

CAUSE NO. 10-1155-B

FILED
LOIS ROGERS
DISTRICT CLERK

2010 APR 23 PM 12:10

M. MARK LESHER and RHONDA,
LESHER

Plaintiffs

vs.

TONDA L. CURRY,
Defendant

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IN THE DISTRICT COURT
SMITH COUNTY, TEXAS

SMITH COUNTY, TEXAS
By *[Signature]*
DEPUTY

114TH JUDICIAL DISTRICT COURT
OF

SMITH COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE COURT:

Comes now M. MARK LESHER and RHONDA L. CURRY, Plaintiffs, and files this Original Petition complaining of TONDA L. CURRY, Defendant, and would show unto the court the following:

I.

SELECTION OF DISCOVERY LEVEL

Plaintiffs plead that discovery should be conducted in accordance with a tailored discovery control plan under Civil Procedure Rule 190.4.

II.

PARTIES AND SERVICE OF CITATION

The Plaintiffs are individuals residing in Titus County, Texas. The Defendant is an individual and an attorney duly licensed to practice law in the State of Texas residing in Tyler, Smith County, Texas, and may be served with process at 423 S. Spring Avenue, Tyler, Texas 75702.

III.
ATTORNEY/CLIENT RELATIONSHIP

On or about April 24, 2008, Plaintiff M. Mark Leshar consulted with the Defendant in her professional capacity as an attorney, with respect to her representing M. Mark Leshar and wife, Rhonda Leshar, and defending them in a felony criminal matter in Red River County, Texas. The Defendant interviewed the Plaintiff and was advised of all of the facts giving rise to the indictments brought against the Plaintiffs. The Plaintiff requested that the Defendant represent M. Mark Leshar and wife, Rhonda Leshar, and to take such action as would be necessary to defend them in these criminal proceedings. The parties agreed that the Defendant would undertake such representation in return for a fee of Forty-Thousand and No/100 Dollars (\$40,000.00) with a Ten Thousand and No/100 Dollars (\$10,000.00) down payment being made on April 24, 2008, a Twenty Thousand and No/100 Dollars (\$20,000.00) payment being made on May 30, 2008 and the final Ten Thousand and No/100 Dollars (\$10,000.00) payment being made on June 13, 2008. Defendant drafted and insisted that Plaintiffs sign a representation agreement. The payments were all made in accordance with the representation agreement entered into between the parties.

IV.

This lawsuit against the Defendant is based on the following causes of action: (1) Breach of fiduciary duties owed to Plaintiffs; (2) Negligence; (3) Breach of contract; (4) Fraud; (5) Breach of the Deceptive Trade Practices Act.

Plaintiffs will show that Defendant performed little to no criminal defense services for the Plaintiffs. Because of this failure to represent Plaintiffs, Plaintiffs terminated the Defendant by letter dated September 5, 2008. Plaintiff also demanded and instructed the Defendant refund

to Plaintiff's office any unearned fee out of the Forty-Thousand and No/100 Dollars (\$40,000.00) paid to date along with an appropriate accounting. Before this termination letter Plaintiff M. Mark Leshar informed the Defendant that due to various strategic reasons he had employed a separate attorney to represent Rhonda Leshar and that he wanted to continue with the Defendant. At all times it was understood initially that the Defendant would represent both of the Plaintiffs until M. Mark Leshar hired another attorney to represent his wife, Rhonda Leshar, individually. Subsequent to the termination letter of September 5, 2008 the Defendant has refused to provide an exact accounting of all work performed by her and/or her firm to support any fees earned and no refund whatsoever has been made to the Plaintiffs of the Forty-Thousand and No/100 Dollars (\$40,000.00) fee paid.

V.

The Defendant violated the duty owed to the Plaintiffs to exercise ordinary care and diligence exercised by other attorneys practicing in the same locality in the same or similar circumstances and was negligent in failing to properly investigate the facts and circumstances; to provide the Plaintiffs a meaningful defense; in failing to interview prospective witnesses; in failing to ascertain appropriate character witnesses and taking statements from each; in failing to file appropriate discovery requests; in failing to follow-up with the Plaintiffs to assure that their rights were being properly represented; in failing to recognize and know who her clients were; in failing to summarize and become knowledgeable of various documents submitted by Plaintiffs in conjunction with their defense; and in failing to correspond appropriately with the Plaintiffs in any meaningful fashion. Each of the foregoing acts and omissions, taken separately or collectively, constitute a proximate cause of damages set forth below.

VI.

The Defendant owed a fiduciary duty to the Plaintiffs to perform with the highest standards of ethical conduct in providing legal representation. A fiduciary relationship existed between the Plaintiffs and Defendant as this was an attorney/client relationship, and the Defendant has breached her fiduciary duty to the Plaintiffs by failing to provide an appropriate accounting of her services from April 24, 2008 until she was terminated on September 5, 2008; in failing to return any unearned fee; in improperly retaining the \$40,000.00 fee paid to the Defendant; and, in failing to refrain from self dealing and therefore committed a clear and serious violation of the fiduciary duty owed to the Plaintiffs.

Each of the foregoing acts and omissions, taken separately or collectively, constitute a breach of the fiduciary duty owed by the Defendant to the Plaintiffs and Plaintiffs seek a forfeiture of the total fee of Forty-Thousand and No/100 Dollars (\$40,000.00) for said violation.

VII.

Plaintiffs incorporate the above stated factual paragraphs and would further show that the Defendant violated the Texas Deceptive Trade Practices Act in the course of handling the Plaintiffs' criminal defense for the reason that the Defendant engaged in an unconscionable action or course of action in violation of said statute by representing to the Plaintiffs that the Defendant was actively defending the Plaintiffs when in fact the Defendant had undertaken little or no such action. By such conduct, the Defendant took advantage of the Plaintiffs' situation to the Plaintiffs' detriment, to a grossly unfair degree. The Defendant's conduct in engaging in an unconscionable action was a producing cause of the actual damages suffered by Plaintiffs in a sum in excess of Forty-Thousand and No/100 Dollars (\$40,000.00).

VIII.

The Defendant further breached the contract as entered into between the Defendant and the Plaintiffs because she failed to provided effective representation within the bounds of the ethical principles governing lawyers licensed to practice in the State of Texas as set forth in the Texas Disciplinary Rules of Professional Conduct, all to the Plaintiffs' damage in a sum in excess of Forty-Thousand and No/100 Dollars (\$40,000.00).

IX.

Plaintiffs would further show that the Defendant committed constructive fraud because Defendant performed little or no professional criminal defense representation for the Plaintiffs such that a reasonably prudent board certified criminal defense attorney specialist would be expected to and would have been expected to perform. By reason of Plaintiffs' reliance on Defendant's representations of competent criminal defense representation described above, Plaintiffs' have been damaged in an amount within the jurisdictional limits of this Court. Plaintiffs further allege that because of this constructive fraud this conduct allows for imposition of exemplary damages. Accordingly, Plaintiffs request that exemplary damages be awarded against the Defendant in a sum within the jurisdictional limits of this Court.

X.

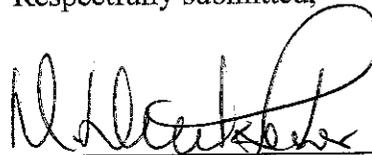
As a result of Defendant's actions, Plaintiffs have or will incur reasonable and necessary attorney fees, which are recoverable under the law.

WHEREFORE, Plaintiffs request that Defendant be cited to appear and answer and that on final trial, Plaintiffs have:

1. Judgment against Defendant for actual damages in a sum within the jurisdictional limits of this Court together with pre-judgment interest as provided by law;

2. Judgment against Defendant for exemplary damages in a sum determined by the trier of fact;
3. Judgment for attorney fees in bringing this action in accordance with the Texas Deceptive Trade Practices Act;
4. Forfeiture of all fees paid to Defendant by Plaintiffs;
5. Interest after judgment as provided by law;
6. Costs of suit;
7. Such other and further relief to which the Plaintiffs may be justly entitled.

Respectfully submitted,



M. Mark Leshner
State Bar No. 12225500

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