

CAUSE NO. CC-22-01322-D

DONN NELSON,

Plaintiff,

v.

**DALLAS BASKETBALL LIMITED, d/b/a
DALLAS MAVERICKS and RADICAL
MAVERICKS MANAGEMENT, LLC,**

Defendants.

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IN THE COUNTY COURT

AT LAW NO. 4

DALLAS COUNTY, TEXAS

DEFENDANTS' ORIGINAL ANSWER

COME NOW Defendants Dallas Basketball Limited d/b/a Dallas Mavericks (the "Dallas Mavericks" or "Mavericks") and Radical Mavericks Management, LLC ("Radical") and file this Original Answer to Plaintiff Donn Nelson's ("Plaintiff" or "Nelson") Original Petition and would respectfully show the Court as follows:

I.

NATURE OF DISPUTE

This lawsuit – and its utterly fictitious Petition – represents the final desperate effort of Nelson's lengthy scheme to extort as much as \$100 million from the Dallas Mavericks. Long before filing this lawsuit, Nelson demanded that he receive, in effect, a blackmail payment in exchange for his promises not to expose the sexual orientation of a former Mavericks front-office employee or to assert other claims which he promised would embarrass Defendants and certain individuals, including Mark Cuban. When his demands were not met, and his own conduct was revealed, Nelson's desperation intensified. The result is this lawsuit and a Petition filled with false

accusations designed solely to obtain publicity for use as leverage against Defendants. This will not stand.

The true nature of the facts underlying the dispute are as follows:

A. Concerned About His Financial Future, Nelson Seeks a Long-Term Employment Contract in Exchange for His Silencing of a Family Member.

Nelson spent more than two decades as a member of the Mavericks front office. But by 2020, thanks to numerous poor personnel decisions and issues with the team's performance, Nelson's star had faded and there were public calls for a change. Nelson was rightfully concerned. As an at-will employee of the Mavericks who never had an employment contract, a team decision to change general managers would leave him unemployed with no guarantee of any severance or payout. Nelson was concerned about his long-term financial security. Out of that desperation, a plot emerged.

In mid-to-late August 2020, Nelson approached Mavericks' team governor Mark Cuban and stated that he knew of purported scandalous allegations from a family member that he could "make go away" in exchange for a long-term employment contract that he had long desired. Specifically, Nelson indicated that he had recently been informed that his 29-year-old nephew claimed to have been sexually harassed by a Mavericks executive. Defendants' representatives told Nelson that if an "assault" had occurred, then Nelson should immediately contact the authorities. Contrary to the statements in his Petition now, Nelson assured Defendants that there had not been an "assault" and, to Defendants' knowledge, neither Nelson nor anyone else ever contacted the authorities as the Defendants had suggested. However, Nelson stressed that if the allegation became public, it would cause embarrassment for a team that had just recently dealt with unrelated claims of sexual misconduct and implied it would "out" the Mavericks executive's sexual orientation. In exchange for a lengthy and high-paying guaranteed contract, Nelson offered

to ensure that the entire incident would disappear. The family member had not yet reached out or complained to the team about any conduct. Instead, Nelson was offering his services to make sure that no complaint would ever be made. It now appears, based on more recent events described below, that this was all part of a plot by Nelson to secure his long-desired multi-year, high-dollar employment contract.

B. The Mavericks Retain an Independent Firm to Investigate the Alleged Incident.

Once it learned of Nelson's adult nephew's actual allegations, the Mavericks retained an independent outside law firm to fully investigate the incident. Defendants and others also acted to immediately inform the NBA of the allegations and kept the league apprised of the situation throughout the investigation.

The resulting independent investigation received the full cooperation of the team. With one exception, all of those involved within the Mavericks organization cooperated fully, including providing text messages and other materials to the investigator. The one curious exception was Nelson, who refused to fully cooperate including refusing to provide his text messages to determine the extent of his involvement with his nephew's allegations.

Critically, the allegations and descriptions of the incident made in Nelson's Petition contrast sharply with the contemporaneous statements of all involved. Nelson's nephew never asserted that he had been "assaulted." The actual allegations were not as sensational as the Petition claims. Indeed, the individuals involved continued to frequently talk and text for six months after their initial meeting. After the investigation concluded, the matter was closed to Nelson's nephew's satisfaction.

At no time was any action taken against Nelson for raising the incident nor did anyone threaten to do so. Indeed, Nelson's employment as the Mavericks' General Manager and President

of Basketball Operations continued for nearly another year—throughout the entirety of the next NBA season.

C. One Year Later, Nelson is Terminated for Performance Issues and Unrelated Misconduct.

The year after Nelson's offer to silence his family member was one of rising tensions and repeated revelations regarding Nelson's activities. Most critically, Nelson's job performance as General Manager continued to decline, and it became apparent that the team needed a change. At the end of the 2020-21 NBA season, Cuban called Nelson and, in a recorded call, informed Nelson that he was being let go.

In no way was the decision to terminate Nelson an act of retaliation. Instead, Nelson was terminated due to a number of factors including: (1) Nelson's poor job performance as General Manager of the Mavericks, (2) the diversion of his time and attention to his numerous outside business enterprises, and (3) Nelson's failures to comply with NBA regulations and the Mavericks' internal human resources policies. While the first issue was well-known around the league, the latter two categories were discovered in 2021.

In early 2021, Defendants' management and representatives were contacted by the NBA, which was inquiring into whether league guidelines had been violated with respect to a sale of Nelson's ownership interest in the Texas Legends G-league franchise. Unbeknownst to Defendants, Nelson had entered into an agreement that equated to an under-the-table sale of his ownership interest in the Texas Legends without reporting the sale to the NBA or documenting the sale with a contemporaneous written contract in violation of NBA league rules.

As troubling as this revelation was, it turned out to be the first of many. Defendants later discovered additional issues about both Nelson's outside business activities as well as his conduct within the organization.

First, although Nelson is required to devote his resources and time to the Mavericks, Nelson and his family members are owners, officers, directors, and/or registered agents of several dozen companies. While a few of these businesses were known to Defendants' management, many were not. In the months leading up to his termination, Defendants' management became aware of the number and extent of these businesses and the substantial amount of time Nelson spent working on those enterprises instead of the Mavericks. Moreover, the team discovered that many of these entities – some of which are purported non-profit charities – engaged in questionable activities and business practices. As Nelson typically touted his role with the Mavericks to entice investors and others to do business with his and his family's endeavors – these questionable business activities and the substantial losses that Nelson's investors incurred threatened to negatively impact Defendants.

Second, the team recently discovered that Nelson, unbeknownst to others within the Mavericks' organization, attempted to violate NBA and Mavericks' organizational rules on numerous occasions by soliciting Mavericks players to participate in one or more of his outside, non-Mavericks business endeavors. NBA policies and rules prohibit team executives from soliciting players to invest or participate in outside businesses or otherwise using players to assist in such outside businesses. Even though it appeared that the players ultimately did not invest or participate in these other endeavors, Nelson's unauthorized, self-interested conduct directly violated these policies.

Third, in the days leading up to his termination, the team was informed about serious allegations that Nelson had violated the Mavericks' Respect in the Workplace policy – which were immediately reported to the NBA. Nelson was terminated one week after the team received these allegations. The audio recording of the phone call wherein Nelson was terminated will show that

Nelson expressed little surprise at his termination, did not claim that he was terminated as an act of retaliation, and made further statements inconsistent with his allegations in this case.

Nelson's other alleged act of retaliation – the purported revocation of a pre-existing contract offer – is simply false. As noted above, Nelson worked for the Mavericks as an at-will employee without any employment agreement whatsoever – certainly not Nelson's purported, oral "lifetime" employment contract (which is both a legal impossibility and a further work of fiction). Indeed, Nelson's own statements and actions at the time he was terminated establish that he knew he had no "lifetime" employment agreement.

Nelson's claim that an offer for long-term employment was somehow withdrawn as a retaliatory act is belied by Nelson's own purported allegations and contemporaneous e-mails. Nelson alleges he last reported the purported incident involving his adult nephew during a September 1, 2020 meeting with Cuban. Yet it was not until the evening of September 1, 2020 – after Nelson and Cuban's meeting earlier that day – that Nelson's agent, Casey Wasserman, first reached out to Cuban via email to begin contract negotiations. Seven days later Wasserman emailed Cuban and requested a 10-year contract for Nelson followed by an email with a specific proposed agreement on September 11, 2020. On September 12, 2020 – nearly two weeks *after* Nelson's last so-called reporting – Cuban emailed Wasserman and made a counteroffer for a long-term employment contract on slightly different terms.

Not only was the team's long-term offer made *after* Nelson's supposed reporting of the incident, but the offer's demise was not the result of any action of Defendants. While Nelson's Petition bizarrely claims that he was retaliated against by Defendants pulling the proposed employment contract, the indisputable fact is that *Nelson rejected it*. On September 14, 2020, Wasserman replied to Cuban's September 12 email, rejected Cuban's proposal and stated that

“neither side seems to be able to tell if the other side actually wants to make a deal.” Wasserman then countered Cuban’s offer, which Cuban rejected the same day, citing, among other things, comparisons to other NBA general managers and Nelson’s job performance. Solely because the parties could not agree on the terms, a deal was never reached, and Nelson continued to be an at-will employee at the same level and with the same compensation he had been paid prior to proposing a long-term agreement.

D. Now Unemployed, Nelson Attempts to Extort the Mavericks by Threatening to “Out” a Former Team Employee and Publicly Humiliate the Team Unless He Receives \$100 Million.

On November 16, 2021, exactly five months after his termination, Nelson’s attorney sent a demand letter to the Mavericks seeking a significant cash settlement. In subsequent discussions, Nelson made clear that the team needed to pay him at least \$100 million, or he would make public accusations that would reveal the sexual orientation of a former Mavericks executive and also disclose other information that Nelson believed would greatly embarrass the team and numerous individuals, including Mr. Cuban.

When a quick payout did not appear, Nelson sought to increase the pressure by filing a Charge of Discrimination with the EEOC on December 1, 2021. While Nelson attached his charge to his Petition, he curiously failed to note that, after Defendants submitted their response, the EEOC’s processing of Nelson’s charge terminated without action against Defendants.

Nelson continued to demand \$100 million, or he would go public with the allegations (which the NBA was already aware of). Sensitive to the potential impact of Nelson’s threatened “outing” of an individual’s otherwise private sexual orientation, the Defendants engaged in settlement discussions.

Importantly, *Nelson repeatedly refused to engage in any resolution that asked him to represent that he had not engaged in any criminal conduct relating to his allegations, his adult nephew's allegations, or the other subject matters above.*¹ Thus, not only did Nelson refuse to reveal his contemporaneous communications regarding the allegations, but he stated that he was unwilling to represent that his actions and communications were not criminal.

Accordingly, there was no agreement to pay any amount of money to Nelson.

Nelson's extortionate threats leveled before and during the negotiations had their intended effect for at least some period of time. But when Defendants refused to meet his demands, Nelson filed his fictitious allegations in this lawsuit, which received the publicity he intended.

Nelson's lawsuit is nothing more than the culmination of his long-running scheme to obscure his own failures as an NBA General Manager and businessman, conceal his own personal misconduct, and repulsively attempt to profit from threatening to "out" a former Mavericks employee.

Hostages to Nelson's scheme no longer, Defendants respond as follows:

II.

GENERAL DENIAL

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendants deny generally each and every allegation and claim in Nelson's Petition and demand strict proof thereof.

¹ The Petition is littered with references to the substance of what allegedly occurred in connection with a confidential mediation that Defendants entered into in good faith with the expectation that it would be conducted according to the law and appropriate ethical standards. References to mediation, or settlement discussions generally, have no place in public pleadings. Limited reference to such circumstances are made here only to correct a false impression created by Nelson's Petition, which purports to rely on otherwise confidential and inadmissible communications. Defendants reserve their rights to address the Petition's misuse of such information.

III.

AFFIRMATIVE DEFENSES

Defendants anticipate relying on the following defenses, if applicable, and if supported by facts to be determined by appropriate discovery. In asserting these defenses, Defendants neither expressly nor implicitly assume the burden of disproving any element of any claim for which Plaintiff bears the burden of proof as a matter of law.

1. Plaintiff's claims are baseless, and Defendants reserve the right to file a motion under Rule 91a or any other rule.

2. Plaintiff has no standing to sue Radical, as he was not an employee of Radical, and Radical is not liable in the capacity in which it was sued.

3. Defendants are not responsible for any expenses or damages allegedly incurred by Plaintiff due to Plaintiff's own acts, conduct, and/or failure to exercise reasonable care in mitigating Plaintiff's damages, if any.

4. Plaintiff's claims are barred by the doctrines of estoppel, waiver, and release.

5. Plaintiff's claims are barred by his own fraudulent and illegal conduct and the doctrine of unclean hands.

6. Plaintiff has failed to meet all conditions precedent to filing suit.

7. Defendants assert the after-acquired evidence defense.

Defendants reserve the right to amend this Answer.

IV.

PRAYER

For the reasons stated, Defendants respectfully request judgment of the Court that Plaintiff take nothing by this suit, and that Defendants recover all costs, together with such other and further relief to which they may be justly entitled.

Dated: March 18, 2022

Respectfully submitted,

WINSTON & STRAWN LLP

By: /s/ Thomas M. Melsheimer

Thomas M. Melsheimer
Texas Bar No. 13922550
tmelsheimer@winston.com

Scott C. Thomas
Texas Bar No. 24046964
scthomas@winston.com
2121 N. Pearl St., Suite 900
Dallas, TX 75201
Telephone: (214) 453-6500
Facsimile: (214) 453-6400

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 18, 2022, I caused a genuine copy of this document to be served on counsel of record via electronic means.

/s/ Scott C. Thomas

Scott C. Thomas

Automated Certificate of eService

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Thomas Melsheimer on behalf of Thomas M. Melsheimer
Bar No. 13922550
tmelsheimer@winston.com
Envelope ID: 62748085
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Associated Case Party: DONN NELSON

Name	BarNumber	Email	TimestampSubmitted	Status
Joshua J Iacune		Josh@RoggeDunnGroup.com	3/18/2022 2:14:37 PM	SENT
Rogge Dunn		dunn@trialtested.com	3/18/2022 2:14:37 PM	SENT
Tina Vanderburg - Paralegal		vanderburg@roggedunngroup.com	3/18/2022 2:14:37 PM	SENT
Firm e-Filing		efiling@roggedunngroup.com	3/18/2022 2:14:37 PM	SENT