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This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2013 IL App (4th) 130069-U  
NO. 4-13-0069  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

**FILED**  
November 15, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS	)	Appeal from
ex rel. VINCENT SHAW,	)	Circuit Court of
Plaintiff-Appellant,	)	Adams County
v.	)	No. 11LM120
RONALD L. BRINK, Individually; and R.L	)	
BRINK, INC.,	)	Honorable
Defendants-Appellees.	)	Robert K. Adrian,
	)	Judge Presiding.

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PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.  
Justices Pope and Holder White concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The appellate court affirmed the grant of defendants' cross-motion for summary judgment where the photographs offered by plaintiff to support his claim that defendants violated the Illinois Prevailing Wage Act could not be considered as evidence because plaintiff failed to strictly comply with Illinois Supreme Court Rule 191 or otherwise authenticate the photographs as required by Illinois Rule of Evidence 901.
- ¶ 2 In April 2011, plaintiff, Vincent Shaw, an organizer for the International Union of Operating Engineers Local 965, on behalf of the State of Illinois, filed a complaint against defendants, Ronald L. Brink (Brink) and R.L. Brink, Inc. (RLB), alleging violations of the Illinois False Claims Act (740 ILCS 175/1 to 8 (West 2010)) and the Illinois Prevailing Wage Act (820 ILCS 130/0.01 to 12 (West 2010)).
- ¶ 3 The trial court granted summary judgment for defendants. Plaintiff appeals,

asserting that the trial court erred by (1) finding that Shaw was not an "original source" and, thus, had no standing to file the *ex rel.* complaint; (2) determining that plaintiffs did not show a violation of the Prevailing Wage Act; (3) failing to (a) properly apply portions of the False Claims Act and (b) find that a fair and reasonable person could find that defendants met the "knowingly" requirement as defined in the False Claims Act as a matter of law; and (4) determining that the alleged "false claim" within the complaint was not a type contemplated under the False Claims Act. We affirm.

¶ 4

#### I. BACKGROUND

¶ 5 Shaw is an organizer for the International Union of Operating Engineers Local 965. As part of his union organizing efforts, Shaw observed RLB jobsites and took nearly 4,000 photographs. Approximately 44 of these photographs allegedly depicted Michael Allen, an RLB employee, working on "public works" sites. After observing the various jobsites and taking photographs, Shaw obtained certified payrolls under the Freedom of Information Act (FOIA) to determine whether RLB was in compliance with the Prevailing Wage Act. Because Allen did not appear on any of the certified payrolls that Shaw obtained, Shaw filed a complaint alleging that defendants employed Allen on public works projects but failed to file the required certified payroll information or pay Allen the prevailing wage, in violation of the False Claims Act and the Prevailing Wage Act.

¶ 6 On October 30, 2012, defendants filed a motion for summary judgment, asserting that (1) Shaw was not an "original source" under the False Claims Act and, thus, the circuit court did not have jurisdiction; (2) the delivery of fuel (Allen's primary job duty) is not covered under the Prevailing Wage Act; (3) defendants did not "knowingly" violate the False Claims Act; (4)

Shaw's claim was not a type of claim contemplated under the False Claims Act; and, in the alternative, (5) defendants were entitled to partial summary judgment as to all federal-aid contracts because they were not covered under the Prevailing Wage Act.

¶ 7 On December 20, 2012, plaintiff filed his response to defendants' motion for summary judgment and a cross-motion for summary judgment, in which he asserted that the pictures he took showed Allen working on a number of RLB jobsites even though Allen did not appear on any certified payrolls as required in the Prevailing Wage Act. On December 6, 2012, defendants' filed a response to plaintiff's motion for summary judgment.

¶ 8 Following a hearing and argument on the parties' motions, the trial court granted defendants' motion for summary judgment. In granting defendants' motion, the court found as follows: (1) Shaw was not an "original source" under the False Claims Act and, thus, the court lacked jurisdiction; (2) Shaw failed to show a violation of the Prevailing Wage Act because (a) the Prevailing Wage Act did not cover fuel delivery and (b) Shaw failed to provide proper evidence to show that Allen performed other work covered by the Prevailing Wage Act because the photographs he submitted were not authenticated; (3) Shaw failed to show that defendant Brink "knowingly" presented a false claim under the False Claims Act; and (4) the alleged false claim was not the type contemplated under the False Claims Act because the State suffered no damage.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, plaintiff contends that the trial court erred by (1) failing to find that Shaw was an "original source" and, thus, had standing to file the *ex rel.* complaint; (2) determin-

ing that plaintiffs did not show a violation of the Prevailing Wage Act; (3) failing to (a) properly apply portions of the False Claims Act and (b) find that a fair and reasonable person could find that defendants met the "knowingly" requirement as defined in the False Claims Act as a matter of law; and (4) determining that the alleged "false claim" within the complaint was not a type contemplated under the False Claims Act.

¶ 12 Initially, defendants assert that the photographs offered by Shaw may not be used as evidence because Shaw failed to comply with Illinois Supreme Court Rule 191 (eff. Jul. 1, 2002) or Illinois Rules of Evidence 901 (eff. Jan. 4, 2013). We agree.

¶ 13 "Illinois Supreme Court Rule 191 (eff. Jul. 1, 2002) requires affidavits in support of section 2-619 motions to set forth with 'particularity' the facts upon which the defense is based and attach 'sworn or certified copies' of the documents relied upon. [Citation.] Strict compliance with Rule 191(a) is required to insure the trial court is presented with valid evidentiary facts on which to base a decision." *Clemons v. Nissan North America, Inc.*, 2013 IL App (4th) 120943, ¶ 36, \_\_\_ N.E.2d \_\_\_. Further, "[b]asic rules of evidence require a party to lay the proper foundation for the introduction of documentary evidence, including its authenticity." *Id.*; see also Ill. R. Evid. 901 (eff. Jan. 1, 2011).

¶ 14 Although plaintiff asserts the photographs at issue were "sworn to by Shaw," our review of the record fails to support this statement. The photographs contain the following comments:

"The above picture shows employee Michael Allen (circled) [engaged in some type of work on the jobsite].

The above photograph was taken by me, Vincent J. Shaw, on the

above referenced date and time and has not been altered in any way."

The photographs are then signed and dated, allegedly by Shaw. However, this statement does not comply with the affidavit requirements of Illinois Supreme Court Rule 191. Further, no proper foundation was laid for these photographs as is required by Illinois Rule of Evidence 901.

Shaw's affidavit states that (1) Shaw took the pictures at issue, (2) Shaw witnessed Allen transporting material to and from RLB construction sites, (3) the pictures depict jobsites that are considered "Public Works," and (4) "the dates, locations and descriptions submitted with each photo \*\*\* were written by me and accurately describe the activities I witnessed at the time each picture \*\*\* was taken by me." However, Shaw's affidavit is neither signed by him nor notarized.

¶ 15 In their cross-motion for summary judgment, defendants set forth reasons why their motion should be granted. Absent a verified affidavit or other foundation for the photographs, we agree with the trial court's finding that Shaw failed to provide proper evidence to show that Allen performed work covered by the Prevailing Wage Act.

¶ 16 Because we find that the photographs cannot be considered as evidence to support plaintiff's claim that defendants violated the Prevailing Wage Act—and because plaintiff's additional claims rely on the photographs—we affirm the trial court and need not consider plaintiff's additional arguments on appeal.

¶ 17 III. CONCLUSION

¶ 18 For the reasons stated, we affirm.

¶ 19 Affirmed.