

IN THE CIRCUIT COURT OF LAFAYETTE COUNTY

JONES, FUNDERBURG, SESSUMS,
PETERSON & LEE, LLC

PLAINTIFF

v.

CIVIL ACTION NO. 07-135

RICHARD SCRUGGS, Individually; DON BARRETT, Individually;
SCRUGGS LAW FIRM, P.A.; BARRETT LAW OFFICE, P.A.;
NUTT & McALISTER, PLLC; and LOVELACE LAW FIRM, P.A.

DEFENDANTS

JURY TRIAL DEMANDED

COMPLAINT FOR DAMAGES AND DECLARATORY RELIEF

I INTRODUCTION

THE GROUP OF THE DEFENDANTS

1. This litigation is brought against the Defendants because of their breaches of contract, tortious bad faith breach of contract, breach of fiduciary duties, conversion, interference with prospective business advantages and such other acts as fraud and breach of duties owed as a result of a constructive trust and conduct which is so egregious as to entitle the Plaintiff to punitive damages. All of these actions developed as a result of a joint venture agreement entered into among the Plaintiff and the Defendants. The group was designated the Scruggs Katrina Group (hereinafter "Joint Venture" or "SKG"). The objective of the Joint Venture was to collectively represent aggrieved insureds against the insurers in the aftermath of Hurricane Katrina and the resulting insurance conflicts that developed. Plaintiff Jones, Funderburg, Sessums, Peterson and Lee, LLC, performed substantial and extensive work, both work assigned to the firm and other work constituting the bulk of the most difficult tasks in discovery and trial. After the performance of the

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work, the Defendants, in a concerted effort amounting to a conspiracy, determined to "freeze out" the Plaintiff and reduce its proper share of money that was collected after work had been done and performed by the Plaintiff and other monies to be collected in the future as a result of Plaintiff's labor and, more importantly, its membership in the Joint Venture.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction to hear this case pursuant to the Mississippi Constitution of 1890, Article VI § 156 and Miss.Code Ann. § 9-7-81 (1972). Jurisdiction is proper in circuit court because legal remedies are being sought for common law actions such as a breach of the fiduciary duties of care, loyalty, and good faith and fair dealing as well as violations of Mississippi statutory law. Pursuant to Art. III, § 3 of the Mississippi Constitution, the right of trial by jury is inviolate in all cases to which at common law a jury trial was necessary, such as the case *sub judice*. Therefore the circuit court is the proper jurisdiction and will allow a trial by jury.

3. Venue is proper in Lafayette County pursuant M.C.A. § 11-11-3 (Supp. 2000).

III. PARTIES

4. Plaintiff Jones, Funderburg, Sessums, Peterson & Lee, PLLC, is a Mississippi professional limited liability company with its principal place of business at 901 North State Street, Jackson, Mississippi 39236.

5. Defendant Richard Scruggs is an adult resident citizen of Lafayette County, Mississippi who may be served with process at his place of business at 120-A Courthouse Square, Oxford, Mississippi 38655.

6. Defendant Don Barrott is a Mississippi resident of Holmes County, Mississippi who may be served with process at his place of business at 404 Court Square North, Lexington,

Mississippi 39095.

7. Defendant Scruggs Law Firm, P.A., is a Mississippi professional association with its principal place of business at 120A Courthouse Square, Oxford, Mississippi 38655 and who may be served with process by serving an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive process for this Defendant at the above address.

8. Defendant Barrett Law Office is a Mississippi professional association with its principal place of business at 404 Court Square North, Lexington, Mississippi 39095 and who may be served with process by serving any officer, a managing or general agent, or any other agent authorized by appointment or by law to receive process for this Defendant at the above address.

9. Defendant Lovelace Law Firm, P.A., is a Florida professional association with its principal place of business at 36474 Emerald Coast Parkway, Suite 4202, Destin, Florida 32550 and who may be served with process by serving any officer, a managing or general agent, or any other agent authorized by appointment or by law to receive process for this Defendant at the above address.

10. Defendant Nutt & McAllister, PLLC, is a Mississippi professional limited liability company with its principal place of business at 605 Crescent Boulevard, Suite 200, Ridgeland, Mississippi 39157 and who may be served with process by serving any officer, a managing or general agent or any other agent authorized by appointment or by law to receive process for this Defendant at the above address.

IV. FACTS

The facts of this case show reprehensible conduct by the Defendants.

THE AGREEMENT

11. In November 2005, Plaintiff Jones, Funderburg, Sessums, Peterson & Lee, LLC, a law firm, entered into a Joint Venture Agreement, a copy of which is attached hereto and incorporated herein and marked as Exhibit 1. It should be noted that Paul Benton withdrew before the group began substantial work.

12. Defendant Scruggs approached Plaintiff who committed to the Joint Venture.

13. The only profit-sharing or fee allocation percentage decided upon was a thirty-five percent (35%) share to Defendant Nutt & McAlister in exchange for financing the Joint Venture. Plaintiff commenced intensive work efforts on behalf of the Joint Venture at this point.

14. The agreement was silent as to percentage of fees for all other parties.

THE PLAINTIFF'S WORK

15. From October 2005 until March 2006, Plaintiff logged substantial work for the SKG thereby foregoing other available legal work.

16. Plaintiff's senior partner Jones devoted approximately ninety-five percent (95%) of his available work time to the Joint Venture.

17. Jones was assisted by his partners Stewart Lee and Steve Funderburg who respectively devoted approximately fifty percent (50%) of their time to the Joint Venture at the request of Jones.

18. Plaintiff's work and performance included a variety of legal tasks including but not limited to developing the principal legal theories used by the Joint Venture in its Katrina

insurance litigation, Complaint and motion drafting, briefing, and deposing witnesses including the insurance corporations being sued and the insurance company's expert witnesses designated for trial which took place in July 2006.

19. Within the Joint Venture, the Plaintiff, among other duties, assumed some of the responsibilities of writing briefs, responding to dispositive motions filed by every defendant in the underlying litigation, drafting motions and responding to motions, deposing witnesses including experts and the depositions of the insurance corporations that were being sued.

THE SCHEME BEGINS

20. In December 2006, individual Defendants Scruggs and Barrett conspired among themselves and others to set Plaintiff's fee allocation at a ridiculously low figure of the net earnings of the Joint Venture.

21. After substantial performance by Plaintiff from October 2005 through March 2006 in which substantial legal work was logged, Defendant Scruggs called Jones and dictated Scruggs's "decision" on a division of attorney fees.

22. Scruggs told Plaintiff that it would receive one payment of \$1,000,000 to be paid by Defendant Nutt outside the venture and that Plaintiff would then be paid nothing else.

23. Defendant Scruggs told Jones that Scruggs and his firm would pay nothing for Plaintiff's share and that Defendants Scruggs, Barrett and Nutt had agreed to split some \$26,500,000 in fees from the State Farm settlement.

24. Jones objected and in correspondence immediately requested a buy-out or binding arbitration as provided for in the Agreement.

25. Over the following three months, Defendant law firms and the individual named

Defendants attempted to bully and cajole Plaintiff into taking less than what Plaintiff was rightfully due in legal fees under the common law and Mississippi statutory law governing division of income in a joint venture when no percentages are set.

26. These intentional, egregious acts were intended to cause and did cause extreme distress to individual members of Plaintiff law firm.

27. Further, Defendants began a course of conduct intended to "freeze out" Plaintiff from further involvement in the Joint Venture.

28. Plaintiff rejected the December 6, 2006 offer since it was entitled to an equal division of net fees as all the Defendants well knew and had all recognized.

THE PLAINTIFFS' PLEA FOR ARBITRATION - FAIRNESS

29. Pursuant to the Agreement, Plaintiff was entitled to mandatory binding arbitration conducted in accordance with the American Arbitration Association if any dispute arose under the agreement.

30. Plaintiff gave notice of its intent to arbitrate this fee dispute to members of the Joint Venture over twenty (20) times. Each request for arbitration was rejected by the Defendants.

31. The rejection of Plaintiff's attempt to arbitrate the fee distribution dispute violated Plaintiff's right to arbitration.

32. December 11, 2006, Plaintiff contacted individual Defendant Scruggs and gave notice that the other members of the Joint Venture could present a buy-out offer to Plaintiff or, if no offer were forthcoming, that Plaintiff invoked his rights of mandatory binding arbitration under the Agreement.

THE FIRST BREACH

33. December 11, 2006, Plaintiff, having received notice that the SKG had received fees demanded an accounting of all fees received at that point by the SKG.

34. December 11, 2006, Plaintiff gave notice to the SKG that SKG was in breach of the terms of the Agreement.

35. December 13, 2006 correspondence to the partners in the SKG from Sidney Backstrom of the Scruggs Law Firm, asked for suggestions as to the allocation of fees to Nutt & McAlister, Scruggs Law Firm, Barrett Law Firm, Plaintiff law firm, and Lovelace Law Firm.

SECOND OF MANY REQUESTS FOR ARBITRATION

36. On December 14, 2006 in correspondence from Plaintiff to Sidney Backstrom of the Scruggs Law Firm and courtesy copied to all members of SKG again invoked Plaintiff's rights to arbitration of the net fee distribution, or, at minimum, a suggestion of mediating the dispute.

REQUEST FOR ACCOUNTING AS REQUIRED BY STATUTE

37. On December 20, 2006, Plaintiff sought through correspondence an accounting of revenues and expenses from Meg McAlister of Nutt & McAlister, the correspondence courtesy copied to all members of SKG.

UNAUTHORIZED EXPENDITURES

38. The Defendant Scruggs engaged in various activities such as the wrongful expenditures of funds belonging to the Joint Ventures including the unauthorized hiring of personnel for SKG without approval of all members of SKG and continued to do so without authority.

39. On February 20, 2007, Plaintiff again gave notice to all partners of SKG that Plaintiff was invoking its rights to arbitration under the Agreement to resolve the net fee

distribution dispute.

40. On February 22, 2007, Sidney Backstrom of the Scruggs Law Firm gave notice through correspondence to partners in SKG proposing a meeting on March 1 to vote "on a division of attorneys' fees, as well as the makeup of the venture going forward."

RECOGNITION OF THE RIGHT TO ARBITRATION

41. On February 22, 2007, Sidney Backstrom of the Scruggs Law Firm recognized in his correspondence to partners of SKG that the Plaintiff had rights under the Agreement when he stated: "Should 4 of 5 venturers not agree on a fee distribution, we may have to resort to the dispute resolution mechanism in the agreement, binding arbitration."

42. On February 22, 2007, SKG Partner Dewitt "Sparky" Lovelace recognized Plaintiff's right under the Agreement to dispute arbitration when he faxed Plaintiff correspondence that indicated Lovelace was willing to "... work this out so we all are paid fairly without a fight, or arbitration."

THE WRONGFUL, GREEDY FREEZE OUT

43. At a meeting of the Joint Venture March 2, 2007, after Plaintiff had given full performance to the Joint Venture and after Defendants consistently violated Plaintiff's contractual right to arbitration, Defendants Scruggs, Barrett, Nutt, and Lovelace (via telephone) informed Plaintiff representatives Jones and Funderburg that the meeting was intended to force Plaintiff to take a sum determined by the other venturers or the Plaintiff would face immediate termination of all further involvement.

44. Defendant Barrett in bad faith demanded that Plaintiff accept a six percent (6%) share of the fees earned by the Joint Venture in a take-it-or-leave-it fashion and in a further act of

bad faith stated that failure to accept the "offer" would result in immediate termination and the withholding of funds to which even the Defendants admitted Plaintiff was entitled.

45. Jones informed the Defendants that the March 2 meeting was the first at which his firm had been invited to discuss profit sharing or fee allocation.

46. Jones asked Defendants if they wanted to hear the basis the legal authority of Plaintiff's position.

47. Barrett said such information was irrelevant.

48. Jones and Funderburg objected. Jones and Funderburg reminded Defendants of their attempts over the previous three months to invoke their rights to arbitration.

49. Barrett once again in bad faith informed Jones and Funderburg that arbitration would not take place.

50. Jones and Funderburg asked for an opportunity to discuss the Defendants' position with the venturers not in attendance.

51. Barrett once again in complete disregard of the Plaintiff's rights, said "no" and told Jones and Funderburg they would have to give an answer "before you leave this room."

52. Funderburg told Defendants that he and Jones would like to discuss the matter with their partners privately and would call back when a decision was reached.

53. Before members of Plaintiff firm had reached a decision, Defendant Barrett, in egregious conduct, sent an email at 2:32 p.m. declaring that Plaintiff had eighteen (18) minutes to call "excepting [sic] my suggestion" or the Defendants would "act accordingly."

54. Plaintiff did not receive this email until the 4 p.m. when Jones returned to his office.

55. Barrett then sent another email at 4:26 p.m. declaring that since Defendants had not heard from Plaintiff by the unilaterally determined time, a vote had been taken at 3 p.m. in which time all four Defendant venturers in bad faith with a complete absence of fair dealing had voted to remove Plaintiff from the Joint Venture.

56. At that time, Plaintiff had made no final decision on the offer but was expelled without cause nonetheless.

57. In addition to the Defendants voting to remove Plaintiff from the Joint Venture, the Defendants also voted to deny Plaintiff all rights under the Agreement and all rights to earned fees due Plaintiff.

58. The stated and only purpose of this action by Defendants in breach of numerous duties of the Defendants and the Plaintiffs was to increase the shares of the remaining venturers and to avoid loss of control by Defendants Scruggs and Barrett irrespective of the terms of the Agreement and Defendants' fiduciary duties to Plaintiff.

59. During this time, individual members of Plaintiff's firm were under extreme pressure and experienced intense distress.

60. March 6, 2007, SKG rendered a check for an alleged three percent (3%) of the net fees of \$617,924.43 which was sent to Plaintiff when the Defendants are wrongfully holding substantially more of the Plaintiff's money, which check was rejected.

PRIOR ACTS OF THIS SAME COURSE OF CONDUCT

61. The Defendant Scruggs has engaged in this same type of conduct on repeated occasions, that is, engage people to do work within a joint venture and then, when funds are collected, to attempt to rearrange the distribution of funds.

62. This has occurred on many repeated occasions with various lawyers and law firms throughout the State of Mississippi and on information and belief elsewhere.

63. This course of egregious coercive conduct entitles the Plaintiff to punitive damages from Richard Scruggs.

64. Don Barrett has engaged in the same type of conduct on multiple occasions where he would engage and be a part of a joint venture to pursue wrongful conduct by tortfeasors on behalf of various clients and when funds became available for distribution would attempt to renegotiate or shortchange his joint venturers.

65. The Plaintiff is on numerous pleadings and various courts as a lawyer with the Joint Venture Group, including in the Southern District of Mississippi and in the United States Court of Appeals for the Fifth Circuit.

66. Plaintiff has not been removed or requested to be removed from clients of the Joint Venture Group.

67. Plaintiff is presently pending as a member of a group seeking certification of a class and seeking to have one of more members of the group named as class counsel.

68. The Plaintiff is a party to numerous contracts with persons who have claims against insurance companies as a result of Hurricane Katrina.

69. None of the clients have requested that the Plaintiff be removed from the pleadings.

70. No orders have been entered by any judge ordering that the Plaintiff be removed from any pleadings.

71. As a result of the Defendants' actions, the Plaintiffs have suffered substantial damages.

V. CAUSES OF ACTION

Count I - Breach of Contract

72. Plaintiff adopts by reference herein the allegations contained in the foregoing paragraphs.

73. Defendants failed to abide by the terms of the contract of the Joint Venture and failed to perform under statutory terms provided by Mississippi Statutory Law and the Common Law.

74. Defendants failed to abide by the provisions of the Joint Venture Agreement by refusing to arbitrate the dispute over the disbursement of partnership funds.

75. As a result, Plaintiffs sustained substantial damages.

Count II - Tortious Bad Faith Breach of Contract

76. Plaintiff adopts by reference herein the allegations contained in the foregoing paragraphs.

77. The breach was so wrongful, egregious, without justification and in bad faith that it entitles the Plaintiff to punitive damages in such an amount as the trier of fact should determine.

Count III - Breach of Fiduciary Duties

78. Plaintiff adopts by reference herein the allegations contained in the foregoing paragraphs.

79. Defendants owe to the Plaintiff certain fiduciary duties of care, loyalty, and fair dealing in the management of the business of SKG.

80. The Defendants breached their fiduciary duties egregiously and in bad faith and/or

were negligent in the conduct of the business of Defendant SKG in their service as partners with relation to its business.

81. Defendants were obligated to provide an account to Plaintiff for the amounts of all income and debts in the operation of the SKG and to pay Plaintiff such monies as are due to the partners of the SKG.

82. Defendants continue to perpetrate breaches, illegalities, and wrongs against Plaintiff by withholding money that belongs to the Plaintiff.

83. Plaintiff, as one partner, is unable to take control of the partnership and is unable to take action to prevent such damages as being inflicted by Defendant partners of the SKG.

84. As a proximate result of the breach of fiduciary duties, Plaintiffs suffered substantial damages as alleged herein.

Count IV - Usurpation

85. Plaintiff adopts by reference herein the allegations contained in the foregoing paragraphs.

86. The Defendants through their actions have prevented the Plaintiff from procuring other legal work and representing other clients as well as being associated to do legal work with other law firms.

87. As a result of the Defendants' actions, the Plaintiff has suffered substantial damages.

Count V - Conversion

88. Plaintiff adopts by reference herein the allegations contained in the foregoing paragraphs.

89. Defendants currently possess monies due to Plaintiff as its share of partnership profits.

90. Defendants wrongfully possess for their own use and exercise dominion over monies due to Plaintiff and refuse to pay those monies due to the Plaintiff.

91. Plaintiff has demanded that the property be turned over to it.

92. Defendants have refused to turn over the property that rightfully belongs to Plaintiff.

93. These acts also constitute such egregious and wrongful conduct as to justify punitive damages.

94. As a result of the Defendants' actions, the Plaintiff has suffered substantial damages.

Count VI - Intentional Interference with Prospective Business Advantage

95. Plaintiff adopts by reference herein the allegations contained in the foregoing paragraphs.

96. Defendants intentionally and willfully committed acts that were calculated to cause damage and loss to Plaintiff.

97. Defendants intentionally interfered with Plaintiff's established rights as a partner in the SKG.

98. Actual damages resulted in that Defendants attempted to remove the Plaintiff as a partner and deny the Plaintiff rights in the partnership.

99. Losses occurred as Plaintiff has been denied monies due after full performance on behalf of the SKG.

100. The modus operandi of Defendants is to lure the work of others through false promises.

101. The acts under their conduct caused substantial damages to the Plaintiff.

Count VII - Fraud

This count is applicable to Scruggs and Barrett individually.

102. Plaintiff adopts by reference herein the allegations contained in the foregoing paragraphs.

103. The conduct of Scruggs and Barrett continued an established pattern of the same type of conduct as in other previous ventures, actions which constitute fraud.

104. The Defendants have callously added insult to injury.

105. The conduct of Scruggs and Barrett individually justifies an award of punitive damages against them separately from any other award of punitive damages.

Count VIII - Constructive Trust

106. Plaintiff adopts by reference herein the allegations contained in the foregoing paragraphs.

107. Pursuant to Miss. Code Ann. § 79-13-404, "General standards of partner's conduct," in particular (b)(1), a partner's duty of loyalty to the partnership and the other partners includes to account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity.

108. Monies paid and owing to the SKG form a constructive trust.

109. Partners in the partnership, pursuant to statutory authority, hold as trustee any

property, profit, or benefit derived by a partner in the conduct of the partnership business.

110. Defendants, as partners, are constructive trustees of monies due Plaintiff.

111. Defendants, by intentionally withholding monies paid and forthcoming monies due to be paid to the SKG, have and will breach their duties as constructive trustees.

112. Defendants' breach of their duties as trustees will, and have, damaged Plaintiff in that Plaintiff will not receive monies due through the aforementioned constructive trust.

Count X - Conspiracy

113. Plaintiff adopts by reference herein the allegations contained in the foregoing paragraphs. The Defendants entered into a plan that has been used before by Scruggs and Barrett to conspire to wrongfully and illegally deprive the Plaintiffs of property.

114. A scheming cabal should not be allowed to succeed.

115. As a result of this conspiracy, the Plaintiff has suffered substantial damages.

Count XI - Unconscionability

116. Plaintiff adopts by reference herein the allegations contained in the foregoing paragraphs.

117. The conduct of the Defendants is unconscionable and so egregious as to entitle the Plaintiff to punitive damages.

Count XII - Declaratory Judgment

118. Plaintiff adopts by reference herein the allegations contained in the foregoing paragraphs.

119. Plaintiff is entitled to a declaratory judgment that it is entitled under the Agreement to twenty percent (20%) of all past attorney fees collected by SKG and twenty percent (20%) of all

future attorney fees to be collected by SKG.

COUNT XII - Punitive Damages

120. Plaintiff adopts by reference herein the allegations contained in the foregoing paragraphs.

121. The conduct hereinabove described entitles the finder of fact to consider punitive damages in such an amount as well as to deter the Defendants from engaging in such conduct in the future and serve as an example to others.

VI. AD DAMNUM

122. Plaintiff demands a declaratory judgment holding that it is entitled under the Agreement to twenty percent (20%) of all past attorney fees collected by SKG and twenty percent (20%) of all future attorney fees to be collected by SKG.

123. The Plaintiff demands actual damages from the Defendants in an amount that far exceeds the statutory amount required for jurisdiction in Circuit Court which will be developed further in the discovery in this matter.

124. The Plaintiff demands punitive damages from all the Defendants in such an amount to compensate it for the expenses and attorneys fees since the conduct in one or more accounts herein mentioned constitutes conduct that requires punitive damages.

125. The Plaintiff demands punitive damages from the Defendant Richard Scruggs and Don Barrett. The punitive damages requested here would be for such an amount as would deter such conduct in the future and would serve as an example to others that such conduct would not be tolerated. The facts will show that such conduct has been a practice by these individual Defendants in the past and punitive damages should be awarded in such an amount that would

deter these two tortfeasors and others from engaging in such conduct in the future.

126. The Plaintiff demands all costs of this proceeding.

127. The Plaintiff also requests that interest be attached to any judgment from the date of the initial breach, that being December 6, 2006.

128. The Plaintiff demands post-judgment interest.

129. The Plaintiff demands all foreseeable expenses of this action.

130. The Plaintiff demands reasonable attorneys' fees.

RESPECTFULLY SUBMITTED, this the 15th day of March, 2007.

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