

IN THE DISTRICT COURT, HARRIS COUNTY

189th Judicial District

Robert J. Kruckemeyer	)	DEFENDANTS MARK
	)	BURKE & JOANNA
Plaintiff	)	BURKE's FIRST
	)	AMENDED
	)	COUNTERCLAIM
vs.	)	/THIRD PARTY
	)	PETITION, AND
Blogger Inc. D/B/A/, LAWIN	)	APPLICATION FOR
TEXAS.COM	)	PERMANENT
	)	INJUNCTION,
	)	ADDENDUM K
	)	No. 2023-11266
)	
Defendant)	
)	
)	
)	

ADDENDUM K:

**FIRST AMENDED COUNTERCLAIM/THIRD-PARTY PETITION
AND APPLICATION FOR PERMANENT INJUNCTION**

Defendants and Counter-Plaintiffs Mark Burke, individually, and on

behalf of Blogger Inc., and Joanna Burke (“The Burkes”) file this Addendum K, Original Counterclaim and Application for Permanent Injunction against Plaintiffs and Counter-Defendants as listed herein.

The Kruckemeyer Counterclaim

In this civil action, a private lawyer and known debt collector Bob sues Blogger Inc. (“LIT”), and more recently Mark and Joanna, for what he falsely claims are statutory libel, and textual defamation for which he seeks punitive damages over and above general damages due to mental anguish and loss of reputation. His amended petition complains of ‘actual malice’ which relies upon the original article published by LIT, and now includes an article published after Bob filed his lawsuit. As stated herein, Bob’s complaint and counts therein should be dismissed with prejudice.

Further, Bob has applied for a baseless and frivolous permanent injunction. See; Plaintiff’s First Amended Original and Application for Permanent Injunction, “Nature of the case”, paragraph 8, filed onto the

docket on June 5, 2023, for a synopsis of the claims.

The defendants and counter-plaintiffs deny any and all of these allegations. Considering the unassailable facts in response to this frivolous lawsuit, including this counterclaim, the exemplary damages and permanent injunction requested by Bob should be denied and his lawsuit dismissed with prejudice.

Perjury

When Bob originally filed suit on February 21, 2023, he submitted an affidavit, in relevant part;

"My name is Robert J. Kruckemeyer. I am the owner of The Kruckemeyer Law Firm and I am authorized ON ITS BEHALF to make this affidavit."

The textual interpretation of those two sentences is without ambiguity. It has a name - perjury. "The Kruckemeyer Law Firm" did not exist until [May 11, 2023](#), and who Bob claims is suing Blogger Inc., per his notarized affidavit.

Actual Fraud

"Actual Fraud" is defined as involving dishonesty of purpose or intent to deceive. Actual fraud can consist of a material misrepresentation, concealment of material facts or the failure to disclose a material fact." - *Pelletier v. Vict. Air Conditioning, Ltd.*, No. 13-20-00011-CV, at *10 (Tex. App. Jan. 6, 2022).

The Kruckemeyer Law Firm did not exist until [May 11, 2023](#) as explained above, so Bob's affidavit is dishonest and is a misrepresentation and concealment of the truth. As such, Bob's affidavit is classified in law as "actual fraud".

Furthermore, see Lewis Brisbois current claims of fraud, including "notarized affidavit fraud and submission of a materially false or fraudulent instrument" in their ongoing case before United States District Judge Keith Ellison in Rusk St., Houston Federal Court; *Lewis Brisbois Bisgaard and Smith LLP v. Bitgood* ([4:22-cv-03279](#)) District Court, S.D. Texas.

This means a non-existent entity is suing and thus the lawsuit should be immediately dismissed for lack of capacity or standing.

Amending the complaint is prohibited in such circumstances.

Standing is a constitutional prerequisite to suit. A court has no jurisdiction over a claim made by a plaintiff who lacks standing to assert it. [Heckman v. Williamson County](#), 369 S.W.3d 137, 150 (Tex. 2012) (citations omitted).

The issues here are two-fold. First there's the fact that most consumers and businesses would consider a lawyer with a website, a business card or even claims to be a "law firm", rather than "the law office of..." would be an entity.

A law firm typically refers to a business entity that is formed by two or more lawyers who come together to provide legal services to clients. Law firms can vary in size, ranging from small boutique firms with just a few attorneys to large multinational firms with hundreds or even thousands of lawyers. Law firms often have multiple practice areas and may offer a wide range of legal services.

On the other hand, "law office of" typically indicates a solo

practitioner or a smaller-scale legal practice operated by a single attorney. It suggests that the attorney is practicing independently and may not have partners or associates. A law office of a specific attorney may focus on a particular area of law or offer a narrower range of legal services.

The second issue is; Can an individual lawyer, who is calling himself “The Kruckemeyer Law Firm” and trading “as” a business - but is neither a legal entity nor a registered DBA - legally collect debts as a debt collecting law firm in Texas or be able to acquire a Surety Bond? The answer should be a resounding ‘no’.

Relying upon the statutes, laws and regulations in Texas which Mark is familiar with, generally, the penalties for failing to register a DBA can include:

Inability to enforce contracts: If a law firm operates under an unregistered DBA, it may face challenges in enforcing contracts or legal agreements entered into using the unregistered name.

Civil penalties: There may be civil penalties imposed by regulatory authorities for non-compliance with DBA registration requirements. These penalties can vary and may involve fines or other financial consequences.

Injunctions or cease and desist orders: Regulatory authorities or affected parties may seek court orders to stop the law firm from using the unregistered DBA until proper registration is completed.

Criminal penalties: In some cases, operating under an unregistered DBA could potentially result in criminal charges, such as misdemeanors, depending on the circumstances and applicable laws and it appears that unlawful debt collection is one of those circumstances.

Chapter 392, Finance Code: provides for both civil remedies and criminal penalties. Tex. Fin. Code §§ 392.402–.404. A consumer may take private legal action against a third-party debt collector or credit bureau for a violation of Chapter 392. In addition, a consumer may file a

complaint with the attorney general if the consumer feels that the third-party debt collector or credit bureau has violated Chapter 392 by engaging in a false, misleading, or deceptive act or practice. As already discussed, this would qualify as “actual fraud”.

AEG and Congo Airways

Bob’s argument revolves around the lawsuit where he represents business partner Jeff Stallone’s business AEG pursuing Congo Airways for non-payment of jet fuel and garnishment based on a judgment received in earlier litigation proceedings.

First, it should be acknowledged that the initial litigation and judgment was legal err by the presiding Harris County District Court judge. In reality, the lawsuit should have been dismissed on jurisdictional grounds.

See, [LIT article](#);

“Have You Been Sued by Associated Energy Group LLC (AEG) in Harris County District Court in Texas? If you’ve been sued by Associated Energy Group LLC for jet fuel debt by The

Kruckemeyer Law Firm, you should read this first.”

Second, there is nothing defamatory or libelous in LIT’s article. Simply put, the merchant is always a third party processor who merely transmits the funds for a fee between buyer and seller, and any competent lawyer collecting debts – especially an “AV rated”, near forty years experienced lawyer should know this. Hence, it is comical.

Third, LIT’s article headline and sub-heading are true, not false as claimed by Bob. Bob goes on to contend that his imaginary law firm is not obligated to obtain a surety bond in Texas. Which is also false.

According to Section 392.001(6) of the Texas Finance Code, an individual can represent a third party in debt collection if:

The individual is an employee of the third party, and the debt being collected is owned by the third party.

In other words, if an individual is an employee of a creditor or a debt collection agency and is collecting a debt which belongs to their employer, they can represent the third party in debt collection activities

in Texas.

That is not the case here. As admitted by Bob, he's been operating under the name of an imaginary DBA, "The Kruckemeyer Law Firm" since around 1984 until May 11, 2023.

Fourth, setting aside the aforementioned, Bob contends he does not collect "consumer debts". That's not true.

Harris County District Court docket proves he does, but first, let's first discuss the statutory and legal textual meaning of "consumer debts". All debt collection is consumer debt in the eyes of the law, and this includes business or commercial debt. In short, the law does not recognize the term "commercial" debt collection.

See, extract from California debt collector who was also highlighted on LIT;

"First there is no such thing as commercial collections per-se. It's either consumer debt or not. The term debt as defined in Federal and most states is consumer debt." - [Arden Silverman](#), Capital Asset Protection, A Debt Collection Agency. This communication is from a debt collector. Any

information obtained may be used for that purpose.

That aside, and despite Bob adding at paragraph 24 of his amended petition that LIT's article was false - without providing any legal argument *why* it is false, Bob has, and continues to collect debts against individuals, which requires an active Surety Bond, on file with the Secretary of State.

See, [LIT article](#);

“Krucke’s, Zombies n’ Bandits: Chasing Personal Debts in Texas Without a Surety Bond. The Kruckemeyer Law Firm chasin’ a personal debt of \$166k for client Jim Elzner from John Slocum in violation of Texas laws”,

and [LIT article](#);

“Lawyer Ken Bailey: Honey, Here’s Our \$3.3M Home for Ten Bucks. That’ll Keep the Zombie Warrior Away. As debt collectin’ lawyer Bob Kruckemeyer seeks to garnish lawyer F. Ken Bailey for millions, Bailey passes title of main residence to spouse.”.

Fifth, setting aside the aforementioned, Bob contends he is not a

“third party” debt collector as defined by Texas Finance Code (“TFC”).

That’s also not true. The gravamen of Bob’s argument is found in Section 392.101(7);

7) "Third-party debt collector" means a debt collector, as defined by 15 U.S.C. Section 1692a(6), but does not include an attorney collecting a debt as an attorney on behalf of and in the name of a client unless the attorney has nonattorney employees who:

- (A) are regularly engaged to solicit debts for collection; or
- (B) regularly make contact with debtors for the purpose of collection or adjustment of debts.

Relying upon [Bob’s website](#), it’s currently a small [father](#) and [son](#) legal ‘business’. Bob’s submissions for attorney fees and accompanying affidavits pertaining to debt collection cases recorded in Harris County District Court confirms he performs the duties of both an attorney-at-law and a nonattorney.

The docket also affirms he’s a debt collector. It is notable that the majority of his cases are chasing non-payment of debts. As such, he is a third party debt collector per TFC and case law supports this assertion.

In Support of LIT: Examples of Rogue Debt Collectin’ Lawyers

Going “Legit”

(1) [“Frosty Lawyer John Resendez](#)

Admits He Should Have a Surety Bond to Debt Collect. By his own actions, his law firm, Fridge and Resendez PC purchased a TX SOS surety bond for the first time in October 2022”;

(2) [“Daughtry and Farine P.C.](#)

“Decades Unlawfully Foreclosurin’ Homeowners as HOA Lawyers in Texas. Sec. 392.101. BOND REQUIREMENT. A third-party debt collector may not engage in debt collection unless they obtained a surety bond (1997)”;

(3) On Jan. 26, 2023, LIT [published an article](#) titled;

“Craig Noack and Carolyn Noack are Debt Collectin’ Lawyers in Texas But Are They Legal Bandits? Based on Noack Law Firms’ website, there’s evidence of non-attorneys working at the firm and revenue is likely mainly from debt collecting.”

Upon seeing more [debt collection activities](#) from the Noack’s, LIT discovered that the Noack’s went legit and filed a surety bond with the Texas Secretary of State as recorded on May 1, 2023;

(4) On Mar. 24, 2022 LIT published;

“There’s a Storey Behind [Texas Debt Collector Shawn Grady](#) in His Pursuit of Odin Demolition, et al. Garnishor Storey Mountain LLC, assignee of First Horizon Bank, successor by merger to IberiaBank Makes application for writs of garnishment.”.

Grady and his law firm went legit on February 15, 2023, shortly after LIT [published this](#) follow-up article.

The First Amended Petition

Robert J. Kruckemeyer on behalf of The Kruckemeyer Law Firm, now belatedly in existence as an unincorporated DBA registered in Harris County, [efiles](#) a revised petition on a Sunday afternoon. A review of the petition now shows [Randy Sorrels](#) of [The Sorrels Law Firm, PLLC](#), as the ‘lead attorney’ and Bob is also listed as counsel.

It should be noted that Randy and Bob are “BFF’s” (Best Friends Forever). In support, Bob’s resume lists Randy as a reference. They also share a mutual friend who is also a reference listed on [Bob’s website bio](#), namely Oliver Luck, who is a lawyer, former NFL football player

turned international sports industry executive [currently back](#) on American soil. The conspiracy and actual fraud is clear on its face.

Violation of Texas Rules of Civil Procedure

“The Rules of Civil Procedure provide that designations of new lead counsel and motions to withdraw and substitute new counsel must be made in writing and that the party designating new counsel or substituting a new attorney must serve notice on the court and all other parties. See Tex. R. Civ. P. 8, 10.” - Perez v. Williams, 474 S.W.3d 408, 417 (Tex. App. 2015) per Rule.

Randy appeared without notice as lead counsel. However, there is no motion or notice to defendants in the underlying suit.

Conspiracy, Retaliation and Actual Fraud

LawsInTexas.com (LIT) has recently published several articles about Randy, raising questions about his firm's decision to act 'pro se' in the collection of alleged unpaid legal fees from an attorney they represented. This is notable considering Randy's documented charge-out rate of \$900 per hour, compared to Bob, who has recently increased

his rates from \$450-475 to around \$525-550 per hour, according to court records in May 2023.

Additionally, LIT has included an article in the amended complaint that discusses and updates these legal proceedings. In the article, LIT questions how Bob is proceeding 'pro se' against Blogger Inc. It strongly suggests a conspiracy between Bob and Randy, as Randy sees this as an opportunity to retaliate against LIT for publishing articles about Sorrels, his law firm, and past ethical concerns raised during his tenure as President of the State Bar of Texas.

The fact that Bob filed the amended petition on a Sunday afternoon, without any involvement or representation of Randy and his law firm, indicates the absence of a formal agreement. It is evident that Bob remains in full control of the lawsuit, contradicting any indication that Randy and his firm are lead counsel, as presented to the court and defendants.

These circumstances provide further evidence of actual fraud.

Defamation

Bob, a debt collecting lawyer, admits to leaving comments on an article published by Mark, the editor of an investigative legal blog called LawsInTexas.com. In his comments, Bob falsely claims that he is not a third-party debt collector, does not collect consumer debts and does not require a surety bond. These false statements are visible to other readers and contributors to the article's comment section.

The comments made by Bob on the article can be considered a form of publication, as they involve the dissemination of false statements to other readers and contributors to the article's comment section. Bob's comments have caused damage to Mark's reputation and that of his blog, resulting in quantifiable harm.

Defamation is a tort which involves making false statements about someone that harm their reputation. In this case;

False Statement: Mark in his individual capacity and on behalf of

Blogger Inc., has demonstrated Bob has made false statements, as detailed above.

Publication: Bob communicated the false statements to a third party by commenting on LIT's article.

Harm to Reputation: The false comments and the subsequent baseless lawsuit filed by Bob has caused damage to Mark's reputation and that of his business, leading to quantifiable harm including financial losses due to loss of business opportunities, and loss of time defending the lawsuit. Bob's suit has garnered media attention, including an article and email from a journalist at Law360 who wrote an article about Bob's lawsuit. As such, Mark's personal reputation along with his entire business is presently at risk.

Fault: Bob has acted negligently and with actual malice, as he knew the comments and subsequent lawsuit is false and recklessly disregarded the truth. Furthermore, Bob has not provided a letter from

the Texas Secretary of State or the Texas Attorney General's Office or any other government representative who can attest to his version of events.

Falsity: On the contrary, Mark has proven the blog comments left by Bob and the subsequent allegations in the underlying lawsuit is false. In short, Mark's statements of truth is an absolute defense to defamation claims.

Retaliation: Bob and Randy have conspired in the amended petition in bad faith. While a party, and in this case a Texas lawyer, has the right to be represented by counsel of its own choice, that right is not absolute.

Here, it is clear from the facts presented in this counterclaim that Bob and Randy are acting in bad faith and retaliating against the Burkes in violation of the law, [The Texas Lawyer's Creed](#) – A Mandate for Professionalism, and violations of the Texas Disciplinary Rules of

Professional Conduct. See Tex. Disciplinary R. Prof'l Conduct. Bad faith means "the conscious doing of a wrong for dishonest, discriminatory, or malicious purposes and applies here.

Who's Being Sued, in What Capacity and Under What Legal Theory?

Robert J. Kruckemeyer in his personal capacity for (I) "malicious use of process" (also known as "abuse of process"), (II) civil conspiracy, (III) "intentional infliction of emotional distress". Further counts include (IV) actual fraud, (V) mental anguish, and (VI) defamation;

The Kruckemeyer Law Firm (unicorporated) for (I) "malicious use of process" (also known as "abuse of process"), (II) civil conspiracy, (III) "intentional infliction of emotional distress". Further counts include (IV) actual fraud, (V) mental anguish, and (VI) defamation;;

Randall O. Sorrels in his personal capacity for (I) "malicious use of process" (also known as "abuse of process"), (II) civil conspiracy, (III) "intentional infliction of emotional distress". Further counts include

(IV) actual fraud, (V) mental anguish, and (VI) retaliation;

The Sorrels Law Firm, PLLC, in their corporate capacity for (I) “malicious use of process” (also known as “abuse of process”), (II) civil conspiracy, (III) “intentional infliction of emotional distress”. Further counts include (IV) actual fraud, (V) mental anguish, and (VI) retaliation;

Count I

Abuse of Process

Defendants and Counter-Plaintiffs re-allege and incorporate each allegation set forth above and in conjunction with the main counterclaim as if fully written herein.

“The elements of abuse of process are (1) an illegal, improper, or perverted use of the process, neither warranted nor authorized by the process, (2) an ulterior motive or purpose in exercising such use, and (3) damages as a result of the illegal act. *Bukaty*, 248 S.W.3d at 897.” *LaCore*

Enters. v. Angles, No. 05-21-00798-CV, at *29 (Tex. App. Mar. 23, 2023).

All elements apply in this case as described in this complaint and supporting docketed pleadings, motions, and exhibits.

Count II

Civil Conspiracy

Defendants and Counter-Plaintiffs re-allege and incorporate each allegation set forth above and in conjunction with the main counterclaim as if fully written herein.

In Texas, civil conspiracy is a legal claim that arises when two or more individuals or entities form an agreement to commit an unlawful act or achieve a lawful act through unlawful means.

Agreement: There exists an agreement or understanding between Bob and Randy to pursue a common objective. It is important to note that this agreement does not have to be explicit or formal but can be inferred from the actions and conduct of the parties involved.

Unlawful Objective: The parties share an objective that involves engaging in an unlawful act or accomplishing a lawful act through unlawful means. This means that the underlying action or conduct must be illegal or wrongful in nature.

Overt Act: In furtherance of the conspiracy, at least one overt act must be committed. This act does not have to be illegal itself, but it must be carried out with the intention of advancing the unlawful objective of the conspiracy.

Damages: The Defendants and Counter-Plaintiffs have suffered actual damages as a result of the conspiracy. This includes measurable harm or loss such as financial losses, reputational damage, or other forms of harm.

Summary: Bob and Randy have engaged in a clear conspiracy, evident through their coordinated actions and shared objectives. Their motive to retaliate against LIT for publishing articles about them and their

legal businesses strongly supports the allegation of conspiracy.

All the necessary elements for establishing civil conspiracy apply in this case, as described in this counterclaim and supported by docketed pleadings, motions, and exhibits.

Count III

Emotional Distress

Defendants and Counter-Plaintiffs re-allege and incorporate each allegation set forth above and in conjunction with the main counterclaim as if fully written herein.

Intentional Infliction of Emotional Distress: The elements of intentional infliction of emotional distress are that (1) the Defendants acted intentionally or recklessly, (2) the conduct was extreme and outrageous, (3) the actions of the Defendants caused the plaintiff emotional distress, and (4) the emotional distress was severe. *Twyman v. Twyman*, 855 S.W.2d 619,

621 (Tex. 1993).

All elements apply in this case as described in this complaint and supporting docketed pleadings, motions, and exhibits.

Count IV

Actual Fraud

Defendants and Counter-Plaintiffs re-allege and incorporate each allegation set forth above and in conjunction with the main counterclaim as if fully written herein.

All elements apply in this case as described in this complaint and supporting docketed pleadings, motions, and exhibits.

Count V

Mental Anguish

Defendants and Counter-Plaintiffs re-allege and incorporate each allegation set forth above and in conjunction with the main counterclaim as

if fully written herein.

The Texas Supreme Court has defined mental anguish as "emotional pain, torment, and suffering." *Moore v. Lillebo*, 722 S.W.2d 683, 688 (Tex. 1986).

The Burkes, specifically Mark and his business, have become the primary targets of Bob and Randy's amended complaint. As a result of this lawsuit, the pressures on Mark and the growing implications have exponentially increased his emotional pain.

It is evident of Bob and Randy's depraved mindset that they have targeted Joanna, a non-party with no involvement in the case.

Fuelled by rage and personal vendettas stemming from an online publishing platform which concerns matters of public concern and is protected speech, Bob and Randy are now tormenting the Burkes.

They are using the comments section on LIT's blog as a means of

communication, alongside spreading falsities through this lawsuit, which emboldens others to harass and intimidate the Burkes.

The torment inflicted upon them is escalating, leaving them in a constant state of anxiety and psychological anguish.

This relentless and orchestrated campaign by Bob and Randy is taking a heavy toll on the Burkes. They find themselves subjected to further acts of retaliation and condemnation. The resulting suffering is immense, encompassing profound emotional distress, a sense of powerlessness, and an overwhelming burden on their mental well-being.

All elements necessary to establish mental anguish in this case are described in this complaint, along with supporting docketed pleadings, motions, and exhibits.

Count VI

Defamation / Retaliation

Defendants and Counter-Plaintiffs re-allege and incorporate each allegation set forth above and in conjunction with the main counterclaim as if fully written herein.

All elements necessary to establish Bob's defamation and Randy's relation in this case are described in this complaint, along with supporting docketed pleadings, motions, and exhibits.

Permanent Injunction

The Burkes request the Court set its Application for Permanent Injunction for a full trial on the merits and, after the trial, issue a permanent injunction against Robert J. Kruckemeyer and Randall O. Sorrels to enjoin them from malicious prosecution of elder citizen Joanna Burke in the future, frivolous lawsuits against The Burkes, and to stop the communications harassment, including writing comments on blog posts, or sending emails to internet domains owned by Blogger Inc.

Prayer & Relief

Based on the foregoing, Defendants and Counter-Plaintiffs seeks the following relief:

A permanent injunction as described against Bob and Randy;

The Burkes respectfully requests this court in Harris County, Texas, consider the jurisdictional implications and exercise its authority to address the standing issues, which is a constitutional prerequisite to suit and a determination is sought in this counterclaim;

And after such determination, any such other relief the Court may deem just, proper and /or necessary under the circumstances, including ;

Damages: Counter-Plaintiffs ask the court to assess and award compensatory and exemplary damages to compensate the Counter-Plaintiffs for any financial losses, emotional distress, or other harm caused by the insurer's actions as detailed.

Jury Trial

Defendants and Counter-Plaintiffs demand a jury trial.


RESPECTFULLY submitted this 27th day of June, 2023.
I declare under penalty of perjury that the foregoing is true and correct.
This declaration under Chapter 132, Civil Practice and Remedies Code.



Mark Burke
State of Texas / Pro Se

46 Kingwood Greens Dr
Kingwood, Texas 77339
Phone Number: (346) 763-2074
Fax: (866) 705-0576
Email: browserweb@gmail.com

I declare under penalty of perjury that the foregoing is true and correct.
This declaration under Chapter 132, Civil Practice and Remedies Code.



Joanna Burke
State of Texas / Pro Se

46 Kingwood Greens Dr
Kingwood, Texas 77339
Phone Number: (281) 812-9591
Fax: (866) 705-0576
Email: joanna@2dobermans.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing First Amended Counterclaim/Third Party Petition with an application for a Permanent Injunction has been forwarded to Plaintiff/Counter-Defendants /Third-Parties and counsel by electronic filing notification and/or electronic mail and/or facsimile and/or certified mail, return receipt requested, this the 27th day of June, 2023.



Mark Burke
State of Texas / Pro Se