

231,751
PROVOST UMPHREY LAW FIRM, LLP

33rd JUDICIAL DISTRICT COURT

VS. NO.: 0-2005-605

PARISH OF ALLEN

JIMMY R. FAIRCLOTH, JR. AND
FAIRCLOTH, VILAR & ELLIOTT, LLC

STATE OF LOUISIANA

FILED: _____

DEPUTY CLERK

PETITION FOR DAMAGES

NOW INTO COURT, through undersigned counsel, comes Plaintiff, Provost Umphrey Law Firm, LLP, hereinafter referred to as "PROVOST UMPHREY", which files this Petition for Damages.

1.

The following are named as Defendants herein:

- A. JIMMY R. FAIRCLOTH, JR., an individual of the full age of majority, hereinafter referred to as "FAIRCLOTH", who may be served at his place of business, FAIRCLOTH, VILAR & ELLIOTT, LLC, 1535 Jackson Street, Alexandria, Louisiana, 71315;
- B. FAIRCLOTH, VILAR & ELLIOTT, LLC, a limited liability corporation, hereinafter referred to as "FAIRCLOTH LAW FIRM", which may be served at its business headquarters, FAIRCLOTH, VILAR & ELLIOTT, LLC, 1535 Jackson Street, Alexandria, Louisiana, 71315.

2.

Venue is proper in Allen Parish, Louisiana, under LSA-C.C.P. Art. 74 because the wrongful conduct complained of herein transpired in such Parish and because damages were sustained in such Parish.

3.

This cause of action is being brought within one (1) year of the injury complained of herein by PROVOST UMPHREY. Specially, on or about June 9, 2005, PROVOST UMPHREY was informed by way of letter that FAIRCLOTH had assumed legal representation of PROVOST UMPHREY'S client, Coushatta Tribe of Louisiana (hereinafter "TRIBE") and that TRIBE had discharged PROVOST UMPHREY. Further, in November 2005, PROVOST UMPHREY discovered that FAIRCLOTH had maligned and falsely denigrated PROVOST UMPHREY, and had intentionally interfered with PROVOST UMPHREY'S contractual attorney-client relationship with TRIBE.

At all material times, Defendant, FAIRCLOTH, was employed by and an agent of FAIRCLOTH LAW FIRM, and as such, Defendant, FAIRCLOTH LAW FIRM, is responsible herein under respondeat superior.

On or about October 12, 2004, PROVOST UMPHREY entered into a contract to provide legal representation to TRIBE, for the purpose of bringing an action against parties responsible for economic losses suffered by TRIBE, totaling more than thirty-two (32) million dollars, as a result of tortious malfeasance by several parties, including lobbyists Jack Abramoff and Michael Scanlon, and the law and lobbying firm of Greenberg Traurig, LLP. PROVOST UMPHREY filed suit against the malfeasors on behalf of TRIBE on or about November 16, 2004

Subsequent to the hiring of PROVOST UMPHREY by TRIBE, after suit was filed, and while the lawsuit was being vigorously prosecuted by PROVOST UMPHREY, Defendant FAIRCLOTH, an attorney at law, contacted TRIBE. At such time, FAIRCLOTH knew well that TRIBE was represented by PROVOST UMPHREY in TRIBE'S lawsuit against Abramoff, Scanlon and Greenberg Traurig. Even so, and in contravention of his ethical duties as a member of the bar, FAIRCLOTH improperly solicited said employment from TRIBE, maligning and denigrating PROVOST UMPHREY and other associated law firms who were collaborating with PROVOST UMPHREY in the effort to secure a judgment for the TRIBE against Abramoff, Scanlon, and Greenberg Traurig. FAIRCLOTH further interfered with the known contractual relationship then existing between PROVOST UMPHREY and TRIBE and invaded said business relationship by requesting that TRIBE discharge PROVOST UMPHREY and by inducing TRIBE'S withdrawal from the contract with PROVOST UMPHREY, persuading TRIBE instead to retain FAIRCLOTH and FAIRCLOTH LAW FIRM to prosecute said suit against Abramoff, Scanlon, and Greenberg Traurig.

Thereafter, TRIBE discharged PROVOST UMPHREY with no assignment of cause, and instead retained FAIRCLOTH and FAIRCLOTH LAW FIRM to pursue the lawsuit filed

by PROVOST UMPHREY against Abramoff, Scanlon, and Greenberg Traurig.

8.

The aforementioned conspiratorial acts by FAIRCLOTH and FAIRCLOTH LAW FIRM were in violation of established contractual rights then existing between PROVOST UMPHREY and TRIBE, and were motivated by FAIRCLOTH'S greed and animus against PROVOST UMPHREY. Said interference and misconduct by FAIRCLOTH and FAIRCLOTH LAW FIRM directly caused PROVOST UMPHREY the loss of legal representation of TRIBE, from which representation PROVOST UMPHREY could reasonably anticipate a contractually agreed-to attorney fee of forty percent (40%) of the sums recovered for TRIBE in remedy of and for the damages inflicted by Abramoff, Scanlon and Greenberg Traurig, believed at this time to be approximately thirty-two (32) million dollars.

9.

PROVOST UMPHREY shows further that the actions of FAIRCLOTH and FAIRCLOTH LAW FIRM were initiated out of avarice, and for the purpose of depriving PROVOST UMPHREY of the right to continue as counsel of and to TRIBE, and for FAIRCLOTH and FAIRCLOTH LAW FIRM to acquire, in place of PROVOST UMPHREY, the benefit of an attorney fee for recovery of sums misappropriated from TRIBE by Abramoff, Scanlon, and Greenberg Traurig, thereby unjustly enriching FAIRCLOTH and FAIRCLOTH LAW FIRM at the expense of PROVOST UMPHREY. Said unethical, unscrupulous, and substantially injurious acts and misdeeds by FAIRCLOTH and FAIRCLOTH LAW FIRM constitute unfair acts and conduct offensive to established public policy.

10.

At all material times, Defendant, FAIRCLOTH, was working under the auspices and supervision of Defendant, FAIRCLOTH LAW FIRM. At all material times, FAIRCLOTH LAW FIRM was negligent in failing to adequately supervise, train control, and monitor Defendant, FAIRCLOTH.

11.

As a result of the foregoing actions and inactions by the Defendants herein, PROVOST UMPHREY has suffered considerable loss and damage. PROVOST

UMPHREY has lost considerable sums of money, and thus prays for damages reasonable in the premises.

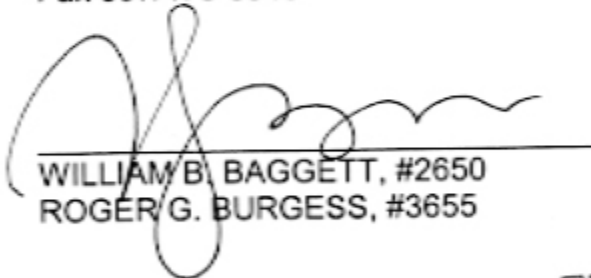
12.

All Defendants are liable individually, jointly, and in solido.

WHEREFORE, Plaintiff prays that Defendants, JIMMY R. FAIRCLOTH, JR. and FAIRCLOTH, VILAR & ELLIOTT, LLC, be duly served with a copy of this petition and cited to appear and answer same, and after the lapse of all legal delays and due proceedings be had, that there be judgment herein in favor of Plaintiff, PROVOST UMPHREY LAW FIRM, LLP, and against Defendants, JIMMY R. FAIRCLOTH, JR. And FAIRCLOTH, VILAR & ELLIOTT, LLC, individually, jointly, and in solido, and for such damages as are reasonable in the premises, together with legal interest from date of judicial demand until paid, and for all costs of these proceedings.

Plaintiff further prays for such additional relief as the law, equity, and the nature of the case may permit.

Respectfully submitted,
BAGGETT, McCALL, BURGESS, WATSON & GAUGHAN
3006 Country Club Road
Lake Charles, LA 70605
Tel 337/478-8888
Fax 337/478-8946



WILLIAM B. BAGGETT, #2650
ROGER G. BURGESS, #3655

BY
DY CLECK & RECORDER
PARISH LA

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FILED RECORDED
CAROLYN J. RILEY AND
CLERK OF COURT

PLEASE HOLD SERVICE ON THE DEFENDANTS.

PROVOST UMPHREY LAW FIRM, LLP

33rd JUDICIAL DISTRICT COURT

VS. NO.: 0-2005-605-

PARISH OF ALLEN

JIMMY R. FAIRCLOTH, JR. AND
FAIRCLOTH, VILAR & ELLIOTT, LLC

STATE OF LOUISIANA

FILED: _____

DEPUTY CLERK

**REQUEST FOR WRITTEN NOTICE
OF ASSIGNMENT AND WRITTEN NOTICE
OF ANY ORDER OR JUDGMENT MADE OR RENDERED**

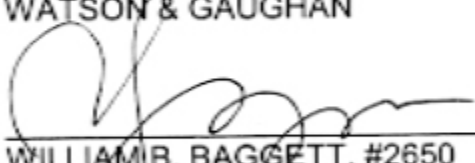
TO: Honorable Gerald W. Harrington
Clerk of Court
33rd Judicial District Court
Allen Parish Courthouse
Oberlin, Louisiana

In accordance with the provisions of LSA - C.C.P. 1571 and 1572, you are hereby requested to give the undersigned, as counsel for petitioner in the above-captioned matter, written notice, by mail, ten (10) days in advance of any date fixed for trial or hearing of the case, whether on exception, rules or the merits thereof.

In accordance with the provisions of LSA - C.C.P. 1914 and 1915, you are hereby additionally requested to send us immediate notice of any order or judgment made or rendered in this case on the entry of such order or judgment.

By their attorneys,

BAGGETT, McCALL, BURGESS,
WATSON & GAUGHAN


WILLIAM B. BAGGETT, #2650
ROGER G. BURGESS, #3655
3006 Country Club Road
Post Office Drawer 7820
Lake Charles, LA 70606-7820
(337) 478-8888
(337) 478-8946

BY
DEPUTY CLERK & RECORDER
PARISH OF ALLEN

08 JUN -5 AM 1:37

FILED & RECORDED
CAPTAIN T. RYLAND
CLERK OF COURT

PROVOST UMPHREY LAW FIRM, LLP * 33rd JUDICIAL DISTRICT COURT
VERSUS * DOCKET NO. C-2005-605
JIMMY FAIRCLOTH, JR., ET AL * ALLEN PARISH, LOUISIANA

POST HEARING MEMORANDUM IN SUPPORT OF DEFENDANTS
EXCEPTION OF IMPROPER VENUE

MAY IT PLEASE THE COURT:

Exceptors, Jimmy R. Faircloth, Jr. and Faircloth, Vilar & Elliot, LLC (hereinafter collectively "Faircloth") offer this post hearing memorandum regarding the exception and defenses thereto offered at the hearing on the exception held on Friday, August 31, 2007. As set forth at the hearing, the only proper venue in the State of Louisiana is in Rapides Parish.

Specifically, at the hearing, plaintiff argued that because the lawsuit for which Provost Umphrey was originally hired to prosecute is ongoing in Allen Parish, the damages sustained by Provost Umphrey are likewise sustained in Allen Parish. However, as this Court is aware, plaintiffs offered and introduced a copy of the contingency fee contract between the Coushatta Tribe and the law firm of Provost Umphrey as evidence at the hearing. It is important to reiterate that this is a contingency fee agreement.

Therefore, any remuneration under the contract in favor of Provost Umphrey is contingent upon a successful outcome of the underlying matter. As plaintiffs have noted, the underlying matter has not yet been resolved. To that end, defendants assert that plaintiff's have yet to suffer any alleged damage if in fact, which is at all times denied, there is any merit to the claims of tortuous interference with the contract between Provost Umphrey and the Tribe. To that end, any argument that the damages were sustained in Allen Parish thus making Allen Parish a Parish of proper venue should not be considered.

Moreover, as pointed out by the defendants at the hearing, Provost Umphrey is a Texas law firm. Any remuneration in favor of Provost Umphrey under its agreement with the Tribe would have taken place in Texas upon the conclusion of the underlying matter. Presumably, any judgment or settlement funds would have been deposited in

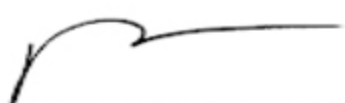
Provost Umphrey's Trust Account which upon information and belief is in Texas. All disbursements to Provost Umphrey would have taken place in Texas. Consequently, if any damage was sustained, the alleged damages would have been sustained in Texas.

Finally, defendants would reiterate their argument that under Louisiana law, the acts of an attorney are deemed to take place in the Parish where the attorney's office is located. *Long Leaf Vending, Inc. v. Louisiana Coca-Cola Bottling Company*, 97-1359 (La.App. 4 Cir. 4/8/98), 709 So.2d 366, 368. This should hold true whether the allegations are for negligent representation of a client or tortious interference with a contract. Both are delictual actions under the law and there should be no distinction for the purposes of the venue argument.

Likewise, if in fact any alleged tortious conduct occurred outside of Rapides Parish, which is at all times denied, the only other location would have been within the confines of the sovereign Coshatta Nation. As such, these alleged acts did not occur in Allen Parish as the Coshatta Nation is not a part of Allen Parish. This leaves only Rapides Parish as the Parish of proper venue.


Respectfully submitted,

JEANSONNE & REMONDET



MICHAEL J. REMONDET, JR. #21046
Post Office Box 91530
Lafayette, LA 70509
Telephone: (337) 237-4370
Fax: (337) 235-2011
ATTORNEYS FOR DEFENDANTS,
JIMMY R. FAIRCLOTH, JR. AND
FAIRCLOTH, VILAR & ELLIOT, LLC

CERTIFICATE

I HEREBY CERTIFY that a copy of the above and foregoing has been served upon all counsel of record by depositing same in the U.S. Mail, properly addressed, with sufficient postage affixed thereto on this 5 day of August, 2007 



MICHAEL J. REMONDET, JR.

PROVOST UMPHREY LAW FIRM, LLP 33rd JUDICIAL DISTRICT COURT
VERSUS DOCKET NO. C-2005-605
JIMMY FAIRCLOTH, JR., ET AL ALLEN PARISH, LOUISIANA

JUDGMENT

On May 16, 2008, this Court, Honorable Judge John Navarre, presiding, considered JIMMY R. FAIRCLOTH, JR. AND FAIRCLOTH, VILAR & ELLIOT, LLC's Declinatory Exception of Improper Venue:

In consideration of the pleading, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that JIMMY R. FAIRCLOTH, JR. AND FAIRCLOTH, VILAR & ELLIOT, LLC's Declinatory Exception of Improper Venue is granted and the case be transferred to the proper venue for this proceeding which is Rapides Parish.

THUS DONE AND SIGNED this 16 day of May, 2008, at Oberlin, Louisiana.

John Navarre
JUDGE JOHN NAVARRE
ad hoc

BY
BY CLERK & RECORDER
ALLEN PARISH, LA

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FILED & RECORDED
CAROLYN A. RYLAND
ALLEN PARISH, LA

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