

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT

HERZFELD, SUETHOLZ, GASTEL, LENISKI, AND WALL PLLC,)	
)	
Plaintiff,)	
)	
v.)	
)	No. _____
STRANCH, JENNINGS & GARVEY, PLLC, JAMES G. STRANCH, III, R. JAN JENNINGS, J. GERARD STRANCH, IV, and MICHAEL STEWART,)	
)	
Defendants.)	

COMPLAINT

The Plaintiff Herzfeld, Suetholz, Gastel, Leniski, and Wall PLLC (hereinafter “HSGLaW”) for its cause of action against Defendants Stranch, Jennings & Garvey, PLLC (hereinafter “the Stranch firm”) and James G. Stranch, III, R. Jan Jennings, J. Gerard Stranch, IV, and Michael Stewart, individually, states to the Court as follows.

Cause of Action

1. This case arises due to the Defendants’ refusal to comply with a Settlement and Business Restructuring Agreement (the “Agreement”) entered between the parties with an Effective Date of February 9, 2023, as well as the Defendants’ conversion of law firm assets. The Agreement is in the possession of the Defendants. Pursuant to Rule 10.03, Tenn. R. Civ. P. it is not necessary at this time to attach a copy of the Agreement to this Complaint.

2. Tricia Herzfeld, David O’Brien Suetholz, Benjamin Gastel, Joey P. Leniski, Jr., Michael Wall, James G. Stranch, III, R. Jan Jennings, J. Gerard Stranch, IV, and Michael Stewart are lawyers and members of BSJ, PLLC formerly known as Branstetter, Stranch & Jennings, PLLC, a Tennessee professional limited liability

company that previously engaged in the practice of law and whose principal office was located in Davidson County, Tennessee.

3. In early 2023, the members of Branstetter, Stranch & Jennings, PLLC decided to part ways and form two new law firms. A majority of the members (Tricia Herzfeld, David O'Brien Suetholz, Benjamin Gastel, Joey P. Leniski, Jr., and Michael Wall) formed HSGLaW. The remaining members (James G. Stranch, III, R. Jan Jennings, J. Gerard Stranch, IV, and Michael Stewart) formed the Stranch firm.

4. The above-mentioned Agreement addressed the winding up of Branstetter, Stranch & Jennings, PLLC, and the distribution of its assets, liabilities, and client files. The Defendants agreed to pay for various items, such as payroll and benefit expenses, during the transition for employees who joined the Stranch firm. As part of the Agreement, Branstetter, Stranch & Jennings, PLLC's name was changed to BSJ, PLLC.

5. HSGLaW has tried unsuccessfully to get the Defendants to make good on their promises. The Defendants will not even pay for their own retirement plan contributions or their employees' payroll and benefits. In addition, the Defendants have kept funds and other assets from the old law firm without paying for them. HSGLaW has reluctantly concluded that it needs the Court's intervention.

The Parties and Jurisdiction

6. The Plaintiff, HSGLaW, is a Tennessee professional limited liability company whose members and employees are engaged in the practice of law. HSGLaW's principal office is located at 223 Rosa L. Parks Avenue, Suite 300, Nashville, Tennessee 37203.

7. The Stranch firm, a Defendant, is a Tennessee professional limited liability company whose members and employees are engaged in the practice of law. The Stranch firm's principal office is located at 223 Rosa L. Parks Avenue, Suite 200, Nashville, Tennessee 37203.

8. The remaining Defendants, James G. Stranch, III, R. Jan Jennings, J. Gerard Stranch, IV, and Michael Stewart, are currently members of the Stranch firm.

9. This Court has personal jurisdiction over the Defendants and subject matter jurisdiction over this action.

Pertinent Facts

10. Effective February 9, 2023, the members of Branstetter, Stranch & Jennings, PLLC, along with the newly formed HSGLaW and Stranch firm, entered into the Agreement.

11. In the Agreement, the parties agreed on how to wind up the old law firm and transition clients and employees to the new law firms. The parties appointed Michael Wall and Michael Stewart to a Transition Committee to discuss and resolve issues arising under the Agreement.

12. The Defendants have breached the Agreement by failing to reimburse HSGLaW for numerous items. Some of these items were paid by HSGLaW directly. Other items were paid out of the Branstetter, Stranch & Jennings, PLLC operating account, which belonged to HSGLaW. In Section 1.a.ii.1 of the Agreement, the Stranch firm and its members agreed to "have no claim to the monies in the Operating Account as of the Effective Date (subject to any deposits and checks clearing)." When the operating account closed, "all remaining funds therein" belonged to HSGLaW under Section 1.a.ii.4 of the Agreement.

13. The Branstetter, Stranch & Jennings, PLLC operating account was debited \$103,449.22 for payroll and \$38,809.39 for health, dental, and other benefits for employees who left to join the Stranch firm. These payroll and benefit expenses were for services rendered after February 5, 2023. Section 1.b.iv.1 of the Agreement states that such expenses are “the sole and exclusive obligation” of the Stranch firm and that “the members of” the Stranch firm (identified in the Agreement as James G. Stranch, III, R. Jan Jennings, J. Gerard Stranch, IV, and Michael Stewart) must reimburse HSGLaW for such expenses.

14. Section 3 of the Agreement also authorized the Transition Committee members, Michael Wall and Michael Stewart, to make decisions regarding severance payments to employees who did not join either HSGLaW or the Stranch firm. The Transition Committee agreed to provide severance to one such employee and to split the cost evenly between HSGLaW and the Stranch firm. This expense was paid out of the Branstetter, Stranch & Jennings, PLLC operating account. The Stranch firm’s share was \$10,896.25, but it has not paid anything.

15. As another example, the retirement plan sponsored by Branstetter, Stranch & Jennings, PLLC had a funding shortfall of \$37,589.91 for the nine members for 2022. The actuary advised that a contribution in this amount was mandatory under the plan document and that failure to make the contribution would jeopardize the plan’s status as a qualified retirement plan for tax purposes.

16. The required contribution to the retirement plan is an operational cost of Branstetter, Stranch & Jennings, PLLC, to be “split pro rata” between HSGLaW and the Stranch firm under Section 1.b.iv.6 of the Agreement. HSGLaW proposed paying 5/9 of the required contribution for its five members and letting the Stranch firm pay 4/9 of the

contribution for its four members. However, the Stranch firm declined to pay any amount. To avoid a plan violation and severe tax consequences, HSGLaW has paid the entire contribution of \$37,589.91 while reserving its right to collect the Stranch firm's pro rata share. Essentially, the Stranch firm played a game of chicken with the retirement plan, knowing that HSGLaW would not allow it to become disqualified.

17. After the Agreement's Effective Date, the Plaintiff's funds were used to pay expenses for cases that went with the Stranch firm. These included \$1,344 in document review expenses in the Rock 'n Play Sleeper Marketing, Sales Practices, and Products Liability Litigation, paid out of the Branstetter, Stranch & Jennings, PLLC operating account, and \$2,022.16 in attorney travel expenses in the TelexFree Securities Litigation, paid by HSGLaW. Section 1.b.iv.5 of the Agreement states that these case expenses, which were incurred but unpaid as of the Effective Date, are "the responsibility of whichever firm continues representation." Section 1.a.i.1 and Exhibit A of the Agreement provide that the Stranch firm will continue representing the clients in these cases. HSGLaW has asked for reimbursement of the expenses, but the Stranch firm has not provided any.

18. September 15, 2023, was the filing deadline for Branstetter, Stranch & Jennings, PLLC's federal and state tax returns for 2022. HSGLaW oversaw the filing of the tax returns and sent state and local tax payments totaling \$14,573. Section 7.b of the Agreement states that the nine members of Branstetter, Stranch & Jennings, PLLC are each responsible for an equal share of "all taxes incurred and paid" on behalf of the old law firm. James G. Stranch, III, R. Jan Jennings, J. Gerard Stranch, IV, and Michael Stewart owe HSG 4/9 of the state and local tax payments described herein, or \$6,476.89. HSG has not received any reimbursement for these tax payments.

19. Pursuant to the Agreement, the Stranch firm or its members owe HSGLaW nearly \$100,000 for various other operational costs, case expenses, and assets from Branstetter, Stranch & Jennings, PLLC.

20. In addition to breaching the Agreement, Defendants have converted assets that rightfully belong to HSGLaW.

21. The professional liability insurance for attorneys at Branstetter, Stranch & Jennings, PLLC was purchased with funds from its operating account before the reorganization. The insurance was cancelled before the end of the policy term because all of the attorneys moved to new law firms.

22. In April 2023, Thompson Flanagan, the insurance brokerage firm, issued a check for \$27,095.05 to Branstetter, Stranch & Jennings, PLLC as a refund of the unearned premium. The refund would have been \$33,425.51, but the Stranch firm underpaid its agreed-upon share of the cost of tail coverage for Branstetter, Stranch & Jennings, PLLC, so the shortfall was deducted from Branstetter, Stranch & Jennings, PLLC's premium refund.

23. The premium refund check was sent to the former office address of Branstetter, Stranch & Jennings, PLLC in Nashville, which was then occupied by the Stranch firm. The Stranch firm received this check but did not inform HSGLaW.

24. HSGLaW learned of the premium refund check by other means and asked the Stranch firm about it. The Stranch firm's office manager acknowledged receiving the check.

25. The Branstetter, Stranch & Jennings, PLLC operating account was closed on or about April 25, 2023. However, in the ordinary course of business, the premium

refund check would have been deposited into the Branstetter, Stranch & Jennings, PLLC operating account.

26. Under Section 1.a.ii of the Agreement, the Defendants had no claim to funds in the Branstetter, Stranch & Jennings, PLLC operating account. After the payment of certain expenses, all remaining funds in that account belonged to HSGLaW.

27. When HSGLaW asserted its claim to the premium refund, the Stranch firm's office manager responded in a May 16, 2023, email, "I was told it was split."

28. Despite acknowledging that the premium refund should at least be split, the Stranch firm has never provided any of these funds to HSGLaW.

29. Upon information and belief, the Stranch firm has deposited the premium refund check into one of its accounts.

30. Defendants have also converted technology assets. Branstetter, Stranch & Jennings, PLLC paid thousands of dollars for Adobe licenses and DocuSign envelopes, which are important for creating and executing legal documents. Defendants took these assets to use at their new law firm without providing any reimbursement for their value.

31. Section 1.a.iii.5 of the Agreement states that miscellaneous assets like these will be transferred to HSGLaW or the Stranch firm, as determined by the Transition Committee. The members of the Transition Committee, Michael Wall and Michael Stewart, did agree for the Stranch firm to take the Adobe licenses and DocuSign envelopes and to reimburse HSGLaW for their value. However, the Stranch firm has not provided reimbursement.

32. HSGLaW has repeatedly asked the Defendants to follow the Agreement and pay for what they took, but the Defendants refuse to do so.

33. As a direct result of the Defendants' misconduct described herein, HSGLaW has been damaged in an amount in excess of \$250,000.

COUNT I: BREACH OF CONTRACT

34. The Plaintiff realleges and incorporates every allegation set forth above as if fully set forth herein.

35. The Agreement constitutes a valid, binding, and enforceable contract between the parties.

36. The Defendants have breached the Agreement by, among other things, failing to reimburse various expenses and failing to adhere to decisions of the Transition Committee.

37. In addition to the mentioned failures to follow the Agreement, Defendants have refused to use their reasonable best efforts to cooperate mutually and to take all necessary actions to comply with, consummate, and make effective the terms of the Agreement as promptly as reasonably practicable, thereby constituting a breach of Section 10.b of the Agreement.

38. The Defendants' breaches of contract have caused significant damages to HSGLaW, for which the Defendants are liable.

COUNT II: CONVERSION

39. The Plaintiff realleges and incorporates every allegation set forth above as if fully set forth herein.

40. HSGLaW should rightfully have the premium refund issued to Branstetter, Stranch & Jennings, PLLC, and some or all of the value of the Adobe licenses and DocuSign envelopes taken by the Defendants.

41. The Defendants appropriated these assets in defiance of HSGLaW's rights.

COUNT III: UNJUST ENRICHMENT

42. The Plaintiff realleges and incorporates every allegation set forth above as if fully set forth herein.

43. The Plaintiff conferred a benefit upon James G. Stranch, III, R. Jan Jennings, J. Gerard Stranch, IV, and Michael Stewart by paying retirement plan contributions specifically allocated to them for 2022. These contributions increased the retirement plan accounts of the above-mentioned Defendants, giving them greater assets for retirement.

44. These Defendants have accepted and appreciated the benefit of the Plaintiff's retirement plan contributions.

45. It would be inequitable for these Defendants to retain the benefit of the Plaintiff's payments without compensating the Plaintiff. The Plaintiff made the required contributions to avert a violation of the plan and unfavorable tax consequences for all nine Branstetter, Stranch & Jennings, PLLC members. The Defendants were aware of the urgent nature of the situation but declined to contribute anything to their own retirement plan accounts. The Plaintiff should not be punished for acting responsibly and saving the plan and the members of Branstetter, Stranch & Jennings, PLLC from harm. Nor should these Defendants enjoy a windfall by refusing to pay for themselves and letting the Plaintiff save the day.

46. The Plaintiff asserts this unjust enrichment claim for the retirement plan contributions in the alternative to the Plaintiff's breach of contract claim for such contributions.

COUNT IV: ACCOUNTING

47. The Plaintiff realleges and incorporates every allegation set forth above as if fully set forth herein.

48. The Plaintiff is entitled to an accounting from the Defendants of all funds and other assets of Branstetter, Stranch & Jennings, PLLC that the Defendants have received, used, or disposed of since the Effective Date of the Agreement.

PRAYER FOR RELIEF

The Plaintiff requests the following relief:

- A. A judgment in favor of the Plaintiff against the Defendants for compensatory damages;
- B. An accounting from the Defendants, as described above;
- C. Any further equitable or injunctive relief to which the Plaintiff is entitled;
- D. An award of pre-judgment interest; and
- E. The Plaintiff's costs and any other relief to which the Plaintiff is entitled.

Respectfully submitted,

/s/ William D. Leader, Jr.

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