on January 10, 2005. (R. 327).

M. Other Filings of Pope

Long after the summary judgment record was closed, Pope made other filings, including the submission of another affidavit from Pope and the attorney who represented Pope with regard

to the earlier settlement. (R. 337-344). As the Court can see, and as discussed herein, these additional filings were also wholly contradicted by Pope's deposition testimony.

On September 28, 2005, yet another attorney for Pope sought to withdraw. (R. 345-347). That attorney, B. Clint Gardner, noted Pope had filed "pleadings in this matter with the Mississippi Supreme Court" without his knowledge, with those pleadings suggesting the attorney had made "derogatory statements" about the integrity of the Court. (R. 345-346). The attorney noted such was just one example of the problems with Pope bringing into question the "veracity and integrity" of the attorney seeking to withdraw. (R. 346).

On October 7, 2005, this Court entered an order denying a recusal motion filed "pro se" by Pope. Counsel for the Sorrentino Appellees was never provided a copy of that motion. This Court also entered an Order on May 10, 2007, on an effort or efforts of Pope to supplement the record. Counsel for the Sorrentino Appellees also has not been provided what Pope filed or submitted to generate that Order.

N. Final Order of the Trial Court

On October 7, 2005, the trial court filed an order noting its "**Final Judgment** in the above-styled and numbered cause was entered on July 5, 2005, and should there be any motions filed since that date but not ruled upon by the Court, all motions, regardless of when filed, are hereby overruled" (R. 350). The trial court further ordered and noted that the "Final Judgment entered by the Court on July 5, 2005 rendered this cause dismissed with prejudice, and that any and all motions are hereby overruled." (R. 350). This Order was entered by the trial court and filed of record on October 7, 2005.

O. Pope's Notice of Appeal

On December 2, 2005, Pope filed his Notice of Appeal "from the Final Judgment entered in this case on January 10, 2005, the Amendment to Judgment dated January 10, 2005, dated July 5, 2005, filed July 10, 2005, and Order dated October 6, 2005." (R. 351).

On December 2, 2005, the trial court entered an order extending the time for Pope to file the notice of appeal. Pursuant to that order, the trial court ordered that "Barry Pope, individually, and as shareholder of Worldwide Forest Products, Inc., should be and is hereby granted until December 5, 2005, to file his notice of appeal." ¹¹(R. 355).

SUMMARY OF THE ARGUMENT

Pope admitted at his depositions each and every fact material to the summary judgment request of the Sorrentino Appellees. The trial court, therefore, had to accept Pope's deposition testimony as true, leaving the trial court no option other than to grant summary judgment as requested by the Sorrentino Appellees. This Court should also bind Pope to his deposition testimony and bring a long overdue end to this ordeal. Pope cannot complain about the entry of judgment adverse to him that was necessitated by his own testimony and admissions.

ARGUMENT

A. The Trial Court Properly Granted Summary Judgment In Favor of the Sorrentino Appellees

Review by this Court of the summary judgment motion of the Sorrentino Appellees (MTSR, Ex. 1 at 1-35), and the reply submitted to the trial court by the Sorrentino Appellees (R.

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This Order was generated by a motion Pope served on November 4, 2005. (MTSR, Ex. 2). Thus, Pope appears to have met the filing deadline for the Notice of Appeal.

200-243), will conclusively demonstrate that Pope's own deposition testimony left the trial court no option but to grant summary judgment in favor of the Sorrentino Appellees. Pope, in essence, and truly, admitted himself out of court by his own testimony.

The Sorrentino Appellees demonstrated by the summary judgment request that the settlement of the prior suit was accomplished by entry of the consent orders. (MTSR, Ex. 1 at 11-17). The settlement of the prior suit was only between Pope and Worldwide. (*Id.*) Pope admitted the prior suit and settlement concerned the same alleged "contracts" Pope was suing on in the trial court. (MTSR, Ex. 1 at 19; 7-15-03 deposition of Pope at 26-28). Pope admitted the prior suit was settled for 30,000 shares of Worldwide stock, and 200,000 warrants for Worldwide stock, with a \$1.00 payment obligation on the part of Pope to exercise the warrants. (MTSR, Ex. 1 at 11-17 and 25; 2-12-04 deposition of Pope at 186). Pope also admitted the prior settlement resolved all claims of Pope on the alleged "contracts" of Pope for 600,000 shares of Worldwide stock, and Pope admitted he actually received the 30,000 shares and the 200,000 warrants he settled for pursuant to the consent orders. (MTSR, Ex. 1 at 24 and 25; 2-12-04 deposition of Pope at 182 and 186).

The Sorrentino Appellees also showed, by the summary judgment filing, that Pope admitted he received what he settled for previously as satisfaction of his alleged "contracts" with Worldwide. (MTSR, Ex. 1 at 24-25; 2-12-04 deposition of Pope at 182 and 186). Pope also admitted the prior settlement did not include any agreement or undertaking on the part of Appellee Sorrentino or any other Appellee. (MTSR, Ex. 1 at 26; 3-5-04 deposition of Pope at 229). Pope clearly admitted he received what he settled for previously, and he admitted (1) the settlement was only with Worldwide; (2) nothing in the Consent Order or Amended Consent

Order in any way bound Worldwide to go public; and, (3) absent Worldwide going public, Pope admittedly received exactly what he was entitled to under the settlement pursuant to the Consent Order and Amended Consent Order (MTSR, Ex. 1 at 34 and 35; 3-5-04 deposition of Pope at 359-364).

The Sorrentino Appellees, as part of the summary judgment request, also demonstrated Pope was represented by counsel at the time of the prior settlement, and that Pope admittedly agreed to the settlement. (MTSR, Ex. 1 at 26-27; 3-5-04 deposition of Pope at 229-230). Pope also admitted the Consent Order and Amended Consent Order reflected “all material terms” of the agreement and prior settlement. (MTSR, Ex. 1 at 27; 3-5-04 deposition of Pope at 230). Pope even admitted he actually received in settlement more than his entitlement under the Consent Order and Amended Consent Order. (Id.) While Pope did vaguely suggest there was a “condition” on the prior settlement (that Appellee Sorrentino and Pope’s attorney, Charles Dunn, would reinstate his alleged “contracts” or 600,000 shares in Worldwide if Worldwide did not go public), the Sorrentino Appellees further showed Pope admitted no such “condition” was incorporated in the Consent Order or Amended Consent Order, even though Pope was represented by counsel at the time of the settlement negotiations and entry of the Consent Order and Amended Consent Order, and even though Pope testified the consent orders reflected all “material terms” of his prior settlement. (MTSR, Ex. 1 at 27 and 28; 3-5-04 deposition of Pope at 230 and 234). And, as to this so-called “condition,” Pope admitted any reinstatement agreement was only an agreement to be honored at a “future time” without any specification of “when or how.” (MTSR; Ex. 1 at 19; 7-15-03 deposition of Pope at 27-28).

The Sorrentino Appellees, as part of the summary judgment record, also showed Pope never demanded that any stock or contract reinstatement “condition” be placed in the Consent Order or Amended Consent Order. (MTSR; Ex. 1 at 28; 3-5-04 deposition of Pope at 234). Pope did testify he told his lawyer, Charles Dunn, before entry of the Amended Consent Order, to reinstate his “contracts” or his alleged 600,000 shares in Worldwide, and that he threatened “fraud and inducement of a contract” charges against Appellee Sorrentino prior to entry of the Amended Consent Order. (MTSR, Ex. 1 at 28; 3-5-04 deposition of Pope at 235). These threats, according to Pope, were made because Appellee Sorrentino in June of 1996 “laughed” at Pope and told Pope he was “stupid” to “settle [Pope’s prior] case the way [Plaintiff Pope] did” (MTSR, Ex. 1 at 28; 3-5-04 deposition of Pope at 235). Yet, Pope admitted his alleged 600,000 shares in Worldwide were never reinstated and, with the threats of Pope as noted above being made in June of 1996, this suit was not filed until November 26, 2001, as is shown by the Court file.

Also, as part of the summary judgment motion, the Sorrentino Appellees showed Pope admitted his claims in the trial court were that he is entitled to 600,000 of Worldwide stock, with some type of alleged conversion right into stock of Appellee Syndication. (MTSR, Ex. 1 at 29; 3-5-04 deposition of Pope at 247). Yet, Pope also admitted all of his claims in this regard were based on his alleged “contracts” with Worldwide that were set, firm and consummated by March of 1994. (MTSR, Ex. 1 at 30; 3-5-04 deposition of Pope at 250-251). Pope also admitted those “contracts,” supposedly entitling Pope to the 600,000 shares of Worldwide stock, were only with Worldwide. (Id.) Pope further admitted that “nobody” personally guaranteed any of his alleged “contracts” supposedly resulting in Pope’s 600,000 share entitlement in Worldwide, and Pope

again admitted that his “agreements” or “contracts” were only with Worldwide. (MTSR, Ex. 1 at 31; 3-5-04 deposition of Pope at 272-273).

In short, Pope admitted he was suing on so-called “contracts” supposedly entitling him to 600,000 shares of Worldwide, all of which “contracts” were, as admitted by Pope, in place and consummated by March of 1994. (MTSR, Ex. 1 at 30-33; 3-5-04 deposition of Pope at 250, 253 and 277-280). However, Pope also admitted David Wise, a representative of Worldwide with whom the supposed “contracts” of Pope were allegedly negotiated and Appellee Sorrentino, the alleged “agent” of the other Sorrentino Appellees, told Pope flat-out in March of 1994 that they were “going to cheat” Pope out of his 600,000 shares; that Pope would “get nothing;” and that they would “see to it that [Pope would] never get a verdict in court” on the same claims Pope attempted to place at issue below. (MTSR, Ex. 1 at 32; 3-5-04 deposition of Pope at 276).

The Sorrentino Appellees also demonstrated, through the summary judgment record, that Pope admitted he even then, in March of 1994, “began looking for a lawyer.” (MTSR, Ex. 1 at 32; 3-5-04 deposition of Pope at 276). Indeed, Pope testified the meeting on March 11, 1994, where Pope says he was told by Wise and Appellee Sorrentino he would get “nothing” out of his alleged contracts with Worldwide, focused on “how the hell” Pope’s contracts “were going to be honored.” (MTSR, Ex. 1 at 20; 7-15-03 deposition of Pope at 128).

Further, the Sorrentino Appellees showed, to justify entry of summary judgment, that Pope even admitted he was then (in 1994) threatening a suit and criminal charges for fraud against Wise and Appellee Sorrentino. (MTSR, Ex. 1 at 21; 7-15-03 deposition of Pope at 129). This was so because, according to the admissions of Pope, he was told on March 11, 1994 by Wise and Appellee Sorrentino that he would “get nothing;” none of his contracts with Worldwide

would be “honored;” and he would not “get a verdict” on his alleged contracts with Worldwide. (MTSR, Ex. 1 at 21; 7-15-03 deposition of Pope at 129). And, as noted, Pope testified he started “looking for a lawyer” on that date because he had been told by both Wise and Appellee Sorrentino that they would “defraud me.” (MTSR, Ex. 1 at 21; 7-15-03 deposition of Pope at 129).

Pope even admitted he knew by March of 1994 that Appellee Sorrentino had created another company to eliminate Worldwide and to defraud him out of his contracts. (MTSR, Ex. 1 at 23; 2-12-04 deposition of Pope at 126-127). Pope also, clearly and unequivocally, admitted he had been told by Appellee Sorrentino in 1994 that Appellee Sorrentino would “defraud” him out of his Worldwide contracts. (MTSR, Ex. 1 at 23; 2-12-04 deposition of Pope at 127-128).

If Pope was complaining in the trial court about the Consent Order and/or Amended Consent Order, this Court should note the Consent Order was entered on March 4, 1996 and the Amended Consent Order was entered on June 28, 1996. If such is the case, Pope should have sought relief long ago in the other action, but any effort of Pope to do so in November of 2001 was clearly time-barred. See *R. N. Turnbow Oil Investments v. McIntosh*, 873 So. 2d 960 (Miss. 2004).

In any event, any and all attempted claims of Pope against the Sorrentino Appellees were, quite obviously, governed by Miss. Code Ann. § 15-1-49 providing, as relevant here, that all “actions for which no other period of limitation is prescribed shall be commenced within three (3) years next after the cause of such action accrued, and not after.” Based on Pope’s own testimony, under oath, and with the Sorrentino Appellees accepting Pope’s testimony in that regard as true only for the purposes of the summary judgment request and this appeal, Pope was

admittedly told on March 11, 1994, by Appellee Sorrentino, as the alleged “agent” of the Sorrentino Appellees, that he would be cheated out of his alleged 600,000 shares of Worldwide and/or his alleged contracts; that he would “get nothing;” that he would “never get a verdict in court;” and that he would be defrauded out of his contracts and/or his alleged 600,000 shares of Worldwide. Pope even acknowledged he “began looking for a lawyer” on that date. Yet, this suit was not filed, as shown by the Court file, until November 26, 2001. Thus, the trial court, quite properly, entered judgment in favor of all Appellees.

In response to the above, Pope argued below that Appellee “Sorrentino and Mike Studor used a firm commitment underwriting letter to induce Pope to settle his case.” (R. 139) Pope argued Appellee “Sorrentino secured this firm commitment letter without telling the underwriter about the EPA liability that existed at Worldwide Forest Products, Inc.” (Id.) Pope also argued he “did not know about the letter not being good nor did he know about the pollution problems when he settled.” Id.

First, Pope never made a part of the summary judgment record any such alleged “firm commitment letter.” Second, Pope testified he knew about, or at the very least had notice of, the facts constituting the EPA liability, or “pollution problems,” referred to by Pope as early as 1992 or 1993. (R. 222-231). Third, as noted, if Pope’s problem is with the prior settlement, Pope’s complaints should have been lodged in the other action long before the filing of this suit, and pursuant to a timely motion in the earlier action. See *Turnbow Oil Investments v. McIntosh*, 873 So. 2d 960 (Miss. 2004).

Pope also argued below he would not have settled previously had Appellee Sorrentino “disclosed the [EPA] liability” and/or not allegedly shown Pope the “firm commitment letter,”

which letter (as noted) was not made a part of the record on the summary judgment motion. (R. 139-140). Yet, Pope admitted he knew about the EPA liability as early as 1992 or 1993 and, again, no “firm commitment letter” was made a part of the summary judgment record.

Pope also suggested below that he relied upon unspecified statements of Appellee Sorrentino to not demand that an alleged reinstatement “condition” be a part of the Consent Order and Amended Consent Order that resulted in the prior settlement. (R. 140). Yet, Pope testified he did not rely upon anything said by Appellee Sorrentino when he settled his suit in 1996, as (again according to Pope) he believed from April of 1994 forward that Appellee Sorrentino was a “crook and a liar.” (R. 237; 3-5-04 deposition of Pope at 390). Pope also admitted that the settlement did not include any agreement on the part of Appellee Sorrentino. (R. 232; 3-5-04 deposition of Pope at 229). Pope further admitted that the prior settlement did not include any agreement or undertaking on the part of any other Appellee. (Id.)

As noted before, Pope also admitted Appellee Sorrentino never personally guaranteed anything to him. (R. 233; 3-5-04 deposition of Pope at 273). Even though Pope did testify Appellee Sorrentino told him Worldwide would be re-listed on NASDAQ when an Oxford verdict was returned, Pope also admitted that any such promise or statement was only a promise or statement of something that would take place only in the future; he admitted no one promised him when Worldwide would be re-listed on NASDAQ; and he admitted no one could possibly make any such promise (R. 234; 3-5-04 deposition of Pope at 280-281).

Pope also testified, on more than one occasion, that Appellee Sorrentino did not guarantee any contract or agreement upon which his claims in the trial court were based. (R. 236; 3-5-04 deposition of Pope at 300). He also admitted again that Appellee Sorrentino never

personally guaranteed any of his alleged “contracts,” being the alleged “contracts” upon which his claims below were based. (*Id.*) Thus, there never existed any factual basis for Pope’s contention, in a wholly inadmissible affidavit, that Appellee “Sorrentino personally guaranteed Pope that he would get his stock value.” (R. 133-134). In fact, this suggestion in the affidavit of Pope is so contrary to his deposition testimony, without any explanation for the discrepancy, that it could not be considered for summary judgment purposes. *See Foldes v. Hancock Bank*, 554 So. 2d 319, 321 (Miss. 1989).

Pope also argued below that he was told in 1994 that politics and influence would be used to keep Pope from getting a verdict only in the prior suit. (R. 141). Yet, this is completely different from Pope’s deposition testimony, as described above. On the contrary, Pope’s deposition testimony was that he was told in 1994 that he would be cheated out of his alleged “contracts;” that he would get “nothing” out of his alleged “contracts;” and that he would “never get a verdict in court” on his alleged “contracts.” Pope, by affidavit, cannot contradict his deposition testimony, without explanation, and there is no explanation in the Affidavit of Barry Pope (R. 132-135) for the discrepancy between his deposition testimony and his contrary statements by affidavit. *Foldes*, 554 So. 2d at 321.

Pope also argued below the “question [was] whether or not Sorrentino and others fraudulently induced Pope to enter into the settlement agreement based on the firm commitment letter shown to him.” (R. 141-142). No such “firm commitment” letter, as noted, was made a part of the summary judgment record. Pope testified he was told in 1994 he would be cheated out of, get nothing for and never get a verdict on of his alleged “contracts.” Indeed, if the issue was alleged fraudulent inducement of the settlement consummated before June 28, 1996 when

the Amended Consent Order was entered, Pope had three years from then to sue, but this suit was filed in November 2001.

Moreover, as to the alleged “firm commitment letter” referred to in Pope’s summary judgment filings, Pope also admitted any such “letter” was not a “letter” at all but was only a “registration statement which never became a prospectus.” (R. 237; 3-5-04 deposition of Pope at 393). Pope even admitted there never was a “bona fide firm commitment underwriting.” (Id.) And also, as to any such “firm commitment,” Pope admitted any promises in connection with any such “firm commitment” were promises with respect to something that would take place only in the future. (R. 238; 3-5-04 deposition of Pope at 396). As to this and any other alleged representations or promises as to future events supposedly relied upon by Pope, this Court knows that a plaintiff cannot base a negligent misrepresentation claim or a fraudulent misrepresentation claim on a promise or representation as to the future. See Skrmetta v. Bayview Yacht Club, Inc., 806 So. 2d 1120, 1124 (Miss. 2002) (a misrepresentation for a negligent misrepresentation claim “must concern a past or present fact as contracted with a promise of future conduct”); Spragins v. Sunburst Bank, 605 So. 2d 777, 781 (Miss. 1992) (“like negligent misrepresentation, a claim of fraudulent representation cannot be predicated on a promise relating to future actions”).

Pope also argued below that the “discovery rule” gave him relief, but this argument was likewise misplaced. (R. 142). If, as Pope testified, he was told by Appellee Sorrentino in 1994, as an alleged agent of the other Sorrentino Appellees, that he would be cheated and defrauded out of his “contracts,” that he would get nothing out of his alleged “contracts,” and that he would never get a verdict in court (on his alleged “contracts”), Pope had three years from that date to

file this suit to avoid the bar of the statute of limitations. Nothing could be clearer based on Pope's testimony, under oath, and the law.

As to any tolling of the applicable statute of limitations, it is clear that the "test on whether to toll the statute of limitations is whether a reasonable person similarly situated would have discovered potential claims." *Andrus v. Ellis*, 2004 Miss. LEXIS 1343, P27 (November 4, 2004), citing *American Bankers Ins. Co. of Florida v. Wells*, 819 So. 2d 1196, 1201 (Miss. 2001). Obviously, if Pope was told what he says he was told in 1994, he then "discovered potential claims" and his claims below were barred.

Also, as to Miss. Code Ann. § 15-1-67, for tolling under the "fraudulent concealment" statute to apply, a plaintiff must show both "subsequent affirmative acts of concealment and due diligence." *Id.*, P30, citing *Stephens v. Equitable Life Assur. Soc'y*, 850 So. 2d 78, 83 (Miss. 2003). In short, a plaintiff must first show "some subsequent affirmative act by the defendant which was designed to prevent and which did prevent discovery of the claim." *Id.*, citing *Stephens*, 850 So. 2d at 83-84. Also, proof of any such act must be coupled with proof that "despite his or her due diligence, the plaintiff was unable to discover the claim." *Id.* And again, if Pope was told what he says he was told in 1994, his "due diligence" date expired three years later, not in 2001. It should also be remembered that Pope says he "began looking for a lawyer" in 1994 as well.

Obviously, therefore, Pope cannot rely upon any "fraudulent concealment" doctrine, as Pope says he was told in 1994 by Appellee Sorrentino, as the alleged agent of the other Sorrentino Appellees, that he would be cheated and defrauded out of his "contracts;" that he would get nothing out of his alleged "contracts;" and that he would never get a verdict in court

on his alleged “contracts.” Since he then, even admittedly, “began looking for a lawyer” at that time, the trial court properly held his claims below were barred by time.

Pope also argued below he was told that a “deal would proceed.” (R. 140). He suggested he was “continually told that there” would be a Worldwide “deal until April of 1999.” (R. 140-141). Pope claimed he was told “that the deal was on track and that it would be done and that Pope would get my money” Pope even claimed he was told “that the WWFP deal was still going to happen up to April of 1999.” (R. 142). However, these are all simply statements or alleged representations as to the future. Indeed, even Pope’s references to a “firm commitment underwriting” concern a future act or event.

If Pope was attempting to establish a claim of negligent misrepresentation, he would have to show:

- (1) A misrepresentation or omission of a fact;
- (2) That the misrepresentation or omission is material or significant;
- (3) That the defendant failed to exercise that degree of diligence and expertise the public is entitled to expect of it;
- (4) That the plaintiff reasonably relied on the defendant’s representations; and
- (5) That the plaintiff suffered damages as a direct and proximate result of his reasonable reliance.

Skrmetta v. Bayview Yacht Club, Inc., 806 So. 2d 1120, 1124 (Miss. 2002) (emphasis added), citing *Spragins v. Sunburst Bank*, 605 So. 2d 777, 780 (Miss. 1992). Further, the first element of misrepresentation stated above “must concern a past or present fact as contrasted with a promise of future conduct.” *Id.*

On the other hand, to establish a claim of fraudulent misrepresentation, a plaintiff must prove, by clear and convincing evidence, the following:

- (1) A representation;
- (2) Its falsity;
- (3) Its materiality;
- (4) The speaker's knowledge of its falsity or ignorance of the truth;
- (5) His intent that it should be acted on by the hearer and in the manner reasonable contemplated;
- (6) The hearer's ignorance of its falsity;
- (7) His reliance on its truth;
- (8) His right to rely thereon; and
- (9) His consequent and proximate injury.

Spragins v. Sunburst Bank, 605 So. 2d 777, 780 (Miss. 1992) (citations omitted) (emphasis added). And, just like a claim of negligent misrepresentation, “a claim of fraudulent representation cannot be predicated on a promise relating to future actions” but “must be related to past or presently existing facts.” *Id.* at 781 (citations omitted) (emphasis added). In short, fraud “cannot be predicated upon statements which are promissory in nature.” *Id.* (citations omitted) (emphasis added) .

Thus, Pope could have no claim even if he was told “he would get his stock value;” he “would get his money;” any “deal would proceed;” and/or “there would be a Worldwide Forest Products deal until April of 1999.” (R. 139-142). Nor would Pope have a claim even if Appellee Sorrentino “would promise Pope that the deal was on track and that it would be done and that Pope would get my money or stock” (R. 141).

Further, Pope could hardly show Appellee “Sorrentino and others fraudulently induced Pope to enter into the settlement agreement based on a firm commitment letter shown to him.” (R. 141-142). Pope never produced any such firm commitment letter. He admitted, as discussed above, no such firm commitment letter existed or was ever “bona fide” or completed.

Additionally, Pope could hardly have a fraud claim against Appellee Sorrentino, or any other Appellee as to which Appellee Sorrentino is an alleged agent, if Pope was told what Pope says he was told by Appellee Sorrentino in 1994, being that he would “get nothing” out of his alleged “contracts.” Even Pope concedes he “began looking for a lawyer” at that time, but no claim was made against Appellee Sorrentino, or any other Appellee as to which Appellee Sorrentino is an alleged agent, until this suit was filed in 2001. Under Pope’s own testimony, Pope could hardly show, by any evidence, much less “clear and convincing evidence,” reasonable reliance or the right to rely on any statements or assertions by Appellee Sorrentino after 1994. Clearly, therefore, under *Skrmetta* and *Spragins*, Pope could have no claim for negligent or fraudulent misrepresentation.

As to Pope’s argument below that Appellee Sorrentino “used a continuous pattern of deception when he kept telling Pope that the WWFP deal was still going to happen up to April of 1999” (R. 142), a “misrepresentation must concern a past or present fact as contrasted with a promise of future conduct” for the representation to support a negligent misrepresentation claim. *Skrmetta*, 806 So. 2d at 1124. Additionally, a “claim of fraudulent representation cannot be predicated on a promise relating to future actions.” *Spragins*, 605 So. 2d at 781. Rather, fraudulent “misrepresentations must be related to past or presently existing facts” and “fraud cannot be predicated upon statements which are promissory in nature.” *Id.* Indeed, as discussed previously, even Pope admitted no one could ever guarantee any stock deal.

Pope conceded below that, “under Mississippi law, a cause of action for fraud accrues on completion of the sale induced by the false representation or upon consummation of the fraud.” (R. 155) (Pope’s Memorandum citing *Black v. Carey Canada, Inc.*, 791 F. Supp. 1120, 1123

(S.D. Miss. 1990)). As such, Pope conceded he had three years from the date of the prior settlement to sue, but Pope did not do so.

Also, if Pope was told what he says he was told in 1994, Pope could not, as a matter of law, rely upon any statement of any Appellee, or any alleged duty of disclosure or duty of loyalty of any Appellee to Pope. In essence, Pope's complaint was that Worldwide did not go public, a future happening or event no one could predict or guarantee. Also, Pope is not a person who could be "unjustifiably imposed upon," as he attempted to suggest below. (R. 157). Rather, he had a great deal of experience in securities and investment matters prior to any contact with any Appellee, and he says he knows more than 90 percent of the public "about investing." (R. 243; 7-15-03 deposition of Pope at 56).

B. Response to Pope's Arguments on Appeal

Pope focuses in detail on his alleged relationship with, and claims against, Worldwide. (Pope's Brief at 5-6). The points he attempts to make are no points at all as to the Sorrentino Appellees. Curiously, Pope even argues on appeal that he "began to suspect," in early 1993, that "his contracts were not going to be honored," and that his suspicions in that regard were confirmed on "March 11, 1993." (Pope's Brief at 7). This is probably a reference to the March of 1994 conversations Pope testified about at his depositions. In any event, even on appeal, Pope admits his "suspicions were confirmed," in either 1993 or 1994, that his contracts would not be honored. (Pope's Brief at 7). Obviously, Pope had three years from then to sue, if he thought he had a claim of any nature against the Sorrentino Appellees, but he did not file this suit until 2001.

Pope argues the “basis” of this suit is that all Appellees fraudulently induced Pope to agree to the prior settlement. (Pope’s Brief at 7). Pope’s testimony, as detailed above, however, belies this assertion. He argues Appellee Sorrentino knew no Worldwide offering would take place, because of EPA liability, but the Sorrentino Appellees have already shown Pope himself knew about any such liability in 1993 or 1994.

Pope also argues, wholly contrary to his deposition testimony, as noted above, that Appellee Hill and Appellee Sorrentino “guaranteed” his Worldwide contracts. (Pope’s Brief at 8). Yet, Pope admitted at his depositions that no such guarantees were made by anyone. He also argues, without any proof in the record, that Worldwide ultimately went to other companies, ending up in Appellee Syndication. Simply put, there is no proof of this in the record.

Pope argues he relied upon statements of Appellee Sorrentino (Pope’s Brief at 10), again contrary to his own deposition testimony. Pope also references Exhibit 1, at various places in his Brief (Pope’s Brief at 5-11), but counsel for the Sorrentino Appellees is unaware of any such exhibit. These and other citations of Pope are not to the appellate record.

Pope refers to testimony of Robert Dugan, but no such testimony is in the record (Pope’s Brief at 10-11), and no such testimony was submitted in opposition to the summary judgment request of the Sorrentino Appellees. He argues “what” he knew and “when he knew it” are jury questions. (Pope’s Brief at 12). Yet, his own deposition testimony is clear and wholly negates any jury question on “what” he knew and “when he knew it,” as discussed above.

Pope also argues the trial court erred in ruling on the Sorrentino Appellees’ entitlement to fees and expenses. (Pope’s Brief at 12-13). Perhaps forgotten by Pope is the fact that the trial

court ultimately overruled the motion for fees and expenses, and no fee or expense award was made against Pope.

Pope also argues about the summary judgment standards (Pope's Brief at 13-14), but the summary judgment entered in this case did not fall short of any such standard. He even argues he "discovered the pollution problems, as well as the deception and negligence of Castle and Sorrentino in April of 1999." (Pope's Brief at 15-16). Yet again, his own deposition testimony is wholly contrary to this argument.

Pope argues about the "discovery rule" and tolling (Pope's Brief at 16-17), but his deposition testimony refutes those arguments. The same can be said for Pope's argument that he ultimately discovered the "pollution problems" were concealed (Pope's Brief at 17), because his own testimony shows he knew of any such problems in 1992 or 1993.

Pope even argues he filed suit within three years of discovering "he was not going to be paid for his services under his contracts" with Worldwide (Pope's Brief at 17), but his deposition testimony shows he knew as early as March of 1994 that he would not be paid on those contracts. Pope even tells this Court he "never found out about the toxic waste" at Worldwide until after 1999, but this is demonstrably untrue based on his own testimony.

Pope refers to an affidavit of Charles Dunn that was not submitted in opposition to the summary judgment request of the Sorrentino Appellees. (Pope's Brief at 21). In any event, what Dunn may have known is not material, as Pope admitted over and over again that he knew in 1994 that his Worldwide contracts would not be honored.

Pope again argues about the fees and expenses that were not awarded against Pope. (Pope's Brief at 22-24). Thus, Pope simply wastes the Court's time with that argument. In the

end result, Pope's arguments are nothing more than an effort to contradict his own testimony. Yet, Pope's testimony is what is relevant, and it was the testimony of Pope that resulted in summary judgment in favor of the Sorrentino Appellees.

CONCLUSION

For all of the reasons set forth above, this Court should affirm the trial court's proper entry of summary judgment in favor of the Sorrentino Appellees. Even on appeal, Pope concedes he had confirmation of his suspicions, in 1993, that his "contracts were not going to be honored." (Pope's Brief at 7). This curious concession, by itself, demonstrates the entry of summary judgment by the trial court was entirely proper and not subject to any relief on appeal.

Respectfully submitted,

APPELLEES BRIAN SORRENTINO, DALE HILL,
KEMPER PRESSURE TREATED FOREST
PRODUCTS, INC., LIFE2K.COM, INC.,
ALGONQUIN ACQUISITION CORP.,
GENERATION ACQUISITION CORP. AND
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CERTIFICATE OF SERVICE

I, Sam S. Thomas, do hereby certify that I have mailed via United States Mail, postage fully prepaid, a true and correct copy of the above and foregoing document to the following:


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THIS, the 20th day of June, 2007.

A handwritten signature in black ink, appearing to be "SAM S. THOMAS", written over a horizontal line.

SAM S. THOMAS