

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

THOMAS BINGHAM,

Plaintiff,

v.

Case No: 8:14-cv-73-T-23JSS

BAYCARE HEALTH SYSTEM,

Defendant.

ORDER ON DEFENDANT'S MOTION TO STRIKE

THIS MATTER is before the Court on Defendant's Motion to Strike. (Dkt. 183.) Defendant, BayCare Health System, moves to strike the declaration of Plaintiff, qui tam relator Thomas Bingham, filed in support of his Response in Opposition to Defendant's Motion for Summary Judgment (Dkt. 169, Ex. 7) on the basis that Plaintiff lacks personal knowledge regarding the statements in the declaration and offers improper legal argument and opinion.

In this case, Plaintiff alleges that BayCare improperly claimed a tax exemption for the Suncoast Medical Office Building ("Suncoast MOB"), thereby passing an improper benefit to the physicians practicing in the Suncoast MOB. Plaintiff contends that the property appraiser's decision to grant a tax exemption was erroneous because it did not consider certain documents, which were allegedly omitted by BayCare. (Dkts. 156, Ex. 11.); (Dkt. 169, Ex. 7.)

Under Federal Rule of Civil Procedure 56, a declaration used to oppose a motion for summary judgment "must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the . . . declarant is competent to testify on the matters stated." Fed. R. Civ. P. 56(c)(4). In his declaration, Plaintiff provides his "opinion or inference regarding the documents that BayCare submitted or failed to submit" to the property appraiser. (Dkt. 189 at 4.)

Plaintiff acknowledges that the declaration merely states his “opinion,” “perceptions,” and “inference” on this matter. (Dkt. 189 at 4.) As such, his statements are based on personal knowledge and constitute lay witness opinions. *See* Fed. R. Evid. 701 (allowing lay witness testimony in the form of opinions or inferences). Accordingly, it is **ORDERED** that Defendant’s Motion to Strike (Dkt. 183) is **DENIED**.

DONE and **ORDERED** in Tampa, Florida, on December 16, 2016.



JULIE S. SNEED
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
Counsel of Record