

NO. 2024-75159

WM COMERCIAL ATACADISTA LTDA.	§	IN THE DISTRICT COURT OF
	§	
	§	
V.	§	HARRIS COUNTY, T E X A S
	§	
	§	
BAILEY LAW FIRM PLLC and JESSE LYNN BAILEY	§	80th JUDICIAL DISTRICT

PLAINTIFF’S FIRST AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW WM COMERCIAL ATACADISTA LTDA., Plaintiff herein, complaining of BAILEY LAW FIRM PLLC and JESSE LYNN BAILEY (hereinafter, collectively, “Defendants”), Defendants herein, and for cause of action would respectfully show unto the Court as follows:

I.

The Parties

Plaintiff WM Comercial Atacadista Ltda. (“WM Trading”) is a corporation organized and existing under the laws of the Federative Republic of Brazil.

Defendant Bailey Law Firm PLLC (“BLF”) has appeared and answered herein.

Defendant Jesse Lynn Bailey (“Bailey”) has appeared and answered herein.

II.

Venue and Jurisdiction

Venue of Plaintiff’s causes of action is proper in Harris County, Texas pursuant to §15.002(a)(1) of the Texas Civil Practice & Remedies Code because all or a substantial part of the events or omissions giving rise to the claim occurred in Harris County. Venue of Plaintiff’s causes

of action is also proper in Harris County, Texas pursuant to §15.002(a)(2) of the Texas Civil Practice & Remedies Code because Harris County is the county of Defendant Bailey's residence.

III.

The Salient Facts

WM Trading is a Brazilian trading company and importer which, acting on behalf of its customer, Greca Asfaltos ("Greca," a Brazilian asphalt company), entered into a May 15, 2024 Sales and Purchase Agreement ("the Sales and Purchase Agreement") with Aspo Energy, Ltd. ("Aspo Energy," a company headquartered in the Republic of Cyprus), to purchase a substantial quantity of bitumen, a petroleum constituent.

BLF has offices in Houston and The Woodlands and is run by a solo attorney, Bailey. Aspo Energy introduced WM Trading to BLF and Bailey and recommended that WM Trading retain BLF and Bailey as WM Trading's counsel to effectively serve as the escrow agent for the contemplated commercial transaction.

Although the Sales and Purchase Agreement contemplated financing for the contemplated transaction through letters of credit, the parties to the Sales and Purchase Agreement ultimately agreed to alternative financing arrangements, including WM Trading's transfer of \$3,038,251.13 ("the WM Funds") to be held in BLF's IOLTA trust account subject to the fulfillment of conditions precedent to the consummation of the transaction contemplated by the Sales and Purchase Agreement.

In anticipation and furtherance of the contemplated transaction, on July 1, 2024, WM Trading, BLF and Bailey entered into an Attorney Engagement for Paymaster Services agreement (the "Attorney Engagement Letter,"). Pursuant to the Attorney Engagement Letter, BLF and Bailey agreed to represent WM Trading and its affiliate companies as clients on an ongoing basis and to

provide paymaster services with respect to the WM Funds in one or more of BLF's IOLTA trust accounts. In the Attorney Engagement Letter, BLF and Bailey expressly agreed to adhere to *The Texas Lawyer's Creed* which, among other obligations, obligated Bailey and BLF to abide by the Texas Disciplinary Rules of Professional Conduct and to "employ all appropriate means to protect and advance the client's legitimate rights, claims, and objectives."

Following execution of the Attorney Engagement Letter, WM Trading's General Counsel on July 2, 2024 sent Bailey an e-mail instructing and re-affirming that, as an "important condition" of the contemplated transaction with Aspo Energy, no payment of the WM Funds could be made by Bailey to Aspo Energy prior to receipt of documentation confirming a third-party inspection, confirmation and approval of both the quality and quantity of the bitumen at the discharge port of destination in Brazil. Bailey responded to this e-mail, confirming Bailey's understanding of this condition precedent to payment.

Pursuant to the Attorney Engagement Letter and in reliance upon Bailey's representation the day before, on or about July 3, 2024, WM Trading wired BLF the WM Funds with the understanding that BLF would hold the WM Funds in one or more of BLF's IOLTA trust accounts pending consummation of the contemplated transaction with Aspo Energy.

Aspo Energy subsequently breached the Sales and Purchase Agreement by failing to satisfy the conditions precedent thereunder and providing evidence that it had commenced the shipment of bitumen to WM Trading in Brazil. As a consequence, on or about September 3, 2024, WM Trading sent a Final Notice informing Aspo Energy that it had breached the Sales and Purchase Agreement by not performing thereunder and, subject to an additional two-day cure period, the Sales and Purchase Agreement would be terminated. Because Aspo Energy never cured its breaches, the Sales and Purchase Agreement was, in fact, terminated by WM Trading as of September 6, 2024.

On September 6, 2024, WM Trading's General Counsel formally notified Bailey that the Sales and Purchase Agreement with Aspo Energy had been terminated, provided evidence of such termination, and requested the immediate return of the WM Funds to WM Trading. Bailey never replied to this request, prompting WM Trading to request that its U.S. counsel based in New York contact Bailey to confirm that Bailey and BLF were continuing to hold the WM Funds and to demand the return of the WM Funds to WM Trading.

On September 17, 2024, in a telephone conversation between Bailey and New York counsel for WM Trading, Bailey verbally confirmed to WM Trading's counsel that the WM Funds remained in BLF's trust account and further confirmed that the WM Funds would continue to remain in the account pending express instruction by WM Trading. That same day, WM Trading's counsel e-mailed Bailey confirming the representations Bailey had made during the call and formally requesting written documentation reflecting that the WM Funds remained in BLF's trust account. Bailey did not respond to this e-mail, nor did she provide the requested documentation.

On September 24, 2024, WM Trading's counsel sent another email to Bailey reiterating WM Trading's request for documentation demonstrating that the WM Funds remained in BLF's trust account. Once more, Bailey did not respond to this request.

On September 27, 2024, WM Trading's counsel emailed Bailey a letter demanding, pursuant to Rule 1.15 of the Texas Disciplinary Rules of Professional Conduct, that Bailey and BLF, by no later than October 4, 2024, return the WM Funds to WM Trading and provide a full accounting of the WM Funds. Again, Bailey and BLF failed to comply with—or even reply to—the September 27, 2024 letter.

Faced with Bailey's inexplicable failure to comply with (or even respond to) the aforementioned demands for an immediate return of the WM Funds and for a full accounting, WM Trading hired Houston-based counsel to assist in seeking the return of the WM Funds.

On October 15, 2024, WM Trading's Houston-based counsel called BLF and, in the course of two telephone conversations with BLF's staff, informed them that, in order to avoid the immediate onset of litigation, Bailey needed to respond with immediate answers and an explanation of why the WM Funds had not been returned to WM Trading. Later that day, WM Trading's Houston-based counsel delivered to Bailey a letter demanding the immediate return of the WM Funds by wire transfer and a full accounting of the WM Funds. In response, Bailey called WM Trading's counsel and, during that call, Bailey confirmed her understanding of the demands and requested that she be provided a copy of the Sales and Purchase Agreement so she could review the agreement and confirm that there were no provisions therein preventing her from transferring the WM Funds back to WM Trading following WM Trading's termination of the Sales and Purchase Agreement. That same evening, a copy of the Sales and Purchase Agreement was e-mailed to Bailey so that Bailey could verify that there were no provisions therein preventing her from releasing the WM Funds to WM Trading.

On October 16, 2024, Bailey emailed WM Trading's counsel, advising that she planned to wire transfer the WM Funds the following day, on October 17, 2024.

On October 17, 2024, Bailey wire transferred only a portion of the WM Funds (\$1,495,000) to WM Trading's counsel's account and expressly represented that she was unable to return the remainder of the WM Funds because her bank's branch had a wire transfer limit of \$1.5 million. Bailey further represented that she had made appointments at her bank in the coming days to wire transfer the remainder of the WM Funds.

Despite Bailey's promises and representations, Bailey subsequently failed to wire transfer any of the remaining portion of the Funds, failed to provide the requested accounting of the WM Funds, and repeatedly failed to communicate with and/or mislead WM Trading's counsel.

On October 23, 2024, WM Trading's counsel advised Bailey that, in light of her conduct, WM Trading intended to seek an injunction and other relief from the Court. In response, Bailey represented that she had scheduled "an appointment with a corporate banker" the next day "to resolve the transfer issue."

On October 24, 2024, Bailey once again failed to wire the remaining portion of the Funds or to communicate with WM Trading's counsel, who telephoned Bailey and left messages with her office that WM Trading planned to commence litigation the following day. Bailey then called WM Trading's counsel in tears, claiming she was "in over my head" and represented to WM Trading's counsel that she had visited her bank that afternoon and was told that the bank's compliance department refused to approve her requested international wire transfer to WM Trading's account without giving her a reason why. In that conversation, Bailey was also unable to provide any plausible justification for her failure to provide the full accounting that WM Trading had repeatedly requested for weeks. During that same call, Bailey represented that she would go to her bank the following morning to wire transfer the remainder of the WM Funds to WM Trading's counsel's trust account. This never occurred, leaving WM Trading with no viable option other than to initiate this lawsuit.

It was only in the days after this lawsuit was commenced that Bailey, through her counsel, sent WM Trading's counsel a letter dated November 1, 2024 in which Bailey claimed and revealed, for the first time that, months earlier in July of 2024, Bailey had, in fact, "mistakenly" sent five wire transfers of the WM Funds totaling \$1,521,549.37 to Aspo Energy in Cyprus and that Bailey had transferred \$56,316.73 of the WM Funds to BLF's checking account. In the same letter, Bailey claimed that Aspo Energy had, ten days earlier, initiated a wire transfer returning the funds which had been "mistakenly" sent to Aspo Energy and that it was Bailey's hope "that the funds will arrive, quite literally, any day now." Of course, no such funds ever have been returned to WM Trading.

IV.

Causes of Action

Plaintiff incorporates all of the allegations set forth in Paragraph IV above.

1. General Negligence

WM Trading would show that Defendants Bailey and BLF failed to exercise reasonable care or competence with regard to its handling and transfer of the WM Funds as described above and, as a direct and proximate result of such conduct, acts and omissions, WM Trading suffered actual damages as described herein for which WM Trading herein seeks recovery.

2. Negligent Misrepresentation

Alternatively and without waiving the foregoing, WM Trading would show that Defendants failed to exercise reasonable care or competence with regard to its representations to WM Trading and/or its counsel as described above and that Defendants were negligent in making these representations. WM Trading reasonably relied on such representations, to WM Trading's detriment, and, as a direct and proximate result of such conduct, acts and omissions, WM Trading suffered actual damages as described herein for which WM Trading herein seeks recovery.

3. Breach of Fiduciary Duty

Alternatively and without waiving the foregoing, Defendants served as WM Trading's attorney with regard to the funds at issue and, under Texas law, thereby owed WM Trading the fiduciary duties of candor, utmost good faith, integrity, fair and honest dealing and full disclosure, among others. Through their acts and omissions described above, Defendants breached one or more of the aforementioned fiduciary duties and this breach has caused injury to WM Trading.

As a consequence, WM Trading entitled to the return of the remaining funds in question and/or equitable relief in the form of an accounting, imposition of a constructive trust over the funds in question, and/or Defendants' forfeiture of any and all fees paid by WM Trading to Defendants.

Moreover, Defendants were or, in the exercise of reasonable diligence, should have become aware of the foreseeable extreme degree of risk of harm described above well before and at the time of the events in question and yet, with actual and subjective awareness of the risk involved, acted in conscious indifference to the rights, safety and welfare of others. Defendants' conduct therefore may well amount to gross negligence and malice, as those terms are defined under Texas law, for which WM Trading may seek the recovery of exemplary damages as prayed for herein.

4. Motion for Return of Client Money Pursuant to Sec. 82.063 of the Texas Government Code

Because Defendants have not promptly returned the Funds when requested by WM Trading, WM Trading hereby invokes Sec. 82.063 of the Texas Government Code and, pursuant thereto, hereby moves for and seeks recovery of the Funds in question plus additional damages in an amount no less than 10% nor greater than 20% of the principal amount of the Funds.

5. Conversion

At all times relevant hereto, WM Trading owned the Funds held in Defendants' trust account as a special deposit and was entitled to re-possession of the Funds upon request. Defendants wrongfully exercised dominion or control over the Funds and thereby caused WM Trading to suffer injury.

As a consequence, WM Trading is entitled to the return of the Funds and/or equitable relief in the form of an accounting, imposition of a constructive trust over the Funds, and/or Defendants' forfeiture of any and all fees paid by WM Trading to Defendants.

Moreover, Defendants were or, in the exercise of reasonable diligence, should have become aware of the foreseeable extreme degree of risk of harm described above well before and at the time of the events in question and yet, with actual and subjective awareness of the risk involved, acted in conscious indifference to the rights, safety and welfare of others. Defendants' conduct therefore

may well amount to gross negligence and malice, as those terms are defined under Texas law, for which WM Trading may seek the recovery of exemplary damages as prayed for herein.

6. Breach of Contract and Violation of The Texas Disciplinary Rules of Professional Conduct

As a result of the aforementioned conduct described above, Defendants breached the Attorney Engagement for Paymaster Services and violated Rule 1.15 of the Texas Disciplinary Rules of Professional Conduct (which was incorporated by reference into the Attorney Engagement for Paymaster Services) by not promptly returning the Funds when requested and by not providing a full accounting of the Funds when requested.

As a result thereof, WM Trading has suffered actual damages as prayed for herein for which WM Trading hereby seeks recovery. Furthermore, pursuant to Chapter 38 of the Texas Civil Practice & Remedies Code, WM Trading is entitled to recover its reasonable attorneys' fees, for which WM Trading herein seeks recovery.

All conditions precedent to WM Trading's recovery under the Attorney Engagement for Paymaster Services have occurred.

V.

Request for Declaratory Relief

WM Trading also requests, pursuant to Sec. 37.001, *et seq.* of the Texas Civil Practice & Remedies Code, that the Court enter a judgment declaring that Defendants have wrongfully retained possession of the funds in question, have breached their obligations under the Attorney Engagement for Paymaster Services, and have violated Rule 1.15 of the Texas Disciplinary Rules of Professional Conduct.

Pursuant to Section §37.009 of the Texas Civil Practice & Remedies Code, WM Trading is also entitled to an award of reasonable and necessary attorney's fees as are equitable and just.

VI.

Damages

As a producing, direct and/or proximate cause of the Defendants' conduct described above, WM Trading has suffered significant damages in an amount in excess of the minimum jurisdictional limits of this court for which WM Trading herein seeks recovery of all damages to which WM Trading is entitled including actual damages, equitable relief and, where appropriate, exemplary damages. In addition, as is prayed for above, WM Trading is entitled to recover reasonable attorney's fees where provided for under governing Texas law, prejudgment interest, and costs of court.

Hence, pursuant to Texas Rule of Procedure 47, WM Trading seeks monetary relief in an amount in excess of \$1 million.

VII.

Rule 193.7 Notice

Pursuant to Texas Rule of Civil Procedure 193.7, WM Trading hereby gives actual notice to Defendants that any documents produced in response to written discovery will be used in pretrial proceedings and/or at trial without the necessity of authenticating the documents, unless the Defendants object pursuant to Rule 193.7.

VIII.

Required Disclosures

Pursuant to Texas Rule of Civil Procedure 194(a), Defendants are required to disclose, within thirty (30) days of the filing of the first answer, the information or material described in Rule 194.2(b)1-12.

IX.

Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiff WM Comercial Atacadista Ltda. respectfully prays that Defendants Bailey Law Firm PLLC and Jesse Lynn Bailey be duly cited to appear and answer herein and, that upon final trial hereof, WM Trading have judgment against Defendants, jointly and severally, for all damages as prayed for herein, equitable relief, exemplary damages if warranted, pre-judgment and post-judgment interest at the maximum legal rate, costs of Court, and for such other and further relief, whether general or special, legal or equitable, to which WM Trading may be justly entitled.

Respectfully submitted,

LAPIN & LANDA, L.L.P.

By: /s/ Robert E. Lapin

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

On this the 6th day of December, 2024, in accordance with the Texas Rules of Civil Procedure, I hereby certify that a true and correct copy of the above and foregoing pleading was duly served upon all parties and/or their counsel of record via e-service, hand delivery, facsimile and/or certified mail, return receipt requested.

Cordt Akers - *Via E-service*
Brock Akers
The Akers Firm
3401 Allen Parkway, Suite 101
Houston, Texas 77019

/s/ Robert E. Lapin
Robert E. Lapin

Unofficial Copy Office of Marilyn Burges District Clerk

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Heather Mathews on behalf of Robert Lapin

Bar No. 11945050

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Envelope ID: 95046586

Filing Code Description: Amended Filing

Filing Description: Plaintiff's First Amended Petition

Status as of 12/6/2024 4:01 PM CST

Case Contacts

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