

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

<b>EDWIN T. JOHNSON,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	<b>19 CH 08843</b>
<b>v.</b>	)	
	)	
<b>JACQUELINE SCHULTZ BAMMERT,</b>	)	
	)	
<b>Respondent.</b>	)	

**ORDER ON RESPONDENT'S MOTION TO STRIKE AND DISMISS  
PETITION FOR ADJUDICATION OF INDIRECT CRIMINAL CONTEMPT**

This matter comes before the Court on Respondent's Motion to Strike and Dismiss Petition for Adjudication of Indirect Criminal Contempt. For the following reasons, the Motion is granted and the Petition is dismissed with prejudice.

**BACKGROUND**

According to the allegations of the Petition and for Adjudication of Indirect Criminal Contempt (the "Petition") and exhibits incorporated therein, Respondent Jacqueline Bammert ("Bammert") is an attorney. Pet. ¶ 3. After graduating from law school in 2009, she worked as an associate in the Chicago law firm of Gardiner Koch Weisberg & Wrona ("GKWW"). Pet. ¶ 8; Deposition of Jacqueline Bammert on 12/6/17 (Dep.) at 8.<sup>1</sup> One of the many clients for whom Bammert worked was 3Red, an LLC owned by members Igor Oystacher and Petitioner Edwin Johnson ("Johnson"). Pet. ¶ 9; Dep. at 34. Johnson was terminated from 3Red in June 2013. Pet. ¶ 10. Bammert left GKWW in 2013 and moved to Michigan with her family. Pet. ¶ 8; Dep. at 15.

In 2014, Johnson sued GKWW and its partner James Koch for legal malpractice. Pet. ¶¶ 1, 4.<sup>2</sup> In that case, which is pending in the Law Division, Johnson has taken the position that he was a client of GKWW at the time he was terminated. Pet. ¶ 12. GKWW has asserted as a defense that it represented the entity 3Red and did not represent Johnson individually. Pet. ¶ 11. In December 2017, Johnson's lawyers took Bammert's deposition. Pet. Ex. A. Many of the questions called for Bammert's recollection and interpretation of events, communications and documents from more than four and a half years prior. See

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<sup>1</sup> The deposition transcript is attached as Exhibit A to the Petition.

<sup>2</sup> Koch has since passed away. Pet. ¶ 17.

*generally id.* Johnson now seeks to hold Bammert in criminal contempt for answering seven sequences (the "Seven Sequences") of questions during the deposition that he believes were perjury. A copy of the Seven Sequences is attached as an Appendix to this opinion.

#### LEGAL STANDARD

"Contempt proceedings, while usually called civil or criminal, are, strictly speaking, neither"; they share aspects of both. *People ex rel. Chicago*. Accordingly, while neither the Code of Civil Procedure nor the Code of Criminal Procedure is strictly applicable to such proceedings, certain governing principles apply, particularly since a person charged with indirect criminal contempt is entitled to the constitutional protections afforded to criminal defendants. *United Transfer, Inc. v. Lorence*, 2011 IL App (2d) 110041, ¶ 18. Those protections include the right to be proven guilty beyond a reasonable doubt. *People v. Budzynski*, 333 Ill. App. 3d 433, 438-49 (4<sup>th</sup> Dist. 2002).

At the pleading stage, the petition must set forth specific facts that describe particular conduct and those alleged facts must be sufficient to constitute the charged offense. *People v. Swanson*, 308 Ill. App. 3d 708, 711 (2d Dist. 1999) (reversing conviction that was based on a legally insufficient information that failed to set forth the offense with sufficient specificity); *People v. White*, 59 Ill. 2d 416, 418 (1974) (affirming dismissal of petition for direct criminal contempt). In other words, a petition should be dismissed if it fails to state an offense. *United Transfer*, 2011 IL App (2d) 110041, ¶ 18 (affirming trial court's grant of motion to dismiss petition for indirect civil contempt for failure to state an offense). *See also generally* 735 ILCS 5/2-615 (requiring dismissal of civil counts that are substantially insufficient in law).

Here, where the petition is based on alleged perjury, Johnson must adequately allege that (1) Bammert's testimony was false and untrue when made; (2) Bammert knew the testimony was false when she gave it; and (3) Bammert had a willful and malevolent intention of assailing the dignity of the court or of interfering with its procedure and the due administration of justice." *People v. Bialek*, 31 Ill. App. 2d 281, 284 (1st Dist. 1961).

An alleged false statement must be a statement of fact and not a conclusion, opinion or deduction drawn from given facts. *White*, 59 Ill. 2d at 418. Moreover, a truthful answer to a question subject to various interpretations is not perjury: "Precise questioning is imperative as a predicate for the offense of perjury." *Id.* at 420 (citing *Bronston v. U.S.*, 409 U.S. 352, 362 (1973)). In other words, "[t]he burden is on the questioner to pin the witness down to the specific object of the questioner's inquiry." *Id.* at 421.

#### ANALYSIS

First, the Court will analyze whether the Petition adequately alleges any false testimony in any of the Seven Sequences.

- *Sequence 1:* Johnson's counsel asked Bammert whether she believed that the firm represented Johnson individually. Bammert first answers that she does not believe so; then rephrases and says she does not recall; and finally answers "Yeah, if there's a difference, I don't recall, I don't – I don't think so, I don't remember." Ultimately, it is unclear what Bammert's answer is. An ambiguous answer cannot form the basis of perjury.<sup>3</sup> *White*, 59 Ill. 2d at 420-21. Johnson's counsel did not adequately "pin the witness down" to answers that could support a perjury charge. Moreover, even if the answer were not vague, the Petition does not allege facts showing that Bammert was untruthful about her lack of recollection.
- *Sequence 2:* Johnson's counsel asked Bammert to interpret a document. Bammert declined to answer, stating "No, I can't answer that question."<sup>4</sup> This non-answer is not a basis for perjury. *Id.* at 421. Furthermore, had a direct answer been given, a witness' interpretation cannot be the basis for perjury. *Id.* at 418 (holding that the alleged false statement must be one of fact and not a conclusion, opinion or deduction drawn from given facts).
- *Sequence 3:* Johnson's counsel asked if Bammert were aware of any other memoranda drafted around the time of the June 2013 memo. Bammert answered that she was not, "but that doesn't mean they don't exist." The question pertained to Bammert's awareness at the time of her deposition, four and a half years after the memo in question. The Petition alleges that this testimony is false because Bammert wrote an "other" memo, ¶ 33, but that is immaterial; Bammert testified that some may exist, but she was not aware of any at the time of her deposition years later. Accepting the allegations as true and all reasonable inferences that can be drawn from them, it is clearly apparent that no set of facts can be proven to show untruthfulness in this exchange. *Canel v. Topinka*, 212 Ill. 2d 311, 318, 818 N.E.2d 311 (2004).
- *Sequence 4:* Johnson's counsel asked Bammert about her awareness of Johnson's termination on June 17, 2013. Bammert answers with a question ("Aware of that date in particular?"), then continues that if the date were in the Complaint, "that would be the only basis for knowing that." The sequence goes to her awareness of the date of termination, and not the fact of termination as Johnson contends. Petition ¶ 36. And here, again, there are no fact allegations suggesting anything unreasonable, much less perjurious, about her basis for recalling the termination date more than four years later.
- *Sequence 5:* The sequence begins with the question of whether Bammert would be "surprised" to know that another law firm was purportedly retained to represent

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<sup>3</sup> The answers are so vague that they would not be effective to impeach a witness, much less prove that she committed perjury.

<sup>4</sup> Bammert's counsel interposed a form objection between the question and answer.

3Red while she was working for them. This question calls explicitly for an emotion or reaction, and not factual testimony. As such, it cannot form the basis of a perjury charge. This is also another example of counsel's failure to "pin down" the testimony.

- *Sequence 6*: This sequence is another example of counsel's failure to "pin down" the testimony. The Petition alleges that Bammert claimed she was "unaware of any investigation." ¶ 42. However, that is not what Bammert said. She testified that she is now not "familiar" with the investigation into Johnson, and that she doesn't recall whether she was aware that it was occurring at the time. Johnson does not allege any facts as to why this testimony might be untruthful.
- *Sequence 7*: Johnson's counsel asked Bammert whether anyone apprised her that Johnson "had done anything fraudulent related to the operating agreement." Bammert answered, "No, I can't recall, no." The Petition alleges this answer was false because Bammert participated in the investigation. However, the question wasn't whether Bammert participated; the question was whether anyone told her that Johnson had done anything fraudulent. Thus, the Petition fails to allege that this answer was false.

In addition to these pleading infirmities on the first element, the Petition suffers from an additional infirmity on the third element of a "willful and malevolent intention of assailing the dignity of the court or of interfering with its procedure and the due administration of justice." *Bialek*, 31 Ill. App. 2d at 284. Johnson alleges that Bammert's actions as an officer of the court "tended to lessen the dignity of the court and impeded the process of the court," Petition ¶ 50, but there is no allegation of intent. On its face, the allegation is insufficient, and for the reasons stated above the Court finds no other allegations that would sufficiently support the "intent" prong of this element.

#### CONCLUSION

For either or both of the foregoing reasons, the Court finds that the Petition allegations are factually insufficient to support the very serious charge of indirect criminal contempt. Being a witness in hotly contested litigation is difficult enough in our court system, as our appellate court has observed. *See Bialek*, 31 App. 2d at 295-96. If in addition "we permit the sword of Damocles to be poised over [witness'] heads in the threat that for any false statement made on the witness stand they may be summarily punished for contempt, we are hindering and not advancing the cause of justice." *Id.* Here, the allegations are insufficient and the sword must be withdrawn. Having reviewed the Petition and the attached deposition transcript upon which the contempt claim is founded, the Court finds that it is clearly apparent that no set of facts can be proven that would entitle Johnson to the contempt finding he seeks. The Petition is dismissed with prejudice.

DATED:

ENTER:

**ENTERED**  
Judge Alison Conlon  
MAY 29 2020  
DOROTHY BROWN  
CLERK OF THE CIRCUIT COURT  
OF COOK COUNTY, IL  
DEPUTY CLERK

\_\_\_/s/ ALISON C CONLON\_\_\_\_\_  
Circuit Judge