

CAUSE No. 2024-75159

**WM COMERCIAL ATACADISTA
LTDA.**

v.

**BAILEY LAW FIRM PLLC and
JESSE LYNN BAILEY**

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

80th JUDICIAL DISTRICT

**DEFENDANTS' MOTION FOR LEAVE TO DESIGNATE
RESPONSIBLE THIRD PARTY**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW BAILEY LAW FIRM and JESSE LYNN BAILEY (“Bailey” or “Defendants”) and hereby file this Motion for leave to Designate Responsible Third Party and with respect thereto would show as follows:

I.

This is not an embezzlement case. This is not a theft case. This is a very simple matter of an attorney putting too much trust in her client. The very same client who likewise duped WM Comercial, and who ultimately breached the trust of all involved and is responsible for the damages caused to the plaintiff. Plaintiffs’ money is not in the hands of Bailey – it is in the hands of Mishel Asraf and his companies, Aspo Energy, Inc. and 4-S Media Group, Inc (hereinafter, “Asraf”).

Bailey was contracted by Plaintiffs and Asraf to act as third-party intermediary for a proposed transaction between the two. WM Comercial, pursuant to the agreement, sent \$3,038,251.13 to Bailey’s trust account. *See Plaintiff’s Amended Petition.* Asraf requested,

pursuant to this proposed transaction, that approximately 50% be wired to his accounts.¹ Asraf assured Bailey that the funds were for the purpose of paying the supply refinery for the product being sold to WM Comercial and requested that she wire the funds in the specified amounts. Based on that representation made by an individual with whom she had no reason not to trust, Bailey sent the funds. Unfortunately, the transaction between Asraf and WM Comercial did not come to fruition.

After several months of demands to return the funds to Bailey so they could be returned to WM Comercial, Asraf has now ceased all communication with Bailey. Asraf, therefore, as the possessor of WM Comercial's approximately \$1.5 million dollars, is responsible for their damages.

II.

Section 33.004 of the Texas Civil Practice and Remedies Code permits a tort defendant to designate a person as a responsible third party by filing a motion "on or before the 60th day before the trial date unless the court finds good cause to allow the motion to be filed at a later date." Tex. Civ. Prac. & Rem. Code § 33.004(a); *see id.* § 33.002 (making the proportionate-responsibility statute applicable to tort and deceptive-trade-practices claims). The trial court "***shall*** grant leave to designate ... a responsible third party" unless another party objects within fifteen days after service. *Id.* § 33.004(f) (*emphasis added*). Even with a timely filed objection, the court must allow the designation unless the objecting party establishes (1) the defendant did not plead sufficient facts concerning the person's alleged responsibility and (2) the pleading

¹ This consisted of a total of separate wires: \$805,000 on 7/5/24, \$50,549.37 on 7/5/24, \$321,000 on 7/23/24, and \$320,000 on 7/31/24.

defect persists after an opportunity to replead. *Id.* § 33.004(g). *In re Coppola*, 535 S.W.3d 506, 507–08 (Tex. 2017).

CONCLUSION

Defendants hereby move this Court for leave to designate MISHEL ASRAF and ASPO ENERGY, INC. as a responsible Third-Party whose conduct is responsible for the damages made the basis of this suit. By the filing of this motion, Defendants hereby place Plaintiff on notice of their intent to submit the comparative responsibility of these responsible Third-Parties pursuant to those provisions within the Civil Practice and Remedies Code. *See*. Tex. Civ. Prac. & Rem. Code §33.004.

Respectfully submitted,

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Unofficial Copy Office of Marilyn Burgess District Clerk

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the District Attorney's Office this February 17, 2025.

/s/ Cordt C. Akers
Cordt C. Akers

Unofficial Copy Office of Marilyn Burgess District Clerk

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