

**NANCY BLANCHARD AND PARK  
PLANTATION, L.L.C.**

**VS**

**LINDER OIL COMPANY, ET AL**

**COURT OF APPEAL**

**FIFTH CIRCUIT**

**STATE OF LOUISIANA**

**NO. 13-CA-737**

---

**AFFIDAVIT**

BEFORE ME, the undersigned authority, duly commissioned and qualified  
in and for the Parish of Terrebonne, State of Louisiana,

**PERSONALLY CAME AND APPEARED:**

**PAUL MACLEAN**

who, being first duly sworn by me, did depose and state:

That I was present at a hearing at the Court of Appeal – Fifth Circuit on  
Tuesday, February 4, 2014 and immediately after witnessing those proceedings, I  
accompanied R. David Brown, Attorney to the offices of the 24<sup>th</sup> Judicial District  
Parish Clerk of Court and personally heard Chief Civil Docket Clerk Mary Najolia  
and Deputy Clerk Simone Elwood explain to Mr. Brown and me, while being  
questioned, the following information that was well-remembered by each person  
and that there was no confusion or disagreement between the two as to what was  
disclosed, stated and supplied to us, but instead all statements were made together  
in accord and stated as though by one:

That in 2012 Judge Windhorst did not return a certain September 7, 2012  
motion for appeal, other individual filings and/or a complete volume of the subject  
litigation recordation to the clerk's office to be recorded in the litigation record.

That both of the named clerks each individually had never experienced  
motions or a litigation record not being returned as in the present litigation.

That the actions of Judge Windhorst were so unusual and extended for such a length of time that Mary Najolia stated that she had taken notes to record the actions but since Judge Windhorst was no longer with the 24<sup>th</sup> Judicial District, and while believing that her notes were no longer needed, she discarded them.

That a motion for appeal was fax filed on September 7, 2012 and it was timely followed up by a paper copy of said motion and that the paper copy was sent up to Judge Windhorst's office but was never returned to them for replacement in the litigation record.

That along with a paper copy of the motion for appeal that was fax filed on September 7, 2012, Mr. Brown transmitted a check for the correct amount of \$538.00 and that check was deposited in the Clerk's account on September 17, 2012.

That said check for \$538.00 would not have been deposited if the paper copy of the September 7, 2012 motion for appeal would not have also been included in the transmittal.

That since Judge Windhorst did not return said motion for appeal, it was absent from the litigation record.

That Judge Windhorst also did not return other filings to the Clerk's office for placement in the litigation record.

That in addition to individual motions not being returned, Volume 11 of 11 of the litigation record had also been sent up to Judge Windhorst's office but it was never returned to the Clerk's office for replacement in the litigation record.

That because Volume 11 was not returned to the clerk's office, the office was forced to attempt to duplicate Volume 11 of the litigation record.

That because such an extended time went by with the filings not being returned to the Clerk's office to be put in the litigation record, Mary Najolia placed a card in the record to remind herself as well as notify others where the filings were located.

That due to the litigation proceeding, because certain filings were no longer in the possession of the Clerk's office, Mr. Brown was contacted to assist in an effort to duplicate the filings.

That many conversations resulted in Mr. Brown assisting the Clerk's office in that effort and Mr. Brown supplied certain documents in an attempt to recreate the litigation record.

That the cover of the duplicated Volume 11 was clearly marked as "Duplicate Record" to evidence that it was not the original Volume 11 of the litigation record.

That during our discovery visit on February 4, 2014 Mary Najolia printed out a limited activity report for specific and relevant period of time and said activity report was given to Mr. Brown for his use.

That during our discovery visit on February 4, 2014 Mary Najolia copied the cover of the "Duplicate Record" of Volume 11 and said copy was given to Mr. Brown for his use.

That (among other things) the activity report showed that a fax filing was received from Mr. Brown at the Clerk's office on September 7, 2012 and a check was deposited on September 17, 2012 by the Clerk's office.

That the judge that replaced Judge Windhorst totally cleaned out Judge Windhorst's office and the September 7, 2012 Motion for Appeal and all other

fillings and the original Volume 11 that went up to Judge Windhorst were never found and/or delivered to the Clerk's office.

That Mary Najolia prepared the August 8, 2012 Order for mailing by metering all notices and then placed them in a mail delivery area for (probably next day) pickup by a postal service mail carrier.

That there was no evidence that the mail notice to Mr. Brown was returned to the Clerk's office as being wrongly addressed.

That there was no evidence in the record that the notice had been delivered by the Sherriff's Department as claimed by at least one of the defendants.

That when told that the notice arrived at Mr. Brown's office 53 days after Mary Najolia placed them in the mail delivery area for mailing, both Mary Najolia and Simone Elwood looked surprised and could not explain what had happened.

That both Mary Najolia and Simone Elwood agreed that each were familiar enough with and remembered the information hereinabove stated to give a written statement attesting to this information but were not sure either one had the authority to unilaterally give such a written statement.

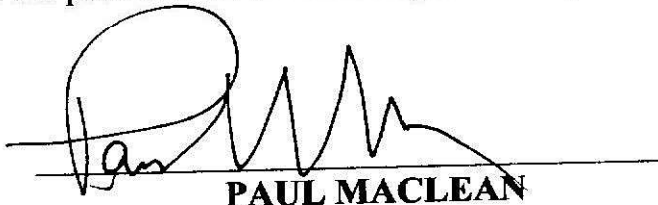
That Mary Najolia called their supervisor, Mr. Borne, Chief Deputy Clerk, to get direction concerning their each giving written statements and, after the conversation, she advised Mr. Brown and me that he would discuss how to give such a statement with the Clerk's attorney, Ms. Carey Daste, who was to contact Mr. Brown to discuss this further.

That both Mary Najolia and Simone Elwood apologized to Mr. Brown and me numerous times for these actions and both stated that this sort of thing should not have happened.


That when I stated the litigation record should be sacrosanct and able to be consistently relied upon as true and correct, each agreed with the undersigned.

That I sat very near to both Mary Najolia and Simone Elwood and could clearly hear their answers to the questions posed by Mr. Brown on February 4, 2014 and I have recollected their statements made that day to the best of my ability.

Thus done, read and signed in the presence of the undersigned notary.

  
PAUL MACLEAN


WITNESSES:

  
MARILYN MANOR

  
MONA TRAHAN

**ATTESTED TO, SWORN AND SUBSCRIBED BEFORE ME**

THIS 21<sup>st</sup> day of February, 2014

  
NOTARY PUBLIC  
Terrie L. Bergeron  
I.D.# 52308