

JURY DEMAND

DC-19-08531

JAVIER HERNANDEZ

CAUSE NO. _____

BRIAN LONCAR, P.C., D/B/A	§	IN THE DISTRICT COURT
LONGAR ASSOCIATES	§	
	§	
Plaintiff,	§	
	§	
vs.	§	___ JUDICIAL DISTRICT
	§	
TOBY TOUDOUZE	§	
	§	
Defendant.	§	DALLAS COUNTY, TEXAS

PLAINTIFF’S ORIGINAL PETITION & REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES **BRIAN LONCAR, P.C., D/B/A LONGAR ASSOCIATES** (hereinafter referred to as “Plaintiff” or “Loncar”) and files this original petition against **TOBY TOUDOUZE** (“Defendant” or “Toudouze”), and would respectfully show the Court as follows:

I. DISCOVERY-CONTROL PLAN

1. Plaintiff intends to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4 and affirmatively pleads that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because Plaintiff seeks equitable relief or, in the alternative, monetary relief over \$100,000.

II. CLAIM FOR RELIEF

2. Plaintiff seeks equitable relief in the form of the return of property including trade secrets and confidential information of the Plaintiff law firm.

3. In the alternative, Plaintiff seeks monetary relief over \$1,000,000. Tex. R. Civ. P. 47(c)(5).

III. PARTIES

4. Plaintiff is a professional corporation doing business in Dallas County, Texas at 424 S. Cesar Chavez Blvd., Dallas, Texas 75201.

5. Defendant, Toby Toudouze, an individual, may be served with process at Defendant's home in Dallas County at 4926 Swiss Avenue, Dallas, Texas 75214, or wherever Defendant may be found.

IV. JURISDICTION

6. The Court has subject matter jurisdiction over the lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

7. The Court has personal jurisdiction over Toudouze because he is a resident of the State of Texas and Dallas County and was a resident of Texas at the time the theft occurred.

V. VENUE

8. Venue is permissive in Dallas County under Texas Civil Practice & Remedies Code section 134.004 because this is a brought under the Texas Theft Liability Act, and Dallas County is where the theft occurred.

VI. FACTS

9. Toby Toudouze was previously an employee of Plaintiff and served as the Chief Financial Officer of Loncar up until April, 2017.

10. On or about March 31, 2017, Toudouze removed boxes of records from the offices of Loncar Associates. These records were the personal property, including trade secrets and financial records of Plaintiff.

11. Additionally, on March 31, 2017 Toudouze removed hard drives and digital information from computers owned by Loncar, which contained additional files and information that were the personal property and trade secrets of Loncar Associates.

12. Toudouze has failed to return the stolen items even though demand has been made that he do so.

13. As an employee of Plaintiff with access to its financial records, Toudouze was entrusted by Plaintiff to act in the interest of Loncar in Defendant's capacity as an employee of Plaintiff with access to privileged and sensitive information.

VII. CAUSES OF ACTION

Count 1 – Theft Liability Act – Theft of Personal Property

14. Plaintiff brings this action under the Texas Theft Liability Act for an unlawful appropriation of physical and digital property, including trade secrets and private financial information under the Texas Civil Practices and Remedies Code Sec. 134.001-134.005 and the Texas Penal Code section 31.03.

15. Loncar was the owner of the written and digital information at issue and was entitled to possession of the boxes of records, the hard drives, and the files contained on the hard drives.

16. Toudouze unlawfully appropriated Plaintiff's personal property and trade secrets in violation of Texas Penal Code section 31.03 in March, 2017.

17. Defendant's unlawful appropriation was made with intent to deprive Plaintiff of the property and information.

18. Defendant's wrongful conduct caused injury to Plaintiff, which resulted in actual damages.

19. Upon proof of actual damages, Plaintiff is entitled to additional statutory damages of up to \$1,000 from Defendant under Texas Civil Practice & Remedies Code section 134.005(a)(1) plus actual damages resulting from the theft.

20. Plaintiff seeks damages within the jurisdictional limits of this Court.

21. Exemplary damages. Loncar's injury resulted from Defendant's malice or actual fraud, which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

22. Loncar's injury resulted from Defendant's felony theft in the third degree or higher under the Texas Penal Code that was committed intentionally and knowingly, which exempts this claim from the cap on exemplary damages under Texas Civil Practice & Remedies Code section 41.008(c).

23. Court costs. Plaintiff is entitled to recover court costs under Texas Civil Practice & Remedies Code section 134.005(b).

24. Attorney fees. Loncar is entitled to recover reasonable and necessary attorney fees under Texas Civil Practice & Remedies Code section 134.005(b).

Count 2 – Breach of Fiduciary Duty

25. Toudouze had a fiduciary relationship with Loncar given his employee status and his position of access to private and confidential financial and trade secret information. Defendant was a long-time employee of Plaintiff and was given access to sensitive and private financial and confidential records and trade secrets at Loncar Associates.

26. Toudouze breached his fiduciary duty to Loncar by stealing from Plaintiff.

27. Defendant's breach of fiduciary duty injured Plaintiff by depriving Plaintiff

of its rightful property, and benefited Defendant by giving Defendant access to private, client records and trade secrets which resulted in actual damages.

28. Plaintiff seeks damages within the jurisdictional limits of this Court.

29. Exemplary damages. Plaintiff's injury resulted from Defendant's malice, fraud, or gross negligence, which entitles Plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

VIII. EQUITABLE RELIEF

30. Plaintiff seeks equitable relief in the form of the return of all stolen property.

IX. JURY DEMAND

31. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

X. REQUESTS FOR DISCLOSURE

32. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2

XI. PRAYER

For these reasons, Plaintiff asks that the Court issue citation for Defendant to appear and answer, and that the Plaintiff be awarded a judgment against Defendant for all damages that resulted from the Defendant's breach of contract. Plaintiff also asks that it be awarded prejudgment and post judgment interest, court costs, attorney fees, and all other appropriate relief, general or special, in law or in equity, to which Plaintiff may be entitled.

Respectfully submitted,

TED B. LYON & ASSOCIATES, P.C.

By: /s/ Dennis Weitzel

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