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COMMUNITY STATE BANK V. GARY WILSON, INTERVENOR

# COMMUNITY STATE BANK v. Gary Wilson, Intervenor (2022)

United States District Court, W.D. Arkansas, Texarkana Division.

COMMUNITY STATE BANK, Plaintiff v. Maxine WILSON; Carrie W. Winford, Administratrix for the Estate of Jennifer Harting Wilson; and J. Schuyler Marvin, District Attorney, Defendants Gary Wilson, Intervenor

Civil No. 4:18-cv-04078

Decided: February 03, 2022

William Blake Montgomery, Jim A. Burke, Montgomery Law Firm PLLC, Hope, AR, for Intervenor. Patrick R. Jackson, Patrick R. Jackson APLC, Bossier City, LA, for Defendant J. Schuyler Marvin. Carrie W. Winford, Pro Se.

## ORDER

Before the Court is separate Defendant J. Schuyler Marvin's Second Motion for Summary Judgment. (ECF No. 121). Intervenor Gary Wilson has filed a response (ECF No. 128), and Defendant has filed a reply (ECF No. 130). Also before the Court is Intervenor's Second Cross Motion for Summary Judgment. (ECF No. 123). Defendant has filed a response (ECF No. 126), and Intervenor has filed a reply. (ECF No. 131). The Court finds the motions ripe for consideration.

## I. BACKGROUND

In October 2017, the Bossier Parish Sheriff's Office began investigating Intervenor Gary Wilson ("Wilson") and his family for suspected criminal activity. In February 2018, Wilson's wife, Jennifer Wilson

("Jennifer"), moved to Bradley, Arkansas, to live with her mother Maxine Wilson ("Maxine"). On March 1, 2018, Jennifer purchased four cashier's checks from First National Bank of Benton, Louisiana, totaling \$205,000. On the same day, Jennifer also purchased a cashier's check from J.P. Morgan Chase in the amount of \$50,209.47. The cashier's checks totaled \$255,209.47.

On March 6, 2018, Jennifer executed a "Power of Attorney" to Maxine. (ECF No. 1, pp. 14-17). The power of attorney was executed in Bossier Parish, Louisiana, at the law offices of attorney Spencer Hays. The power of attorney gave Maxine authority to endorse and deposit checks on Jennifer's behalf. Maxine has also testified that Jennifer instructed her to deposit the money from the cashier's checks into an account at Community State Bank ("CSB") in Bradley, Arkansas. (ECF No. 123-1). Maxine did not immediately deposit the checks into CSB and there is no explanation in the record for the delay.

On March 15, 2018, Maxine was informed that Jennifer's car had been found abandoned on a bridge that crossed the Red River in Bossier Parish, Louisiana. Maxine was also informed that a "goodbye letter" had been found inside Jennifer's vehicle. Maxine was not shown the goodbye letter until sometime after March 15, and she has testified that she was not immediately informed of the contents of the letter. (ECF No. 123-1). The following day, March 16, 2018, Maxine called attorney Hays and asked his advice regarding what she should do with the cashier's checks in her possession. Mr. Hays advised that Maxine should deposit the checks into CSB as Jennifer had instructed. Mr. Hays also explicitly stated that although Jennifer's car had been discovered, it did not mean that Jennifer was actually deceased. The same day, Maxine opened a checking account with CSB and deposited the cashier's checks, totaling \$255,209.47. Maxine endorsed the checks as "Jennifer Wilson by Maxine Wilson POA." Maxine testified that she believed Jennifer was alive on the day she deposited the cashier's checks.

On March 29, 2018, the deceased bodies of Jennifer and her son, Coty Wilson, were found in the Red River in Bossier Parish, Louisiana. The coroner declared that Jennifer and Coty Wilson died by suicide on March 15, 2016. The Court has ruled in this case that Jennifer indeed died on March 15, 2016, and that the power of attorney executed in favor of Maxine terminated on this date. (ECF No. 119). The Court also held that because the power of attorney had been terminated, it did not authorize Maxine to deposit the funds into CSB on March 16, 2018. However, at no point did Maxine ever receive notice that Jennifer wished to revoke the power of attorney. Moreover, no funeral or memorial service was held for Jennifer until after her body was discovered. Maxine never used any of the funds from the CSB account.

On April 19, 2018, a "Warrant of Seizure for Forfeiture" was signed by a Louisiana state judge in Bossier Parish. (ECF No. 1, p. 19). The warrant directed CSB to seize the \$255,209.47 that Maxine had deposited into CSB on Jennifer's behalf. The warrant then directed CSB to issue a cashier's check for \$255,209.47, made payable to the 26th Judicial District Attorney's Office in Bossier Parish, Louisiana. The funds would then be under the supervision of separate Defendant, Louisiana District Attorney J. Schuyler Marvin ("Marvin"), pending further order of the Louisiana District Court.

Wilson filed a motion in Louisiana state court seeking to quash the warrant for seizure in its entirety. However, the Louisiana court only granted Wilson's motion in part—quashing the warrant as to \$118,209.47 but conditionally denying Wilson's motion as to the remaining funds. Accordingly, the warrant of seizure now attaches to only \$137,000 of the total CSB account.

CSB filed this interpleader action seeking to resolve all competing claims to the \$255,209.47. (ECF No. 1). Maxine Wilson, Carrie W. Winford as Administatrix for the Estate of Jennifer Wilson, Intervenor Wilson, and District Attorney Marvin have all been identified as having a potential claim to the money held in the CSB account. However, Maxine and the Estate of Jennifer Wilson have defaulted in this action, and the Court has entered Default Judgment with respect to both claimants. (ECF Nos. 96, 97). Accordingly, the instant cross motions for summary judgment only concern whether Wilson or Marvin are entitled to funds from the CSB account.

Wilson and Marvin previously filed cross motions for summary judgment. (ECF Nos. 104, 109). The Court denied both motions, holding that it lacked the evidence necessary to determine whether Maxine's deposit of the cashier's checks can be unwound. (ECF No. 119). In particular, the Court held that the primary issue in resolving this question is whether Maxine had a good faith belief that Jennifer was alive when she deposited the cashier's checks into the CSB account. The Court directed the parties to file the instant summary judgment motions on the specific issue of whether Maxine's deposit of the cashier's checks was executed in good faith.

## II. STANDARD

The standard for summary judgment is well established. When a party moves for summary judgment, “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact, and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Krenik v. Cnty. of Le Sueur*, 47 F.3d 953, 957 (8th Cir. 1995). This is a “threshold inquiry of . whether there is a need for trial—whether, in other words, there are genuine factual issues that properly can be resolved only by a finder of fact because they reasonably may be resolved in favor of either party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). A fact is material only when its resolution affects the outcome of the case. *Id.* at 248, 106 S.Ct. 2505. A dispute is genuine if the evidence is such that it could cause a reasonable jury to return a verdict for either party. *Id.* at 252, 106 S.Ct. 2505.

In deciding a motion for summary judgment, the Court must consider all the evidence and all reasonable inferences that arise from the evidence in a light most favorable to the nonmoving party. *Nitsche v. CEO of Osage Valley Elec. Co-Op*, 446 F.3d 841, 845 (8th Cir. 2006). The moving party bears the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. See *Enter. Bank v. Magna Bank*, 92 F.3d 743, 747 (8th Cir. 1996). The nonmoving party must then demonstrate the existence of specific facts in the record that create a genuine issue for trial. *Krenik*, 47

F.3d at 957. However, a party opposing a properly supported summary judgment motion “may not rest upon mere allegations or denials . but must set forth specific facts showing that there is a genuine issue for trial.” Anderson, 477 U.S. at 256, 106 S.Ct. 2505.

### III. DISCUSSION

The instant cross motions for summary judgment concern two separate sums of money: (1) the \$137,000 for which a Louisiana warrant of seizure has been issued, and (2) the \$118,209.47 for which the warrant of seizure has been quashed. The Court will consider each sum of money in turn.

#### A. Cross Claims to \$137,000

As the Court noted previously, the primary issue with regard to the \$137,000 is whether Maxine's deposit of the cashier's checks into CSB can be unwound. It is undisputed that the question of whether the deposits can be unwound turns on whether Maxine had a good faith belief that Jennifer was alive when the checks were deposited. Because of this, the only question presented on the cross motions is whether there is a genuine issue of material fact regarding whether Wilson deposited the checks in good faith. However, even if the facts are undisputed, neither party will be entitled to summary judgment as a matter of law if a fact finder could reasonably resolve any inferences that arise out of those undisputed facts in favor of either party.

Before turning to the facts however, the Court must determine what law governs the issue of unwinding transactions. In its previous order, the Court specifically held that Arkansas law of agency governs whether the deposits can be unwound. However, Arkansas law itself does not end the Court's choice of law analysis. Indeed, under Arkansas's Uniform Power of Attorney Act, “[t]he meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power of attorney, and in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.” Ark. Code Ann. § 28-68-107.

The power of attorney executed in favor of Maxine does not indicate what law governs the meaning and effect of its provisions. However, it is undisputed that the power of attorney was executed in the state of Louisiana. Thus, although Arkansas law of agency governs whether Maxine's deposit of the checks can be unwound, Arkansas law mandates that the Court apply Louisiana law to settle the issue of unwinding transactions. Accordingly, the Court must determine whether Maxine's deposit of the cashier's checks can be unwound according to Louisiana's agency law principles.

#### 1. Louisiana Law of Agency

Under Louisiana law, when a person confers authority on another to transact business affairs on their behalf, the agreement is referred to as a “mandate.” La. Civ. Code art. 2989. The person who receives authority from a principal to act on the principal's own behalf is considered a “mandatary.” Id. A principal

may confer authority on a mandatary “to do whatever is appropriate under the circumstances.” La. Civ. Code art. 2994. “The mandatary is bound to fulfill with prudence and diligence the mandate he has accepted.” La. Civ. Code art. 3001.

A mandatary has the power to act on behalf of a principal until the mandatary has knowledge that the mandate has terminated. La. Civ. Code art. 3010. However, “[t]he mandatary is bound to complete an undertaking he had commenced at the time of the principal's death if delay would cause injury.” La. Civ. Code art. 3030. “If the mandatary does not know that the mandate or his authority has terminated and enters into a contract with a third person who is in good faith, the contract is enforceable.” La. Civ. Code art. 3031. The Louisiana Code does not articulate the circumstances under which a mandatary knows or should know that his or her authority has terminated. However, “[i]n all matters for which no special provision is made” in the mandate code, “the contract of mandate is governed by the ‘Obligations in General’ ” section of Louisiana's Civil Code. La. Civ. Code art. 2990. The “Obligations in General” section of the Code states that “[g]ood faith shall govern the conduct of the obligor and the obligee in whatever pertains to [an] obligation.” La. Civ. Code Art. 1759.

In few instances, Louisiana Courts have discussed the scope of a mandatary's duties and obligations to a principal after the principal's death. In *In re Succession of Badeaux* for example, the Louisiana Court of Appeals held that a “mandatary[’s] duty extend[s] past the time of decedent's death” if the mandate imposes an “obligation to ensure that the decedent's wishes were protected” after death. In *re Succession of Badeaux*, 12 So.3d 348, 354 (La. Ct. App. 2009). The court in *Badeaux* specifically held that article 3030 imposes a “continuing duty” on a mandatary to ensure that the principal's wishes are protected after the principal's death. *Id.* The court also recognized that a mandatary's duties may extend beyond the death of a principal even though Louisiana law generally holds that a mandatary's authority is terminated upon the principal's death. *Id.* Accordingly, a mandatary is required, and therefore has the authority, to act on behalf of a deceased principal if such acts are required to ensure that the deceased principal's wishes are protected. *Id.*

The Louisiana Court of Appeals has also applied the law of mandates to a situation where a mandatary acts on behalf of a deceased principal without prior knowledge of the principal's death. See *Simms v. Braren*, 252 So.2d 459 (La. Ct. App. 1971). In *Braren*, a plaintiff's attorney (“mandatary”) brought a personal injury lawsuit on behalf of his client (“principal”). *Id.* at 460. However, the mandatary did not know that the principal had died eight days prior to the filing of the lawsuit. *Id.* On a challenge to the validity of the lawsuit, the Court of Appeals held that Louisiana's law of mandates would make “ ‘valid’ [the mandatary's] transactions for the [principal]” if the mandatary was “ignorant of the [principal's]” death at the time the lawsuit was filed. *Id.* The court specifically held that if the mandatary “had been authorized to [act] . and did so ignorant of the [principal's] death, the [act] would . have been valid” under article 3032.

Badeaux and Braren present two questions regarding whether Maxine's deposit of the cashier's checks can be unwound: (1) did Maxine have a continuing obligation to deposit the cashier's checks pursuant to article 3030; and (2) are the deposits valid under article 3032 because Maxine was ignorant of Jennifer's death at the time the checks were deposited? In either scenario, Maxine's deposit of the checks would have been a valid exercise of her authority under Louisiana agency law. The Court will consider each matter in turn.

#### a. Continuing Obligation

Wilson alleges that Jennifer gave Maxine the cashier's checks with instructions that Maxine should deposit those checks into an account with CSB. However, the record citation upon which Wilson bases this argument does not support such a concrete conclusion. Indeed, Wilson cites to Maxine's deposition testimony wherein Maxine testified that Jennifer wanted Maxine to hold onto the checks for Jennifer and that Jennifer intended to deposit the checks at a bank in Bradley. (ECF No. 123-1, 49:15-17). Maxine testified further that Jennifer wanted to go to the bank with Maxine so that Maxine could help Jennifer transfer her accounts to a bank in Bradley.<sup>1</sup> (ECF No. 123-1, 49:17-25). There is no other specific evidence in the record indicating what Maxine was told with regard to the cashier's checks or whether the two had any further conversations regarding what actions Jennifer wanted Maxine to undertake on her behalf. Accordingly, based upon the record presented, the Court cannot hold that Jennifer directed Maxine to specifically deposit the checks into a new CSB account as a matter of law.

Based on the foregoing, the Court finds that there is a genuine issue of material fact with regard to whether Maxine had a continuing obligation to deposit the cashier's checks at CSB after Jennifer's death. The Court has already held that the power of attorney terminated upon Jennifer's death. Based upon the record, the Court cannot determine whether article 3030 imposed any further "continuing obligation" upon Maxine to deposit the checks after Jennifer's death. Indeed, there is insufficient evidence in the record for the Court to find that Jennifer specifically directed Maxine to deposit the checks into an account with CSB. Accordingly, there is a genuine issue of material fact regarding whether Maxine had a continuing obligation to deposit the checks into CSB after Jennifer's death.

#### b. Ignorance of Death

The parties' primary argument on summary judgment is whether Maxine was ignorant of Jennifer's death at the time the checks were deposited. As noted above, the question of whether Maxine was indeed "ignorant" of Jennifer's death turns on whether Maxine had a good faith belief that Jennifer was alive at the time the checks were deposited. See La. Civ. Code art. 3031; see also La. Civ. Code art 1759. A lack of good faith "means more than bad judgment or negligence and it implies the conscious doing of a wrong for dishonest or morally questionable motives." *Volentine v. Raeford Farms of Louisiana, L.L.C.*, 121 So.3d 742 (La. Ct. App. 2013). The parties do not dispute what information regarding Jennifer's disappearance had been communicated to Maxine by the time she deposited the checks into the CSB

account. Accordingly, the only issue before the Court is whether that undisputed evidence is sufficient to establish that Maxine had a good faith belief that Jennifer was alive on March 16, 2018, as a matter of law.

Maxine testified that she believed Jennifer was alive on March 16, 2018. At the same time however, Maxine knew that Jennifer's car had been discovered abandoned on a bridge crossing the Red River. Moreover, Maxine was also informed that a "goodbye letter" had been left inside the vehicle. Maxine was then told by attorney Hays that this information alone was insufficient to establish that Jennifer was deceased. Mr. Hays then specifically directed Maxine to deposit the cashier's checks into CSB, which Maxine alleges was in furtherance of Jennifer's wishes. There is no other evidence in the record establishing whether Maxine knew any additional information at the time the checks were deposited.

Marvin argues that it was unreasonable for Maxine to assume that Jennifer was alive under these circumstances. In response, Wilson points to evidence which could indicate that Maxine had a sincere belief that Jennifer was alive on March 16, 2018. Wilson points out that no funeral or memorial service was held until after Jennifer's body was discovered, and that no life insurance policy had been opened prior to that discovery. Wilson also points out that Maxine did not spend any of the money that was deposited into CSB. Marvin attempts to rebut this evidence by presenting testimony from CSB employees that tends to show that CSB representatives now question whether Maxine misled CSB employees when she opened the CSB account on Jennifer's behalf.

The Court finds that the question of whether Maxine acted in good faith turns almost entirely on whether Maxine's testimony is credible. Indeed, the Louisiana law governing good faith specifically questions whether Maxine acted with dishonest or morally questionable motives. Although Marvin spends considerable time in his summary judgment motion disputing the credibility of Maxine's beliefs, it would be inappropriate for the Court to make such a credibility determination on summary judgment. Instead, the Court finds that the summary judgment record should be subject to adversarial trial proceedings so that the Court, sitting as the finder of fact, can accurately assess the credibility of witnesses and weigh the evidence accordingly.

Based on the foregoing, the Court finds that there is insufficient evidence to determine whether Maxine deposited the checks in good faith as a matter of law. Although the factual record is undisputed, a reasonable fact finder could still reach different conclusions regarding what Maxine's motivations were in depositing the checks. Resolving the issue of Maxine's motivations rests in large part on how the fact finder views the weight and credibility of the evidence presented, particularly with regard to Maxine's testimony. It would be inappropriate for the Court to resolve any inferences or assess witness credibility on summary judgment. Accordingly, the cross motions for summary judgment should be denied with respect to the \$137,000 because there is a genuine issue of material fact regarding whether Maxine acted in good faith when she deposited the cashier's checks into CSB.

## 2. Validity of Louisiana Warrant

Wilson also moves for summary judgment on the \$137,000 on the grounds that the warrant for seizure violates the constitution and the laws for the state of Louisiana because a Louisiana state court judge cannot issue a valid warrant for property held by a bank situated only in Arkansas. However, the issue of extra territorial warrants is subject to varying interpretations among circuit courts, has never been fully addressed by the United States Supreme Court, and it does not appear that the issue has been addressed within the context of warrants issued for the purposes of asset forfeiture. See *United States v. Horton*, 863 F.3d 1041, 1048-50 (8th Cir. 2017) (collecting cases). Moreover, the Court need only address Wilson's constitutional arguments if it determines that Maxine's deposit of the checks can be unwound in the first instance.

Although the Court has already ruled that it may properly apply Louisiana law to determine whether the warrant for seizure is valid under Louisiana law (ECF No. 88), deciding whether an out-of-state warrant violates the constitution, or whether the constitution specifically provides Wilson with a judicial remedy under the circumstances, would require the Court to answer novel issues of constitutional law. The Eighth Circuit has specifically held that “[t]he doctrine of constitutional avoidance . counsels [courts] not to give unnecessary answers to constitutional questions.” *O'Brien v. U.S. Dept. of Health and Hum. Serv.*, 766 F.3d 862, 863 (8th Cir. 2014) (citing *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 344-48, 56 S.Ct. 466, 80 L.Ed. 688 (1936) (Brandeis, J., concurring) (observing that “[i]t is not the habit of the court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case”)). Therefore, the doctrine of constitutional avoidance counsels that the Court should avoid answering Wilson's constitutional challenges unless such is necessary to the disposition of this action. Accordingly, the Court declines to address Wilson's constitutional arguments on summary judgment because the record fails to establish that such is necessary to the disposition of this case.

### B. Wilson's Claim to \$118,209.47

Wilson is the only party to this action that states a claim to the remaining \$118,209.47. However, the Court notes that Wilson's original claim to the CSB account was based on the laws governing the division of marital property, which Wilson claims entitles him to one-half of the CSB funds. (ECF No. 17).

In an interpleader action, each claimant has the burden of establishing his/her/its right to the disputed funds by a preponderance of the evidence. See *Consol. Underwriters of S.C. Ins. Co. v. Bradshaw*, 136 F. Supp. 395, 397 (W.D. Ark. 1955); see also *Viking Ins. Co. of Wisconsin v. Kemp*, No. 3:12-cv-00216-KGB, 2013 WL 6780571, at \*4 (E.D. Ark. Dec. 19, 2013). However, “[i]n an interpleader context, ‘it has been repeatedly held that the failure of a named interpleader defendant to answer the interpleader complaint and assert a claim to the res can be viewed as forfeiting any claim of entitlement that might have been asserted.’” *Community State Bank v. Wilson*, No. 4:18-cv-4078, 2019 WL 2998707, at \*1 (W.D. Ark. Jan. 29, 2019) (citing *Kemp*, No. 3:12-cv-0216-KGB, 2013 WL 6780571, at \*2).



Wilson is the only party who states a claim to the \$118,209.47. The remaining claimants to this sum have defaulted in this action and the Court has ruled that both parties' claims to the funds have been extinguished. (ECF Nos. 96, 97). The Eighth Circuit has not determined whether the default of other parties entitles a remaining defendant to the disputed funds in an interpleader action. However, the United States District Court for the Eastern District of Missouri has held that "[e]ach claimant in an interpleader action bears the burden of proof . . . and cannot recover upon the weakness of another's claim. Thus, a party's failure to prove his/her/its claim does not mean another claimant automatically wins." *Kearney Trust Co. v. Taylor*, No. 4:11-cv-00815-BCW, 2013 WL 323329 (E.D. Mo. Jan. 28, 2013).

Based on the foregoing, the Court declines to enter summary judgment on behalf of Wilson at this time. Although Wilson is the only claimant to the \$118,209.47, Wilson has not made an independent showing that he is actually entitled to these funds. Instead, Wilson's sole argument with regard to this sum is that the default of the remaining parties entitles him to the entire \$118,209.47 as a matter of law. The Court declines to award Wilson \$118,209.47 by means of default when he has failed to articulate that he might otherwise be entitled that money. Although Wilson may indeed be entitled to these funds by virtue of default, he has not demonstrated such in the current summary judgment record. Accordingly, Wilson's summary judgment should be denied with regard to his claim to the \$118,209.47.

However, the Court also finds it appropriate to allow Wilson the opportunity to prove he is entitled to the \$118,209.47 without proceeding to trial. Therefore, Wilson may file a motion with the Court articulating his entitlement to the remaining \$118,209.47. Otherwise, the issue shall be addressed at trial.

#### IV. CONCLUSION

The only disputed issue in the cross motions for summary judgment is whether Maxine had a good faith belief that Jennifer was alive when she deposited the disputed funds into the CSB account. However, the summary judgment record fails to present legally sufficient evidence to determine whether Maxine acted in good faith as a matter of law. Instead, the Court finds that the evidence must be subject to the adversarial trial process so that the Court can make an informed decision regarding the weight and credibility of that evidence. Indeed, it would be inappropriate for the Court to make any such credibility determinations on summary judgment.

Based on the foregoing, the parties' cross motions for summary judgment (ECF Nos. 120, 123) are hereby DENIED. The bench trial in the matter is set for March 21, 2022 at 9:00 a.m. in Texarkana, AR. The Court further ORDERS that Intervenor Gary Wilson shall have up to and including March 4, 2022, to file a motion with the Court articulating why he is entitled to the \$118,209.47 portion of funds. Otherwise, the matter will be addressed at trial.

IT IS SO ORDERED, this 4th day of February, 2022.

## FOOTNOTES

1. Maxine's testimony did not identify a specific bank. However, it appears that Maxine and Jennifer understood that the money would be deposited into CSB in Bradley.

Susan O. Hickey, Chief United States District Judge

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## COMMUNITY STATE BANK v. Gary Wilson, Intervenor (2022)

**Docket No:** Civil No. 4:18-cv-04078

**Decided:** February 03, 2022

**Court:** United States District Court, W.D. Arkansas, Texarkana Division.

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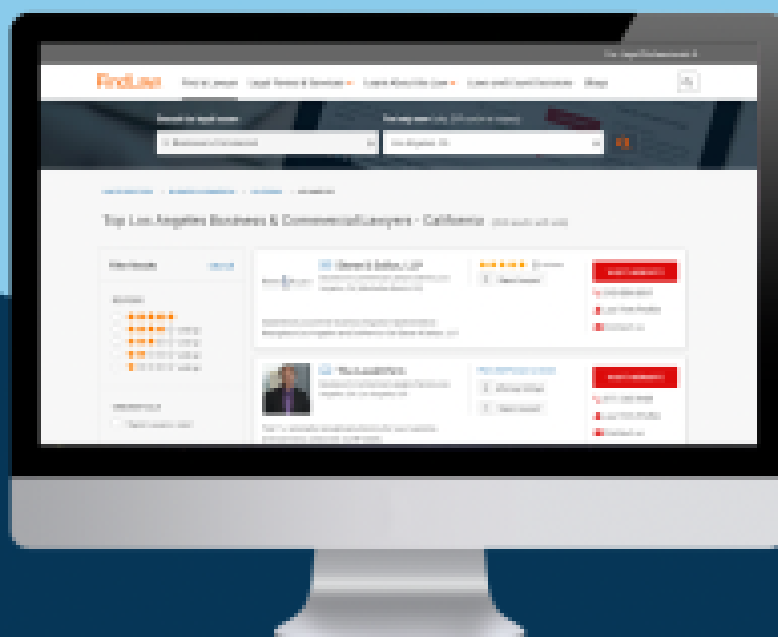
 

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