

2008 SEP 11 AM 10:29

NO. 11-02-1945

DALLAS COUNTY CLERK
DALLAS COUNTY

ANJU GILL FOUNDATION, and its)
BOARD OF DIRECTORS DIANA)
BACON, SARA BROOKE BLANTON,)
JAYME NOURALLAH, SALIM)
NOURALLAH, and RAHIM QUAZI,)

IN THE COUNTY COURT

Plaintiffs,

AT LAW NUMBER OF

v.

ALLISON "ALLY" DAVID-SWANK and)
BEND STUDIO LLC,)

DALLAS COUNTY, TEXAS

Defendants.

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF THE COURT:

COMES NOW Plaintiffs, the Anju Gill Foundation and its Board of Directors, Diana Bacon, Sara Brooke Blanton, Jayme Nourallah, Salim Nourallah, and Rahim Quazi (with all Plaintiffs collectively herein referred to as "AGF"), complaining of Defendants Ally David-Swank and Bend Studio LLC and would respectfully show the Court as follows:

I. DISCOVERY CONTROL PLAN

1. AGF intends for discovery to be conducted under "LEVEL 2", TEX. R. CIV. P. 190.3.

II. PARTIES

2. AGF is a nonprofit charitable foundation doing business in Dallas County, Texas.

3. AGF's individual board members – Diana Bacon, Sara Brooke Blanton, Jayme Nourallah, Salim Nourallah, and Rahim Quazi – are individuals who reside in Dallas County, Texas.

4. Allison "Ally" David-Swank ("Ally David") is an individual who operates and serves as the managing member of Bend Studio in Dallas County, Texas. She can be served with process at her place of business, 5014 McKinney Ave., Dallas, Texas, 75202.

5. Bend Studio LLC ("Bend Studio") is a Texas limited liability corporation located and doing business in Dallas County, Texas and may be served with process by serving its registered agent Ally David-Swank, at 5014 McKinney Ave., Dallas, Texas 75202

III. VENUE AND JURISDICTION

6. Venue is proper in Dallas County, Texas because some of the events or omissions giving rise to AGF's claims occurred in El Paso County, Texas.

IV. STATEMENT OF FACTS

7. This case arises out the unauthorized spending of charitable funds by Ally David and/or Bend Studio.

8. The Anju Gill Foundation was established to honor the memory of Anju Gill, who passed away in 2006, by creating a nonprofit charitable foundation to promote live musical performances in the Dallas area. The Anju Gill Foundation is overseen by a board of five members who direct the foundation and its fundraising efforts. The Anju Gill Foundation is currently unincorporated, but in the process of formalizing itself as an established legal entity. It does, however, have standing to sue under Texas law.

9. Ally David is the owner and operator of Bend Studio, a yoga studio and live musical venue located at 5014 McKinney Ave., Dallas, Texas 75202.

10. Upon creation of the Anju Gill Foundation, Ally David agreed to serve as a fiduciary responsible for the initial \$10,000 donation from Ms. Gill's parents and for the subsequent monies raised at live performances by musicians in honor of the memory of Anju Gill. At the time the foundation's funds were entrusted to Ally David, she both understood and agreed to hold the funds in trust for the Anju Gill Foundation. Ally David also agreed to hold and retain all monies obtained through subsequent fundraisers.

11. Ally David subsequently encouraged and assisted in fundraising activities in the name of, and for the benefit of, the Anju Gill Foundation. With her assistance and assurances, additional funds were raised at musical concerts for the Anju Gill Foundaton. Ally David retained the funds which were raised.

12. AGF recently requested an accounting of the funds entrusted to Ally David's care and responsibility. After several attempts to obtain information from her about the funds raised for the AGF, Ally David admitted that she spent the funds. Those funds did not belong to Ally David, and she was never authorized to spend them. Ally David has defrauded/converted approximately \$12,000 of funds from the Anju Gill Foundation. This constitutes the \$10,000 initial deposit and conservative estimate of \$2,000 raised at the live performances by Billy Harvey, Salim Nourallah, Kacy Crowley, and Rahim Quazi at the Anju Gill Foundation benefits.

V. CAUSES OF ACTION

A. Fraudulent Inducement and Fraud

13. Paragraphs 1 through 12 are incorporated herein as if fully re-alleged.

14. AGF sues Defendants for fraudulent inducement and fraud because Defendants made: (i) material representations; (ii) that were false; (iii) when Defendants made such representations, Defendant knew such representations were false or made such representations recklessly without any knowledge of the truth as positive assertions; (iv) Defendants made such representations with the intention that they would be acted upon by AGF; (v) AGF acted in reliance on the misrepresentations; and (vi) AGF thereby suffered damages. Defendants' fraudulent inducement and fraud caused AGF to suffer actual damages in excess of the minimum jurisdictional limit of the Court. The conduct described in this portion of the petition was a proximate cause of damages to AGF in excess of the minimum jurisdictional limits of the Court.

B. Conversion

15. Paragraphs 1 through 14 are incorporated herein as if fully re-alleged.

16. Plaintiffs' second cause of action against Defendants is for the tort of conversion. In particular, Defendants engaged in the unauthorized and wrongful assumption and exercise of dominion and control over the property of Plaintiffs, to the exclusion of, or inconsistent with, Plaintiffs' rights. Defendants' conversion of property belonging to Plaintiffs has caused Plaintiffs to suffer damages and other costs and expenses within the jurisdictional limit of the Court.

C. Suit in Quantum Meruit/Unjust Enrichment

17. Paragraphs 1 through 16 are incorporated herein as if fully re-alleged.

18. As a further cause of action, AGF would show that it conferred a benefit upon Defendants by providing charitable funds, which, in turn, used and utilized by Defendants to

their benefit. Defendants have been unjustly enriched by their conduct. Defendants failed and refused to pay the balance due AGF for these credentialing and back-office support services.

D. Breach of Contract

19. Paragraphs 1 through 19 are incorporated herein as if fully re-alleged.

20. Alternatively, Defendants failed to comply with the terms of an agreement entered into between the parties. Specifically, Defendants agreed to administer the funds raised by AGF in return for a benefit to Defendants (publicity and other fees earned by Bend Studio). The foregoing acts constitute breaches of contract which has caused AGF to suffer actual damages, together with interest, reasonable attorneys' fees, and other costs and expenses in excess of the minimum jurisdictional limit of the Court. The conduct described in this portion of the petition was a proximate cause of damages to AGF in excess of the minimum jurisdictional limits of the Court.

E. Recovery of Attorneys' Fees for Breach of Contract

21. Paragraphs 1 through 21 are incorporated herein as if fully re-alleged.

22. As a result of the breaches of contract by Defendants, AGF was required to hire legal counsel to prosecute this suit. Accordingly, pursuant to § 37.001 of the Texas Civil Practice and Remedies Code, AGF is entitled to recover its reasonable costs and attorneys' fees incurred in connection with the prosecution of this suit. AGF seeks all reasonable and necessary costs and attorneys' fees in this case which include the following: (i) preparation and trial of this lawsuit; (ii) post-trial, pre-appeal legal services; (iii) an appeal to the Court of Appeals; (iv) making or responding to a request for review of an appeal by the Supreme Court of Texas; (v) an appeal to the Supreme Court of Texas in the event appeal to the Supreme Court of Texas is

granted; and (vi) post-judgment discovery and collection in the event execution on the judgment is necessary.

To date, a reasonable fee is \$1,250. A reasonable fee for the attorney's services rendered and to be rendered is the sum of no less than \$5,000 for the trial of this cause. Should this cause be appealed beyond the trial level then AGF would be entitled to receive a fee of no less than an additional sum of \$5,000. Should the case be appealed beyond the Court of Appeals, then AGF would be entitled an additional reasonable attorney's fees of no less than \$8,000.

F. Recovery of Punitive Damages

23. Paragraphs 1 through 23 are incorporated herein as if fully re-alleged.

24. AGF further sues for the recovery of punitive damages on its claims for fraudulent inducement, fraud and conversion. Defendants acted with the requisite culpable mental state to support an award of punitive damages in connection with these claims. Specifically, Defendants acted with a specific intent to cause substantial injury to AGF. Alternatively, Defendants' conduct, when viewed objectively from the standpoint of Defendants at the time it occurred, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to AGF, and Defendants proceeded with conscious indifference to the rights, safety, or welfare of AGF despite Defendants' actual, subjective awareness of the risk AGF therefore seek to recover punitive damages against Defendants by an amount to be set by the trier of fact.

VI. CONDITIONS PRECEDENT

25. Paragraphs 1 through 25 are incorporated herein as if fully re-alleged.

26. AGF has demanded that Defendants pay the amount due for its various breaches of contract, but Defendants have not done so. Furthermore, all conditions precedent have been performed, or have occurred.

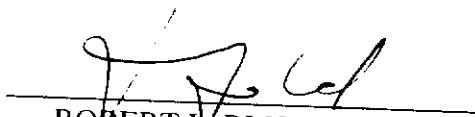
WHEREFORE, PREMISES CONSIDERED, AGF requests that Defendants be cited to appear and answer herein; that the matter be set for trial and that upon said trial it recover judgment against Defendants for actual damages, reasonable attorneys' fees and expenses, costs of court (including, but not limited to, expert and audit fees), punitive damages, pre- and post-judgment interest as well as such other relief at law or in equity to which it is entitled.

Dated this 8th day of September, 2008.

Respectfully submitted,

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