20150301
FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
DECEMBER 21, 2015
STATE OF NORTH DAKOTA

In the Supreme Court
State Of North Dakota

December 21, 2015

Supreme Court No. 20150301

PHI Financial Services, Inc.,
Plaintiff and Appellee,
v.
Johnston Law Office, P.C., and
Choice Financial Group,
Defendant,

Johnston Law Office, P.C.,
Appellant.

Grand Forks County
#18-2012-CV-00577

APPEAL FROM ORDER COMPELLING DISCOVERY AND JUDGMENT
OF CONTEMPT THE DISTRICT COURT OF GRAND FORKS,
NORTH DAKOTA NORTHEAST CENTRAL JUDICIAL DISTRICT
THE HONORABLE THOMAS E. MERRICK, PRESIDING

OPNENING BRIEF OF APPELLANT,
JOHNSTON LAW OFFICE, P.C.

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[2] STATEMENT OF THE ISSUES

I. Whether the District Court erred in its determination that PHI had not exceeded the allowed number of interrogatories.

II. Whether the District Court erred in its determination that the "meet and confer" requirement had been satisfied by PHI's counsel leaving a single voicemail prior to filing a Motion to Compel Discovery.

III. Whether the District Court erred in finding Johnston Law Office, P.C., in contempt of the Court where Johnston Law believed the underlying Order to Compel Discovery was invalid.

[3] STATEMENT OF THE CASE

[4] Appellant Johnston Law appeals from post-judgment discovery orders issued by the District Court. PHI and Johnston Law have both appealed a judgment in PHI's favor. (Doc #419) While the appeal has been pending, PHI has continued to pursue post-judgment discovery. Johnston Law contends PHI has pursued discovery in an improper manner, filling interrogatories and attempting to levy on Johnston Law's bank accounts during the 14 day stay pursuant to Rule 62(a) of the North Dakota Rules of Civil Procedure, demanding Johnston Law answer more interrogatories than allowed, and pursuing a motion to compel discovery without first conducting the required "meet and confer".

[5] As a result of the disputes between PHI and Johnston Law Office, the District Court entered post-judgment discovery orders which are the subject of the current appeal. The subject of the disputes has been PHI's repeated failure to abide by the Rules of Civil Procedure in pursuing discovery. First, PHI violated the fourteen day stay following entry of judgment by attempting to levy on Johnston Law's accounts, including Johnston Law's trust account, without providing Johnston Law with notice. (Doc. #433) PHI then served Johnston Law with a third set of interrogatories, pushing the total of PHI's interrogatories to over 100, far exceeding the 50 interrogatories allowed by Rule 33. When Johnston Law pointed out the number of interrogatories, PHI filed an Order to Compel Discovery with only a token effort to meet and confer instead of simply requesting from the Court an exemption to the limitations as allowed by Rule 33. (Doc. #458)

[6] The District Court bought PHI's arguments and ordered Johnston Law to provide discovery. (Doc. #474) Johnston Law objected to the order to compel due to

violations of Rule 33 and 37, and the Court found Johnston Law in contempt of the Order to Compel Discovery without evidence or a finding that Johnston Law acted with requisite intent to violate the Order. (Doc. #491)

[7] In summation, Johnston Law appeals the Order to Compel Discovery and Contempt Order on three different grounds: (1) the District Court lacked jurisdiction to enter a Motion to Compel Discovery because PHI did not conduct a "meet and confer" prior to filing its discovery motion; (2) the District Court's Order to Compel Discovery is invalid because Johnston Law was required to answer more interrogatories than is allowed; (3) the Contempt Order is invalid because the underlying motion was void and Johnston Law lacked the "inexcusable" intent in violating the Order to Compel Discovery.

STATEMENT OF FACTS

[8] Appellee PHI Financial Services, Inc. (PHI) filed a suit against Appellant Johnston Law Office, P.C. (Johnston Law) in 2012. (Doc. #1) PHI obtained a judgment of $167,000 against Johnston Law. PHI entered judgment on January 30th, 2015, (Doc. #419) and, in violation of the 14 day stay of execution following the entry of judgment pursuant to the North Dakota Rule of Civil Procedure 62(a), PHI sent post-judgment interrogatories and attempted to levy on Johnston Law's bank accounts without providing Johnston Law with notice. (Doc. #433)

[9] Johnston Law and PHI both appealed the District Court's order. While the appeal was pending, PHI continued to pursue post-judgment discovery. On March 30th, 2015, PHI served Johnston Law with Interrogatories and Demand for Production in Aid of Execution. On May 4th, 2015, Johnston Law provided a response, though Johnston Law objected to a number of interrogatories as exceeding the allowed 50 interrogatories allowed by the North Dakota Rule of Civil Procedure. PHI had previously served Johnston Law with 44 interrogatories in its first set (Doc. #8, APP - 20), 37 interrogatories in its second set (Doc. #131, APP - 29) of discovery, and an additional 36 interrogatories (Doc. #462, APP - 38) that brought the instant dispute to the Court.

[10] PHI responded to the objected interrogatories by email. On May 8th, PHI advised Johnston Law that PHI believed the interrogatories to conform with the Rules of Civil Procedure and requested Johnston Law respond to the objected interrogatories. Johnston Law responded by letter objecting to PHI's argument. On May 19th, PHI left Johnston Law a voice message regarding the outstanding discovery during a time when Johnston Law was transitioning after the loss of an associate attorney, and when Johnston

Law failed to respond, PHI filed a motion to compel discovery. (Doc. #459) The Court found PHI had satisfied the "meet and confer" requirement, that the interrogatories did not violate Rule 37, and required Johnston Law to supplement its answer to PHI's discovery request. (Doc. #474, APP - 15)

[11] One month after the Order to Compel Discovery was filed, PHI filed a Motion for an Order to Show Cause. (Doc. #480) Johnston Law had not provided the requested discovery because Johnston Law considered the Order invalid on the basis that PHI had served too many interrogatories and PHI had not conducted a "meet and confer" prior to filing a Motion to Compel Discovery. Following a hearing, the Court found Johnston Law in contempt of the Court. (Doc. #491, APP - 19) On October 13th, Johnston Law filed a notice of appeal on both the Contempt Order and Order to Compel Discovery. (Doc. #496)

STANDARD OF REVIEW

[12] The proper standard of review for discovery orders is abuse of discretion. Med. Arts Clinic, P.C. v. Franciscan Initiatives, 531 N.W.2d 289, 301 (N.D. 1995). Abuse of discretion is also the standard of review for contempt orders. Prchal v. Prchal, 2011 ND 62, ¶ 5, 795 N.W.2d 693, 696. The party asserting the court abused its discretion bears the heavy burden of establishing relief is appropriate. Investors Title Ins. Co. v. Herzig, 2010 ND 169, ¶ 38, 788 N.W.2d 312 (quoting Martin v. Trinity Hosp., 2008 ND 176, ¶ 17, 755 N.W.2d 900). "The district court abuses its discretion only when it acts in an arbitrary, unreasonable, or unconscionable manner, or when its decision is not the product of a rational mental process leading to a reasoned determination. The party seeking relief must show more than the district court made a "poor" decision, but that it positively abused the discretion it has under the rule." Martin, 2008 ND at ¶ 17.

LAW AND ARGUMENT

[13] The appeal of the District Court's Order to Compel Discovery and subsequent Contempt Order is based on two central questions: (1) whether PHI requested too many interrogatories of Johnston Law; and (2) whether Phi satisfied the "meet and confer" requirement before requesting an Order to Compel Discovery. If Johnston Law is correct on any of these positions, the Order to Compel Discovery would be invalid on its face, and the District Court's subsequent finding that Johnston Law was in contempt of the Court's order reversed. In any event Johnston Law lacked the intent to support a contempt finding by the District Court.

I. Johnston Law was justified in objecting to PHI's post-judgment interrogatories because the post-judgment interrogatories exceeded the 50 interrogatories allowed by North Dakota Rules of Civil Procedure.

[14] Johnston Law was justified in objecting to PHI's post-judgment interrogatories because the post-judgment interrogatories exceeded the 50 interrogatories allowed by North Dakota Rules of Civil Procedure 33. PHI served Johnston Law with 3 sets of interrogatories: sets 1 and 2 prior to trial and set 3 being the post-judgment interrogatories in question. The first set contained 44 interrogatories (including discrete subparts), the second set contained 37 interrogatories, and the post-judgment interrogatories requested Johnston Law respond to an additional 36 interrogatories. All of the post-judgment interrogatories exceeded the 50 interrogatory limit, therefore Johnston Law was justified in objecting to the post-judgment interrogatories.

[15] While Rule 33(a)(3) allows a court to extend the limit on interrogatories by order, the court has entered no such order. When the issue was brought before the District Court in Johnston Law's response to the Motion to Compel Discovery, the Court ruled that post-judgment interrogatories need not abide by the restrictions of Rule 33. "A court abuses its discretion when… it misinterprets or misapplies the law." Schaefer v. Souris River Telecomms. Coop., 2000 ND 187, ¶ 14, 618 N.W.2d 175, 180. If the District Court misapplied Rule 33 in that the Rule does apply to post-judgment interrogatories and PHI has violated Rule 33 through its post-judgment interrogatories, the District Court has abused its discretion in compelling Johnston Law to answer the interrogatories; therefore the Court should void by reversing the District Court Order to Compel Discovery.

A. Rule 33(a)(3) applies to post-judgment interrogatories.

[16] The ability to serve post-judgment discovery derives from the North Dakota Rule of Civil Procedure 69(b), which states: "In aid of the judgment or execution, the

judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person, including the judgment debtor, as provided in these rules." N.D.R. Civ.P. Rule 69(b). As provided in Rule 69(b) ("the judgment creditor… may obtain discovery from any person… as provided in these rules"), post-judgment discovery is circumscribed by the North Dakota Rules of Civil Procedure. Rule 33(a)(3) limits interrogatories to 50 and provides no exception to post-judgment interrogatories. The Rules of Civil Procedure provide no basis for the District Court's exclusion of PHI's post-judgment interrogatories from the limitations of Rule 33(a)(3).

[17] In addition to the lack of statutory support, there is also an absence of case law to endorse the District Court's Order to Compel Discovery. Johnston Law was unable to find any North Dakota cases on the issue, but was able to locate a federal case based on the Federal Rule of Civil Procedure 69(b), which is almost identical to the N.D.R. Civ. P. Rule 69(b). Mid-Dakota Clinic, P.C. v. Kolsrud, 1999 ND 244, ¶ 5, 603 N.W.2d 475, 477. "Though the Court is not compelled to interpret [North Dakota's] state procedure in the same manner as the federal courts interpret their corresponding rules, the federal courts' interpretations are highly persuasive." Id. The federal case applied the interrogatory limit on post-judgment discovery, thereby providing no support for the Order to Compel Discovery.

[18] The federal court case is the Fifth Circuit Court of Appeals case Cooper v. Dallas Police Ass'n, 584 Fed. Appx. 208. In Cooper, the federal court applied the Texas Rules of Civil Procedure to post-judgment discovery served pursuant to Rule 69(b). Cooper v. Dall. Police Ass'n, 584 F. App'x 208, 208 (5th Cir. 2014). The court considered Tex. R. Civ. P. 190 in determining the appropriateness of post-judgment discovery,

which provides for discovery limits including limitations on the number of interrogatories that can be served. Tex. R. Civ. P 190.6 specifically provides an exception to discovery limitations for post-judgment discovery. Id. The Cooper court ultimately found that post-judgment interrogatories were unlimited under Texas civil procedure. Id. The court reached this conclusion, not because post-judgment discovery is ungoverned by the rules of civil procedure, but because the Texas Rules of Civil Procedure provided an exception to limitations on post-judgment discovery.

[19] Just as the Fifth Circuit Court of Appeals considered the rules of civil procedure in determining limitations on post-judgment discovery, so should the District Court have analyzed the North Dakota Rules of Civil Procedure in determining its application to PHI's post-judgment discovery. That the Rules of Civil Procedure apply to post-judgment discovery is stated in N.D.R. Civ.P Rule 69(b). That discovery is limited to 50 interrogatories is stated in N.D.R.Civ.P Rule 33(a)(3). However, whereas in Cooper, the Texas Rules of Civil Procedure provided an exemption to discovery limits for post-judgment discovery, **the North Dakota Rules of Civil Procedure provides no exemption for post-judgment discovery**. All discovery is limited to a maximum 50 interrogatories, and that includes PHI's post-judgment discovery.

B. PHI SERVED MORE THAN 50 INTERROGATORIES IN VIOLATION OF RULE 33(A)(3).

[20] PHI violated Rule 33(a)(3) by serving more than 50 interrogatories on Johnston Law without first requesting the Court order the discovery limitation to be expanded. PHI filed three different sets of interrogatories on Johnston Law. The first set of interrogatories contained 15 main questions and 32 subparts. Under Rule 33(a)(3), all discrete subparts are included in the 50 written interrogatories limitation; therefore the

interrogatories in the first set totaled 47. In the second set of interrogatories, PHI included 17 main questions and 23 subparts, totaling 40 interrogatories. Even before PHI served Johnston Law with its post-judgment interrogatories, PHI had already exceeded the discovery limitations imposed by Rule 33(a)(3).

[21] After receiving a judgment in its favor, PHI served Johnston Law with an additional set of interrogatories. The final set included 25 main questions and 12 subparts, resulting in 37 interrogatories. Throughout litigation and post-judgment proceedings, PHI has served upon Johnston Law over 124 interrogatories, far exceeding the limitations of Rule 33(a)(3). As the post-judgment interrogatories were in violation of the Rules of Civil Procedure, Johnston Law was justified in its objections.

THE DISTRICT COURT ABUSED ITS DISCRETION IN COMPELLING JOHNSTON LAW TO ANSWER INTERROGATORIES IN VIOLATION OF RULE 33(A)(3).

[22] Rule 33(a)(3) limits post-judgment discovery, preventing a party from serving more than 50 interrogatories. PHI served interrogatories that exceeded the 50 interrogatory limitation and Johnston Law objected to those interrogatories. The Court compelled Johnston Law to answer the interrogatories, finding Rule 33 does not apply to post-judgment interrogatories. The District Court misapplied the Rules of Civil Procedure, abusing its discretion. Because the Order to Compel Discovery does not adhere to Rule 33, the Order to Compel Discovery is void and must be reversed.

II. PHI's Motion to Compel Discovery was invalid because PHI had not conducted the necessary "meet and confer" prior to filing the motion.

[23] PHI filed an invalid Motion to Compel Discovery due to a failure to conduct the required "meet and confer" prior to filing its motion. A motion for an order compelling discovery is filed pursuant to North Dakota Rule of Civil Procedure 37,

which requires the movant to certify that the movant has in good faith attempted to resolve discovery disputes prior to filing the motion. This requirement is commonly referred to as a "meet and confer". PHI claims it satisfied the "meet and confer" requirement by exchanging one letter and leaving a voicemail. A letter and a voicemail does not satisfy the "meet and confer" requirement, thereby preventing the Court from considering PHI's motion. As the District Court never had jurisdiction to consider the motion, the Order to Compel Discovery is invalid.

A. THE "MEET AND CONFER" STANDARD.

[24] The "meet and confer" requirement derives from North Dakota Rule of Civil Procedure 37(a)(1), which states:

> [A] party may move for an order compelling discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make discovery in an effort to obtain it without court action.
> N.D.R. Civ.P. 37(a)(1).

[25] There is no North Dakota case law defining the "meet and confer" requirement. Fortunately, North Dakota's civil procedure derives in large part from the Federal Rules of Civil Procedure. St. Aubbin v. Nelson, 329 N.W.2d 874, 876 (N.D. 1983). Other courts have interpreted good faith as requiring that "parties make a genuine attempt to resolve the discovery dispute without involving the court" and as a "sincere attempt by counsel to actually confer, whether in-person or by telephonic or other electronic means, in order to resolve differences without involving the Court." Shuffle Master, Inc. v. Progressive Games, 170 F.R.D. 166, 170-171 (D.Nev. 1996); *69 N. Dak. L. Rev. 861, 866*. A "reasonable effort to confer" means more than mailing, faxing, or e-mailing a single letter to the opposing party; it requires that the parties "in good faith

converse, confer, compare views, consult and deliberate, or in good faith attempt to do so." Hayne v. Green Ford Sales, Inc., 263 F.R.D. 647, 652 (D. Kan. 2009).

[26] The courts have distinguished token efforts, which do not satisfy Rule 37, with sincere efforts. Efforts that have been found insufficient include: a faxed 22 page letter, a single threatening fax, mailing a single letter, four emails, and three emails and a voicemail. Naviant Mktg. Sols., Inc. v. Larry Tucker, Inc., 339 F.3d 180, 186 (3d Cir. 2003); Cannon v. Cherry Hill Toyota, 190 F.R.D. 147 (D. N.J. 1999); Hayne v. Green Ford Sales, Inc., 263 F.R.D. 647, 653 (D. Kan. 2009); Themis Bar Review, LLC v. Kaplan, Inc., No. 14CV208- L (BLM), 2015 U.S. Dist. LEXIS 67917, at *14 (S.D. Cal. May 26, 2015); Allstate Ins. Co. v. Balle, 2013 U.S. Dist. LEXIS 62213, at *7 (D. Nev. Apr. 30, 2013).

B. PHI FAILED TO SATISFY THE "MEET AND CONFER" REQUIREMENT PRIOR TO FILING THE MOTION TO COMPEL DISCOVERY, THEREFORE THE DISTRICT COURT COULD NOT RULE ON THE MOTION.

[27] PHI failed to satisfy the "meet and confer" requirement prior to filing the motion to compel discovery, therefore the district court could not rule on the motion. Before a court can rule on a motion to compel, the parties must demonstrate they acted in good faith to resolve the issue among themselves. Fed. R. Civ. P. 37(a)(2)(A). If PHI failed to demonstrate it had acted in good faith to resolve the dispute, the District Court could not have ruled on the motion, and the resulting Order to Compel Discovery would be void.

[28] PHI outlined its efforts to comply with the "meet and confer" requirement in attorney John Brakke's affidavit. Regarding Mr. Brakke's efforts to resolve the dispute, the affidavit states:

> On May 8th, 2015, your affiant sent a letter by electronic service to the Defendant, Johnston Law Office, P.C. advising that Defendant, Johnston Law Office, P.C.'s answers were incomplete and requesting complete answers to Plaintiff's Interrogatories and Demand for Production of Documents in Aid of Execution in the following respects: (PHI went on to list the relevant interrogatories).
>
> On May 19th, 2015, the Defendant Johnston Law Office, P.C. served a letter objecting to the above requests for complete answers. In an attempt to resolve the dispute, Plaintiff's counsel left a voice message for the Defendant, Johnston Law Office, P.C. To date [May 28th], the Defendant, Johnston Law Office, P.C. has failed to respond to said message.

(Doc. #491). PHI alleges it complied with the "meet and confer" requirement by emailing a letter and leaving a voice mail. One letter and a voice mail is a token attempt to resolve the dispute, and token attempts do not satisfy Rule 37(a).

[29] The case that is most akin to PHI's efforts is Allstate Ins. Co. v. Balle, 2013 U.S. Dist. (D. Nev. Apr. 30, 2013). In Allstate, the movants sent three emails and later left a voicemail that was left unanswered. Id at *7. The court found that movants had failed to conduct a good faith "meet and confer". Id at *8. The court's analysis of movant's efforts was particularly poignant:

> According to the Plaintiffs, AIM never returned a request for a phone call and therefore, admittedly, no meet and confer ever occurred... [M]erely sending three emails is not sufficient to show a good faith effort to meet and confer. Id at *7-9.

[30] PHI sent one letter and left one voicemail. Since Johnston Law never returned the call, and one letter is insufficient to establish a good faith effort to meet and confer, PHI failed to satisfy Rule 37(a).

THE DISTRICT COURT LACKED THE ABILITY TO RULE ON PHI'S MOTION TO COMPEL DISCOVERY BECAUSE PHI HAD FAILED TO CERTIFY PHI HAD MADE A GOOD FAITH EFFORT TO RESOLVE THE DISPUTE.

[31] Rule 37 requires that the movant include a certification that movant has in good faith conferred with opposing party to resolve the dispute. The certificate of a good faith effort is a prerequisite for the court to rule on the motion. Where a party fails to act in good faith, the court cannot rule enter an Order compelling discovery.

[32] PHI filed an affidavit with its Motion to Compel Discovery asserting a good faith effort had been made because attorney John Brakke had emailed a letter and left a voicemail. This effort has been roundly considered by other courts to be a token effort, rather than a sincere effort, to resolve the dispute, and a token effort does not satisfy Rule 37.

[33] The District Court lacked the ability enter an Order Compelling Discovery because PHI did not satisfy Rule 37 in filing the Motion to Compel Discovery. The District Court abused its discretion in entering the Order, therefore the District Court Order should be reversed.

III. <u>The Contempt Order should be overturned because the underlying Order to Compel Discovery was invalid due to violations of N.D.R. Civ. P 33 and 37.</u>

[34] Johnston Law was found in contempt of court due to Johnston Law's failure to abide by the Order to Compel Discovery. However, a part is under no obligation to adhere to a void order. As detailed earlier, the Order to Compel Discovery is void because it ordered Johnston Law to answer interrogatories that violated N.D.R. Civ.P 33 and because the District Court could not rule on the motion due to PHI's failure to abide by N.D.R. Civ.P 37. "[D]isobedience of an order made without or in excess of

jurisdiction is not punishable as contempt," i.e., "it is not contempt to disobey a void order." Dahlen, 393 N.W.2d at 770 (citing In re Kramer, 75 N.W.2d 753 (N.D. 1956); Hodous v. Hodous, 76 N.D. 392, 36 N.W.2d 554 (N.D. 1949)).The Court's finding of contempt should be overturned because the underlying order was invalid.

[35] Even if the Order to Compel Discovery was valid, the Court should overturn the District Court's finding of contempt due to the lack of requisite intent on the part of Johnston Law. Two conditions must be present to establish contempt of a court's order: (1) the person had actual notice or knowledge of that order; and (2) a willful and inexcusable intent to violate a court order. BeauLac v. BeauLac, 2002 ND 126, ¶ 10, 649 N.W.2d 210. Johnston Law lacked an inexcusable intent to violate the law because the prior-detailed issues regarding compliance with N.D.R. Civ.P 33 and 37 were outstanding.

[36] A party is substantially justified in noncompliance with a discovery order where, regarding the principle upon which the party violates the order, "there is an absence of controlling authority, and the issue presented is one not free from doubt and could engender a responsible difference of opinion among conscientious, diligent but reasonable advocates". Athridge v. Aetna Cas. & Sur. Co., 184 F.R.D. 200, 205 n.1 (D.D.C. 1998). The issue regarding Rule 33's application to post-judgment interrogatories and the issue regarding the "meet and confer" requirement of Rule 37 lack controlling authority in North Dakota and could reasonably engender differences between advocates. As such, Johnston Law did not act with the necessary "inexcusable" intent to be found in contempt, but rather acted reasonably in his belief that the Order to Compel Discovery is invalid.

CONCLUSION

[37] Johnston Law requests the Court reverse the District Court's Order to Compel Discovery and Contempt Order. The Order to Compel Discovery is invalid because the District Court ordered Johnston Law to answer interrogatories in excess of the 50 allowed by Rule 33. The Order to Compel Discovery is further invalidated by PHI's failure to "meet and confer" prior to filing a Motion to Compel Discovery. As the finding of contempt was based on the Order to Compel Discovery is invalid, the Order must be reversed because Johnston Law cannot be found in contempt for failure to abide by a void order.

Dated this 21st day of December, 2015.

JOHNSTON LAW OFFICE

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In the Supreme Court
State Of North Dakota

PHI Financial Services, Inc.,
Plaintiff/ Appellee
v.

Johnston Law Office, P.C.,
Defendant/Appellant

Supreme Court No. 20150301

Grand Forks County Number: 18-2012-CV-00577

CERTIFICATE OF ELECTRONIC SERVICE

I, **DeWayne Johnston**, attorney for the Defendant\Appellant, and officer of the court, hereby certify that a true and correct copy of the foregoing:

1. **Plaintiff/Appellant's Opening Brief**
2. **Plaintiff/Appellant's Appendix**

was served via **ELECTRONIC MAIL** from Grand Forks, North Dakota on this 21st day of December, 2015 to:

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Dated this 21st day of December, 2015.

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In the Supreme Court
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Supreme Court No. 20150301

Grand Forks County Number: 18-2012-CV-00577

CERTIFICATE OF ELECTRONIC SERVICE

I, **DeWayne Johnston**, attorney for the Defendant\Appellant, and officer of the court, hereby certify that a true and correct copy of the foregoing:

1. **Revised Plaintiff/Appellant's Opening Brief**

was served via **ELECTRONIC MAIL** from Grand Forks, North Dakota on this 22nd day of December, 2015 to:

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Dated this 22nd day of December, 2015.

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In the Supreme Court
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December 21, 2015

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PHI Financial Services, Inc.,
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Defendant,

Johnston Law Office, P.C.,
Appellant.

Grand Forks County
#18-2012-CV-00577

CERTIFICATE OF ELECTRONIC SERVICE

I, **DeWayne Johnston**, attorney for the Defendant\Appellant, and officer of the court, hereby certify that a true and correct copy of the foregoing:

Revised Plaintiff/Appellant's Opening Brief

was served via **ELECTRONIC MAIL** from Grand Forks, North Dakota on this 23rd day of December, 2015 to:

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Dated this 23rd day of December, 2015.

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