

FILED *AC*

CAUSE NO. CC-11-04547-A

2011 JUN 29 PM 1:28

CHRIS L. GILBERT,

Plaintiff,

v.

**DIANE CALDWELL, individually, and
CALDWELL & ASSOCIATES, INC.,**

Defendants.

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IN THE COUNTY COURT

JOHN F. WARREN
COUNTY CLERK
DALLAS COUNTY

AT LAW NO. 1

DALLAS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

The Plaintiff Chris L. Gilbert ("Gilbert") files his Original Petition against the Defendants Diane Caldwell, individually, Caldwell & Associates, Inc. ("Caldwell & Associates") (collectively, "Caldwell") (collectively, "Defendants").

I.

DISCOVERY CONTROL PLAN

1. Discovery is intended to be conducted under **Level III** pursuant to Texas Rule of Civil Procedure 190.4.

II.

NATURE OF THE CASE

2. This lawsuit for compensatory and punitive damages is brought by a Texas attorney against a Dallas legal recruiter who made representations and fraudulently convinced him to join a Washington, D.C.--based law firm.

III.
PARTIES

3. Plaintiff Chris Gilbert is an attorney in Dallas, Dallas County, Texas.

4. Caldwell & Associates, Inc. is a Texas recruiting firm whose principal place of business is 1201 Elm Street, Suite 2929 and which also conducts business at 4415 Black Otter Trail, Dallas, Texas 75287. Caldwell & Associates, Inc. is owned and operated by Diane Caldwell ("Caldwell"), a citizen of the State of Texas and a resident of Collin County, Texas.

IV.
JURISDICTION AND VENUE

5. Defendants were doing business in Dallas, Dallas County, Texas at all times relevant to this lawsuit. Therefore, jurisdiction and venue are proper in Dallas, Dallas County, Texas. As a proximate result Defendants actions, damages in excess of the minimum jurisdictional limits of this Court were incurred by Plaintiff.

V.
SERVICE

6. Service of process may be obtained upon Defendant Caldwell & Associates by delivery of the citation upon:

Caldwell & Associates, Inc.
c/o its Registered Agent Diane S. Caldwell
1201 Elm Street, Suite 2929
Dallas, TX 75270

or

4415 Black Otter Trail
Dallas, Texas 75287

7. Or upon the appropriate person and/or entity upon whom service can be obtained at the last known address.

8. Service of process may be obtained upon Diane Caldwell, individually, by delivery of the citation upon:

Diane Caldwell
4415 Black Otter Trail
Dallas, TX 75287

VI.

FACTS

9. Gilbert is a licensed attorney in the States of Texas and Tennessee. He began his legal career in Nashville with a prestigious law firm, where he became a partner.

10. This dispute began when Caldwell recruited Gilbert away from the law firm K&L Gates LLP (“K&L Gates”) where he was a partner, to the Dallas office of Patton Boggs.

11. For her efforts, Caldwell received substantial compensation for moving Gilbert to Patton Boggs.

12. Around April 2008, Caldwell *initiated* a call to Gilbert and made various representations to him including, among others, that she was an independent recruiter, it would be in his best interests to leave K&L and go to another firm where he could make more money and grow his practice to the next level.

13. Caldwell explained that Gilbert was in a “lock-step” compensation system and that as a young partner with portable business he would never be fairly compensated in such a

system for many years and that she knew of much better opportunities for him that would advance his career and increase his compensation.

14. Upon being asked about references and the nature of her business and status, Caldwell told Gilbert that she was an independent recruiter, not tied to any particular firm, which enabled her to obtain competing offers from many different prominent firms, she also represented that she had worked with very prominent attorneys in the past, such as former United States Secretary of State James Baker III, and was currently working with other prominent attorneys at K&L Gates.

15. Gilbert believed, trusted and relied on Caldwell's representations. She continually told Gilbert that as a veteran of the Dallas legal community she would look out for Gilbert's best interests, would represent him and his best interests and that she had contacts in the Dallas legal community and the ability to place Gilbert at several different Dallas firms.

16. Caldwell contacted other firms and arranged meetings with those firms, which appeared to be advantageous for Gilbert. However, Caldwell continually stressed Patton Boggs was the best fit because it was "entrepreneurial," very stable, profitable and had an "objective" compensation system based on fee production, which would economically benefit Gilbert.

17. She constantly stressed that Gilbert should avoid subjective and "lock-step" systems offered at other firms.

18. Following meetings with Patton Boggs' representatives, Gilbert told Caldwell that he was more interested in another firm due to various concerns he had with Patton Boggs.

19. Caldwell then told Gilbert, among other things, that any issues he had with Patton Boggs would be resolved to his satisfaction because Gilbert would be made practice leader in Dallas, have total management over the department and make more money than in the other firm.

20. Caldwell also told Gilbert that he should accept the offer from Patton Boggs because the other firms couldn't move according to Gilbert's timetable because, in her experience with those firms, they tended to move slowly and were not "nimble."

21. Caldwell told Gilbert that she had received assurances from the Patton Boggs Partners that they would completely support his practice after he moved to their firm and make him a practice group leader.

22. Caldwell also told Gilbert to bring a group with him both to service the portable client base and work that was waiting and that being made practice group leader of a major firm was a huge, once-in-a-lifetime opportunity.

23. Caldwell never disclosed the nature of her close relationship with Patton Boggs. The promises Caldwell made were false.

24. Gilbert later learned that Caldwell was on a retainer from Patton Boggs to find lateral partners with business, despite the fact that she had represented that she was an independent recruiter and working on Gilbert's behalf.

25. Caldwell had not disclosed that she actually worked for Patton Boggs to Gilbert during the recruiting process, but instead told him that she was an independent legal recruiter working for Gilbert only, to find the best law firm for him and only had Gilbert's best interests in mind.

26. The promises and representations made to Gilbert by Caldwell, a person he trusted, were false and deceitful causing Gilbert substantial damages.

VII.
CAUSES OF ACTION

COUNT 1 - NEGLIGENCE

27. Pursuant to Texas State law Gilbert pleads a cause of action for negligence. The allegations contained in all of the paragraphs of this Petition are hereby reaverred and realleged, for all purposes, and incorporated herein with the same force and effect as set forth verbatim herein.

28. Defendants made numerous representations or omissions to Gilbert in the course of Defendants' business or in a transaction in which Defendants had an interest. Defendants supplied false information for the guidance of Gilbert. Defendants did not exercise reasonable care or competence in obtaining or communicating this information. Gilbert justifiably relied on the misrepresentations and omissions in leaving his prior firm to join Patton Boggs. Defendants' misrepresentations and omissions proximately caused Gilbert to suffer substantial damages. Defendants' actions were fraudulent, malicious, and/or grossly negligent and subject them to exemplary damages in an amount to be determined by the jury.

COUNT 2 - FRAUD

29. Pursuant to Texas State law Gilbert pleads a cause of action for fraud. The allegations contained in all of the paragraphs of this Petition are hereby reaverred and realleged, for all purposes, and incorporated herein with the same force and effect as set forth verbatim herein.

30. Defendants made numerous material misrepresentations or omissions to Gilbert to induce him to join Patton Boggs. These representations were false and/or were made recklessly, as positive assertions, and without knowledge of their truth. Defendants made these

representations and omissions with the intent that Gilbert rely on them, and Gilbert did rely on them to his detriment. Defendants' misrepresentations and omissions proximately caused Gilbert to suffer substantial damages. Defendants' actions were fraudulent, malicious, and/or grossly negligent and subject them to exemplary damages in an amount to be determined by the jury.

COUNT 3 - BREACH OF FIDUCIARY DUTY

31. Pursuant to Texas State law Gilbert pleads a cause of action for fiduciary duty. The allegations contained in all of the paragraphs of this Petition are hereby reaverred and realleged, for all purposes, and incorporated herein with the same force and effect as set forth verbatim herein.

32. As Gilbert's recruiter, Caldwell owed a fiduciary duty to Gilbert.

33. Caldwell's actions - in particular her failure to disclose her relationship with Patton Boggs - in recruiting Gilbert to Patton Boggs breached that fiduciary duty.

34. That breach proximately caused injury to Gilbert.

COUNT 4 - BREACH OF CONTRACT

35. Pursuant to Texas State law Gilbert pleads a cause of action for breach of contract. The allegations contained in all of the paragraphs of this Petition are hereby reaverred and realleged, for all purposes, and incorporated herein with the same force and effect as set forth verbatim herein.

36. Gilbert and Caldwell entered into a valid contract for Caldwell to serve as Gilbert's legal recruiter.

37. Caldwell breached that contract.

38. As a result of that breach, Gilbert has been damaged.

39. As a further result of that breach, Gilbert has been forced to retain attorneys and is, therefore, entitled to the recovery of attorney's fees under Chapter 38 of the Texas Civil Practice & Remedies Code.

VIII.
REQUEST FOR DISCLOSURE

40. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, you are requested to disclose, within the time provided by the Rules, the information described in Rule 194.2 (a)-(l) of the Texas Rules of Civil Procedure.

IX.
REPORTER DEMAND

41. Plaintiffs request the Official Court Reporter for this Court, perform all the duties of the office, as set forth in Section 52.046 of the Government Code of the State of Texas, and as set forth in Rule 13 of the Rules of Appellate Procedure, including reporting all testimony and trial proceedings, voir dire examinations and jury arguments.

X.
JURY DEMAND

42. Gilbert demands a trial by jury.

XI.
RESERVATION OF RIGHTS

43. Gilbert reserves the right to amend his complaint to assert such additional causes of action as may be revealed during discovery.

XII.
ATTORNEYS' FEES

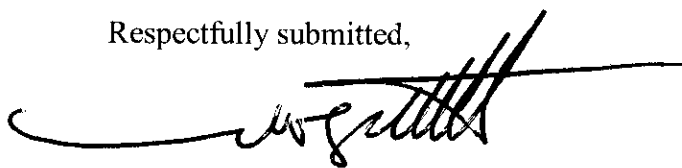
44. Gilbert also seeks to recover reasonable attorney's fees and expenses expended in this action as provided under §38.001 of the Texas Civil Practice and Remedies Code, and as provided elsewhere by law. All conditions precedent to all relief being sought by Plaintiff in the above-referenced lawsuit have been met, performed and occurred.

XIII.
PRAYER

WHEREFORE, Gilbert prays that Defendants be cited to appear and to answer herein and that upon final trial, he have judgment against Defendants, jointly and severally, in an amount in excess of the minimum jurisdictional limits of this Court, for the following:

- (a) All damages, whether actual, consequential, or punitive, to which Gilbert is entitled;
- (b) reasonable attorneys' fees, reasonable paralegal fees, costs of court and pre- and post-judgment interest at the highest rate allowed by law;
- (c) an order revoking any license enabling Defendant(s) to operate in Texas and revoking any certificate authorizing Defendant(s) to do business in Texas if any judgment rendered in this case has not been satisfied within three (3) months from the date of filing said final judgment; and
- (d) Such other and further relief, general or special, at law or in equity, to which Gilbert may show himself entitled.

Respectfully submitted,



R. Rogge Dunn
Texas State Bar No. 06249500
CLOUSE DUNN LLP
1201 Elm Street, Suite 5200
Dallas, TX 75270-2142
Tel: 214.220.3888
Fax: 214.220.3833
Email: RDunn@trialtested.com

ATTORNEYS FOR PLAINTIFF



5200 RENAISSANCE TOWER
1201 ELM STREET
DALLAS, TEXAS 75270-2142
PH: (214) 220.3888 ▲ FAX: (214) 220.3833

TINA M. VANDERBURG

PARALEGAL

WRITER'S DIRECT DIAL: (214) 239-2702
WRITER'S E-MAIL: tvanderburg@cdklawyers.com

June 29, 2011

County Clerk
George L. Allen Sr. Courts Building
600 Commerce Street
Dallas, TX 75202

- VIA OVERNIGHT
- VIA HAND DELIVERY
- VIA FIRST CLASS MAIL
- VIA FAX :
- VIA CERTIFIED MAIL/RRR

FILED
2011 JUN 29 PM 1:26
JOHN E. WARRICK
CLERK
DALLAS COUNTY CLERK'S OFFICE
DALLAS

Re: Chris L. Gilbert vs. Diane Caldwell, Individually and Caldwell & Associates, Inc.

Our File: Gilbert/PB
Our File No: 2275-55555

Dear Clerk:

Enclosed please find the following document(s) in the above-referenced matter:

1. Plaintiff's Original Petition; and
2. Check in the amount of \$229.99 for filing fee and issuance of citation.

Please issue the citation for service by private process to the following Defendants:

Diane Caldwell
4415 Black Otter Trail
Dallas, TX 75287

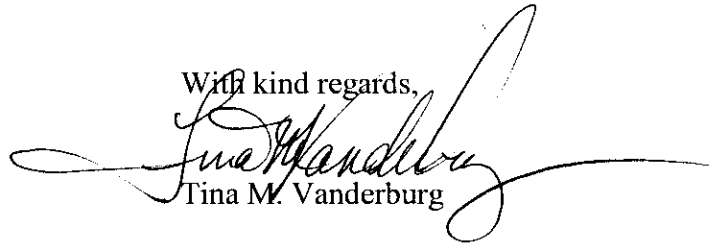
And

Caldwell & Associates, Inc.
c/o Registered Agent – Diane S. Caldwell
1201 Elm Street, Suite 2929
Dallas, TX 75270
or
4415 Black Otter Trail
Dallas, TX 75287

Please file the Petition and return the extra file-stamped copies of the Petition and the Citations to the awaiting courier.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

With kind regards,



Tina M. Vanderburg

TMV:

cc: w/enc, w/o enc, no enc.

Rogge Dunn, Esq. (Our Firm)