

**IN UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

TODD JANSON, et al., on behalf of)
themselves and on behalf of all others)
similarly situated,)

Plaintiffs,)

v.)

Case No. 2:10-cv-04018-NKL

LEGALZOOM.COM, INC.)

Defendant.)

**Plaintiffs' Reply to Defendant's Suggestions in Opposition of
Plaintiffs' Motion for Partial Summary Judgment**

INTRODUCTION

As LegalZoom acknowledges in its opposition to this Motion, the Court indicated that a central issue in the case is “what type of online interaction between buyer and seller of legal forms constitutes ‘assisting in the drawing for a valuable consideration of any **paper, document or instrument affecting or relating to secular rights.**’” *See* Order Granting Class Certification (Doc. #61), p. 10 (emphasis added). In an effort to streamline the case and reduce the number of issues necessary to present at trial, Plaintiffs filed this Motion for Partial Summary Judgment asking the Court for a ruling that the documents at issue are documents that affect or relate to secular rights. LegalZoom opposes the Motion arguing that this issue is “irrelevant” and “would not save one minute of time at trial.” Such an argument, however, ignores the last prong of what this Court clearly stated is a central issue in the case – whether the documents at issue affect or relate to secular rights.

As set forth in the Suggestions in Support of this Motion and in this Reply, the determination of whether the documents at issue relate to or affect secular rights is a purely legal question and a ruling on this issue would spare the finder of fact the time consuming task of listening to testimony regarding what rights each particular document may affect.

ARGUMENT

- I. **LegalZoom Ignores the Issue Raised in Plaintiff’s Motion**
 - A. **Plaintiffs’ Motion for Partial Summary Judgment Addresses a Central Issue of this Case and Serves to Expedite and Advance this Litigation**

LegalZoom first argues Plaintiffs’ Motion for Partial Summary Judgment “glides over all the central issues in the case.” It then completely ignores the true issue raised by Plaintiffs’

Motion and accuses Plaintiffs of failing to address LegalZoom's conduct in creating the documents at issue. Such is not the case. As this Court stated in the Order Granting Class Certification, Plaintiffs must show 1) Defendant assisted in the drawing for valuable consideration of 2) any paper, document or instrument affecting or relating to secular rights. *See* (Document #61), p. 10. Plaintiffs' Motion for Partial Summary Judgment simply asks this Court to find that the documents at issue in this matter, those documents resulting from the services offered by LegalZoom, **affect or relate to secular rights**. Contrary to LegalZoom's argument, Plaintiffs' Motion does not glide over the central issue in this case but, rather, directly addresses one part of that central issue. Resolution of this simple and straightforward issue will greatly streamline the trial of this case.

B. Missouri Case Law Supports Plaintiffs' Motion

LegalZoom next attempts to re-argue the issues presented in its Motion for Summary Judgment by asserting that it is merely selling "forms" and not assisting in the drawing of documents. Again, this issue was not raised in Plaintiffs' Motion for Partial Summary Judgment. This goes to the first prong of the central issue in the case – i.e. "what type of online interaction . . . constitutes 'assisting in the drawing for a valuable consideration.'" *See* Order Granting Class Certification (Doc. #61), p. 10. This issue was addressed in LegalZoom's Motion for Summary Judgment and will be addressed at trial.

Furthermore, LegalZoom does more than just sell fill-in-the-blank forms such as those at issue in the *In Re Thompson* case on which it relies. The LegalZoom process is more completely explained in Plaintiffs' Suggestions in Opposition to Defendant's Motion for Summary Judgment. *See* (Doc. # 113) , Plaintiffs' Response to LegalZoom's Statement of Fact 2., pp. 2 –

6. In obtaining the documents at issue in this case, the consumers never even see a form or fill-in-the-blank document. Rather, the customer is asked a series of questions and LegalZoom prepares a document based on these answers. *Id.* This case is far different from the facts of *In Re Thompson*, 574 S.W.2d 365 (Mo. 1978).

Interestingly, LegalZoom's advertisements, in stark contrast the position it now takes with this Court, proudly confirm that it is LegalZoom that prepares the legal documents, not its customers. For example, a national television advertisement states:

I'm Robert Shapiro. Over a million people have discovered how easy it is use LegalZoom for important legal documents, and LegalZoom will help you incorporate your business, file a patent, make a will and more. You can complete our online questions in minutes. Then **we'll prepare your legal documents and deliver them directly to you.** So start your business, protect your family, launch your dreams. At LegalZoom.com we put the law on your side.

See Plaintiffs' Suggestions in Opposition to Defendant's Motion for Summary Judgment (Doc. # 113), Additional Uncontroverted Material Fact #4, pg 39 (emphasis added), (the Deposition Testimony is attached again hereto as Exhibit 1 to this Motion). LegalZoom is talking out of both sides of its mouth by now arguing that consumers are the ones preparing the legal documents and not LegalZoom.

Plaintiffs do agree with LegalZoom on at least one point – the judiciary is the arbiter of what constitutes the practice of law. *Eisel v. Midwest BankCentre*, 230 S.W.3d 335 (Mo. Banc 2007). However, LegalZoom is incorrect in its implication that whether the documents at issue affect or relate to secular rights is irrelevant under Missouri caselaw. As the *Eisel* Court held (and this Court agreed in the Order Granting Class Certification), §484.010, RSMo. which uses the very language LegalZoom wishes to ignore, aids the courts in determining whether the unauthorized practice of law has occurred.

The Missouri Supreme Court discussed at length the interplay between the statutes at issue and the power of the Court as it relates to the unauthorized practice of law in *Clark v. Austin*, 101 S.W.2d 977 (Mo.1937). The *Clark* Court held courts have the:

inherent power to regulate the practice of law...and that any statute frustrating that power is unconstitutional. But... ‘The legislature may enact police legislation for the protection of the public against things hurtful or threatening to their safety and welfare. [So long as they do not infringe upon the powers properly belonging to the courts,] they may prescribe reasonable conditions which will exclude from the practice those persons through whom injurious consequences are likely to result to the inhabitants of the state.’

Clark v. Austin, 101 S.W.2d at 990.

The Missouri legislature enacted §§484.010 - .020, RSMo. to protect the public against the unauthorized practice of law. Missouri courts uniformly approve these statutes and the definitions provided therein to aid in the determination of whether conduct constitutes the unauthorized practice of law. See *Eisel v. Midwest BankCentre*, 230 S.W.3d 335 (Mo. 2007), *Carpenter v. Countrywide Home Loans, Inc.*, 250 S.W.3d 697 (Mo. 2008), *In re Mid-Am. Living Trust Assocs., Inc.*, 927 S.W.2d 855 (Mo. 1996); *Hulse v. Criger*, 247 S.W.2d 855 (Mo. 1952), *Zmuda v. Chesterfield Valley Power Sports, Inc.*, 267 S.W.3d 712 (Mo. App. 2008). Thus, the definitions contained in these statutes are not “irrelevant” or immaterial as LegalZoom argues. Rather, they are central to the issues raised by this case and this Motion, namely whether the documents are those “relating to or affecting secular rights.” § 484.010.2, RSMo.

There simply is no conflict between the statutes and the case law as LegalZoom implies. LegalZoom cites no case that finds that the documents at issue in an unauthorized practice of law case did not relate to or affect secular rights. The cases all cite the statutes at issue with approval. Because there is generally no issue in the unauthorized practice of law cases as to whether the documents at issue related to or affected secular rights, the decisions rarely analyze

that issue. *Id.* Accordingly, some of the Courts refer to the documents simply as “legal” documents as short hand for documents that relate to or affect secular rights. *See e.g., Carpenter*, 250 S.W.3d at 702; *Zmuda v. Chesterfield Valley Power Sports, Inc.*, 267 S.W.3d 712, 715 (Mo. App. E.D. 2008). Regardless of which term is used, there can be no serious question as to whether the documents at issue are “legal” documents¹ and/or documents that relate to or affect “secular rights.”

C. Plaintiffs’ Motion for Partial Summary Judgment Only Addresses the Documents at Issue, Not LegalZoom’s Conduct

LegalZoom next argues Plaintiffs “mischaracterize” its conduct related to the documents at issue, creatively arguing that it does not *sell* legal documents despite the fact that in return for payment, it sends a customized and individualized legal document to the customer’s door. LegalZoom even tells the public that “we’ll prepare your legal documents and deliver them directly to you.” *See* Plaintiffs’ Suggestions in Opposition to Defendant’s Motion for Summary Judgment (Doc. # 113), Additional Uncontroverted Material Fact #4, pg 39, (Deposition Testimony attached again hereto as Exhibit 1 to this Motion). LegalZoom is even a licensed document preparer in the State of California. *Id.*, Additional Uncontroverted Material Fact # 9. However, it now expects the Court to believe that it plays no role in preparing the documents or even in assisting in the drawing of the documents.

LegalZoom continually repeats the mantra that “customers create” documents via the LegalZoom website and LegalZoom plays no role. However, repeating the phrase over and over

¹ LegalZoom’s own advertisement even state that the documents it delivers directly to its customers are “legal documents.” *See* Plaintiffs’ Suggestions in Opposition to Defendant’s Motion for Summary Judgment (Doc. # 113), Additional Uncontroverted Material Fact #4, pg 39, (Deposition Testimony attached again hereto as Exhibit 1 to this Motion).

simply does not make it so. LegalZoom’s public statements completely contradict its statements to this Court. Regardless, for purposes of the motion at issue, LegalZoom’s conduct and whether that conduct arises to the unauthorized practice of law (in other words, whether its conduct constitutes the assisting in the drawing of such documents for valuable consideration) is not at issue. That is a factual issue that will be determined at trial (if LegalZoom escapes a directed verdict after all evidence is presented).² The issue presented in this Motion is simply whether the documents at issue relate to or affect secular rights (or are “legal” documents).

D. This Motion Does Not Implicate Constitutional Issues

Likewise, LegalZoom’s arguments regarding whether its conduct is protected by the First Amendment is not at issue in the Motion at hand. For the sake of brevity, Plaintiffs’ respectfully refer the Court to their Response to LegalZoom’s Motion for Summary Judgment on the constitutional issues for their response to these arguments. Such issues simply have nothing to do with whether the documents at issue affect or relate to secular rights.

II. The Documents at Issue Relate to or Affect Secular Rights and Are Therefore Legal Documents

LegalZoom next argues that the documents at issue do not “affect secular rights” because they may not be effective until a subsequent event occurs (e.g., execution, filing, etc.). Again, the argument misses the mark. Of course, it is true with many documents, even those documents prepared by a lawyer, that they may not have final effect until such documents are filed or executed. However, that does not mean that it falls outside of the definition of documents implicated by the unauthorized practice of law statutes and caselaw.

² The issue is also addressed in Plaintiff’s Suggestions in Opposition to Defendant’s Motion for Summary Judgment. By stating there is an issue of fact now, Plaintiffs do not waive the right to ask the Court to direct a verdict after all of the evidence is presented.

If LegalZoom were correct that documents not yet signed are not implicated by the unauthorized practice of law statutes and caselaw, the laws governing the unauthorized practice of law would be rendered meaningless. Under such an interpretation, a real estate broker could prepare wills for his or her clients and simply tell them not to sign them in his or her office, but rather take them somewhere else to make them effective. Under LegalZoom's view of the law, this would be perfectly acceptable because when the will left the broker's office it was not yet "effective" as it was not signed. Such a result is obviously preposterous.

The interpretation urged by LegalZoom is not tenable. Under Missouri law, when "construing a statute enacted under the police power and primarily intended to protect the public from the rendition of certain services, deemed to require special fitness and training on the part of those performing the same, by persons not lawfully held to possess the requisite qualifications....the statute [] should be interpreted, if possible, so as to effectuate the legislative intent." *State ex inf. Miller v. St. Louis Union Trust Co.*, 74 S.W.2d 348, 357 (Mo. 1934). The legislative intent in enacting §§484.010-.020, RSMo was clearly to make sure that those people or entities that assist in the drawing of legal documents, such as those at issue in this case, must be licensed to practice law in Missouri. If LegalZoom is successful in arguing that because documents may not be signed or filed when they leave LegalZoom's office they therefore do not fall within the definitions of §484.010, RSMo, it would render the statute meaningless.

The flaw in LegalZoom's argument is further demonstrated in the *In re Mid-America Living Trust Associates, Inc.* case. There, an unlicensed entity creating trusts, pour-over wills, durable and general power of attorneys, among other legal documents, and delivering unsigned documents to the customer for execution was found to be conducting the unauthorized practice

of law. *In Re Mid-America Living Trust Associates, Inc.*, 927 S.W.2d, 850, 856-57 (Mo. 1996). Clearly, the court there understood that the documents in that case were delivered to the customer in a state in which they were not yet executed. However, that fact did not keep the Court from finding those documents fell within the purview of the unauthorized practice of law, i.e., documents that affect or relate to secular rights.

In addition, LegalZoom's argument focuses solely on the term "affecting" and completely ignores the fact the statute at issue actually reads that the documents or instruments implicated are those "affecting or **relating to** secular rights." § 484.010.2, RSMo (emphasis added). It does not even attempt to address how the documents identified in Plaintiffs' Motion do not, at a minimum, "relate to" the consumers' secular rights.

Simply put, the documents at issue are clearly "affecting or relating to secular rights." Whether LegalZoom's conduct associated with those documents amounts to the "drawing of" or "assisting in the drawing" of such documents is not at issue in this Motion and will be decided at another time.

III. The Issue Raised in this Motion is Procedurally Proper

LegalZoom's final argument is that the issue raised by Plaintiffs' Motion is procedurally improper because it will not resolve a "material issue" in the case. Again, LegalZoom simply ignores the fact that there are two parts of what it acknowledges is a "central issue" in the case. That is, 1) what "constitutes assisting in the drawing for valuable consideration" of 2) "any paper, document or instrument affecting or relating to secular rights." *See* Defendant's Suggestions in Opposition to Plaintiffs' Motion for Partial Summary Judgment (Doc. #112), p. 10 (quoting this Court's Order Granting Class Certification). Obviously, part of this "central

issue” is whether the documents affect or relate to secular rights. That is the “part of” the claim on which Plaintiffs seek partial summary judgment.

Federal Rule of Civil Procedure 56(a) provides that:

A party may move for summary judgment, identifying each claim or defense--**or the part of each claim** or defense--on which summary judgment is sought. The 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.

(emphasis added). LegalZoom argues that the “part of each claim” language of Rule 56(a) should be ignored, and this Court should deny Plaintiffs’ Motion on grounds that seeking an order on just part of a claim is inappropriate. However, even before the language regarding summary judgment on “part of each claim” was added to Rule 56(a), this Court addressed the issue of summary judgment on just a portion of a claim in *Blackford v. Action Products Co., Inc.*, 92 F.R.D. 79 (W.D. Mo. 1981) and stated as follows:

Defendant maintains that summary judgment is not permitted as to a portion of a single claim...The Federal Rules of Civil Procedure provide that a party seeking to recover upon a claim may be awarded summary judgment “upon all or part thereof”. Rule 56(a) F.R.Civ.P...We decline defendant's invitation to read less into the rule than is there. We do not believe defendant's interpretation to represent either the intent of the drafters or sound procedural policy. The award of summary judgment on a portion of a claim is clearly covered by the words of Rule 56(a). It is a not uncommon occurrence, and has been the practice since early decisions applying the Federal Rules of Civil Procedure.

Blackford v. Action Products Co., Inc., 92 F.R.D. at 79-80.

The relief requested in this Motion is entirely appropriate under both Fed. R. Civ. P. 56 and the caselaw. Disposition of the issue advances the case and will expedite the litigation because it is part of the central issue in this case. “Partial summary judgment accelerates litigation by framing and narrowing triable issues, and by eliminating, before trial, matters that

contain no genuine issue of material fact.” *Antenor v. D & S Farms*, 866 F.Supp. 1389, 1396 (S.D.Fla. 1994).

CONCLUSION

LegalZoom prepares legal documents. LegalZoom advertises its services as an entity that will “prepare” legal documents Missouri consumers. It is even a licensed legal document preparer in the state of California. However, who prepares the documents is not at issue in this Motion. Rather, Plaintiffs’ Motion simply seeks a determination that the documents purchased by the class as specified in the Motion for Partial Summary Judgment are in fact what LegalZoom sold and advertised them as – legal documents (i.e. those affecting or relating to secular rights). The jury in this matter will have enough issues to deal with and decide besides whether certain documents are “legal” or not. This matter is not genuinely contested and is best resolved in a Motion for Partial Summary Judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 11, 2011, I served this paper upon the following via this Court's ECF system:

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