

COPY

CAUSE NO. 101209-00D

TALON/LPE, LTD.,

Plaintiff,

V.

KEVIN CASHMAN; TEXAS
CONSTRUCTION & DEMO, INC.;
RED INDUSTRIAL, INC.;
JOSE PEREZ, d/b/a J.N.I. CONTRACTORS;
GRANT-HILL, INC.; SUSAN RING;
MEGAN CASHMAN; and
ETHEL CASHMAN,

Defendants.

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IN THE _____ DISTRICT COURT

IN AND FOR

filed 2/6/13

POTTER COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE COURT:

COMES NOW Plaintiff, TALON/LPE, LTD. ("~~Talon~~"), ~~complaining of KEVIN CASHMAN, TEXAS CONSTRUCTION & DEMO, INC., RED INDUSTRIAL, INC., JOSE PEREZ, d/b/a J.N.I. CONTRACTORS, GRANT-HILL, INC., SUSAN RING, MEGAN CASHMAN, and ETHEL CASHMAN~~ ("~~Defendants~~"), and for cause of action respectfully shows as follows:

DISCOVERY CONTROL PLAN

1. Plaintiff intends discovery be conducted pursuant to Tex. R. Civ. P. 190.4 (Level 3).

PARTIES

2. Talon/LPE, Ltd. is a Texas limited liability company with its principal office in Amarillo, Potter County, Texas.

3. Kevin Cashman is a resident of Lubbock County, Texas who may be served with process at 307 Raider Blvd., Wolfforth, Texas 79328. Plaintiff requests the court issue citation and deliver it to Plaintiff's process server for service.

4. Texas Construction & Demo, Inc. is a Texas corporation and may be served with process by service on its Registered Agent, Susan Ring, at 1057 Nottingham, Wolfforth, Texas 79382. Plaintiff requests the court issue citation and deliver it to Plaintiff's process server for service.

5. Red Industrial, Inc. is a Texas corporation and may be served with process by service on its Registered Agent, Northwest Registered Agent, 700 Lavaca Street, Suite 1402, Austin, Texas 78701. Plaintiff requests the court issue citation and deliver it to Plaintiff's process server for service.

6. Jose Perez d/b/a J.N.I. Contractors is believed to be a resident of Lubbock County, Texas and may be served with process at 2704 N. M.L.K., Jr. Blvd., Lubbock, TX 79403. Plaintiff requests the court issue citation and deliver it to Plaintiff's process server for service.

7. Grant-Hill, Inc. is a Texas corporation with its principal place of business at 14 Brentwood Circle, Lubbock, Texas 79407. It may be served with process by service on Glen D. Gay, its Registered Agent at 14 Brentwood Circle, Lubbock, Texas 79407. Plaintiff requests the court issue citation and deliver it to Plaintiff's process server for service.

8. Susan Ring is a resident of Lubbock County, Texas who may be served with process at 1057 Nottingham, Wolfforth, Texas 79382. Plaintiff requests the court issue citation and deliver it to Plaintiff's process server for service.

9. Megan Cashman is a resident of Lubbock County, Texas and may be served with process at 1057 Nottingham, Wolfforth, Texas 79382. Plaintiff requests the court issue citation and deliver it to Plaintiff's process server for service.

10. Ethel Cashman is a resident of Lubbock County, Texas and may be served with process at 1057 Nottingham, Wolfforth, Texas 79382. Plaintiff requests the court issue citation and deliver it to Plaintiff's process server for service.

JURISDICTION & VENUE

11. The court has jurisdiction over the case pursuant to Tex. Gov. Code § 24.007.

12. Venue is proper in Potter County, Texas pursuant to Tex. Civ. Prac. & Rem. Code § 15.002 because a substantial part of the events giving rise to Plaintiff's claims occurred in the county.

GENERAL FACTUAL ALLEGATIONS

13. Talon's business activities include providing general construction and utility construction services for clients. ~~One of Talon's projects was the replacement of a cooling tower for Lubbock Power & Light's Massengale Station.~~

14. Defendant Kevin Cashman was hired by Talon in Potter County on June 30, 2009 as a project manager/estimator. His job duties included the selection and coordination of subcontractors, overseeing the performance of subcontractors, and approval of subcontractor invoices. He was assigned as the ~~project manager for ongoing Talon projects with Lubbock Power & Light.~~ At all relevant times, Kevin Cashman was an employee of Talon and owed Talon fiduciary duties of good faith, loyalty, candor and full disclosure.

15. In or about September 2011, Kevin Cashman moved to Lubbock County, Texas in order to be closer to the projects assigned to him and for which he was responsible. His address

was either 1507 Nottingham Drive, Wolfforth, Texas or 1509 Westminster Drive, Wolfforth, Texas.

16. Unknown to Talon, Kevin Cashman and Susan Ring formed Texas Construction & Demo, Inc. a/k/a ~~TexXcon~~ on June 1, 2010. The listed address for the registered agent was 1507 Nottingham Drive, Wolfforth, Texas, the same address as Kevin Cashman's residence. It is believed that Kevin Cashman and Susan Ring are brother and sister.

17. Beginning in July, 2010, ~~TexXcon~~ began invoicing Talon for work on projects supervised by Kevin Cashman, and Kevin Cashman approved TexXcon invoices and forwarded the invoices to Talon in Amarillo for payment. Talon processed the invoices and issued payment in Amarillo. Kevin Cashman, Susan Ring and Texas Construction & Demo, Inc. a/k/a TexXcon invoiced Talon \$254,708 and has to date been paid \$114,284. True and correct copies of the invoices are attached hereto as Exhibit "A." True and correct copies of documents evidencing payments made by Talon are attached hereto as Exhibit "B."

18. ~~The work shown on TexXcon's invoices was either not done, done by other subcontractors or was done by Kevin Cashman while a full-time employee of Talon and drawing his monthly salary.~~

19. On October 9, 2012, Kevin Cashman, Ethel Cashman and Megan Cashman, as its directors, formed Red Industrial, Inc. Red Industrial's principal address and the address for all three directors was listed as 1507 Nottingham Drive, Wolfforth, Texas, Kevin Cashman's address as well as the address of the registered agent for TexXcon, and the address to which Talon's payments were mailed.

20. Kevin Cashman began directing another ~~subcontractor, Grant Hill, Inc.~~, to invoice Talon for work purportedly done by Red Industrial and/or Kevin Cashman and then directed the

subcontractor to issue payment to him personally in the amount of \$10,000 and additional payments to Red Industrial in the amount of \$90,000. True and correct copies of documents evidencing payment to Kevin Cashman and Red Industrial are attached hereto as Exhibit "C."

21. Kevin Cashman approved inflated invoices by yet another subcontractor, ~~Quality Construction and Home Improvements~~, for work that was not done or approved rates beyond those that were normal and customary. Kevin Cashman then directed the subcontractor to issue checks payable to Kevin Cashman totaling \$25,622. True and correct copies of documents evidencing payment to Kevin Cashman are attached hereto as Exhibit "D."

22. It is believed Kevin Cashman paid Talon funds to ~~J.N.I. Contractors~~ and those funds have not been credited back to Talon. It is also believed that Kevin Cashman approved ~~inflated invoices submitted by J.N.I. Contractors~~ for work that was not done, done by other subcontractors, or done by Kevin Cashman while on Talon's payroll. It is further believed that Kevin Cashman directed J.N.I. Contractors to make payments to him, TexXcon, and/or Red Industrial.

23. In December 2012, Talon discovered Kevin Cashman's activities and terminated his employment.

24. On December 19, 2012, Talon's counsel wrote Kevin Cashman and Texas Construction & Demo demanding repayment of all sums, less credits, paid to TexXcon and all sums received by Kevin Cashman from Talon subcontractors. As of the date hereof, those sums remain outstanding. A true and correct copy of the demand letter is attached hereto as Exhibit "E."

FIRST CAUSE OF ACTION: FRAUD

25. Talon reasserts paragraphs 2 through 24 as if restated herein.
26. Kevin Cashman acting individually and as an agent for Texas Construction & Demo, Inc., TexXcon, and Red Industrial, Inc. prepared and submitted false invoices to Talon.
27. Susan Ring acting individually and as an agent for Texas Construction & Demo, Inc., and TexXcon prepared and submitted false invoices to Talon.
28. Kevin Cashman, individually and as an agent for Red Industrial, Inc. prepared and submitted false invoices to Grant-Hill, Inc. and directed Grant-Hill, Inc. pass the invoice charges through to Talon.
29. It is believed Kevin Cashman directed J.N.I. Contractors to submit false invoices to Talon and directed J.N.I. Contractors to remit funds back to him, TexXcon and/or Red Industrial.
30. The invoices represented that the charges were for labor and materials provided on the Talon Massengale Project.
31. The representations were false. In reality, either no labor or materials were provided, the labor or materials were provided by others, or the services or labor was performed by Kevin Cashman while an employee of Talon and performed while on Talon's payroll for many of the charges shown on the invoices.
32. The representations were material. The amount of the invoices submitted by Grant-Hill total \$234,904, and TexXcon total \$254,708. J.N.I. Contractors also submitted invoices totaling \$289,050, not all of which represent labor or material provided by J.N.I. Contractors.

33. Kevin Cashman, individually and as an agent of Texas Construction & Demo, Inc., TexXcon and as agent for Red Industrial, knew the representations were false. Susan Ring, individually and as agent of Texas Construction & Demo, TexXcon; Grant-Hill, Inc.; and Jose Perez knew the representations were false or were reckless as to the truth of the representations.

34. Kevin Cashman, individually and as agent for Texas Construction & Demo, TexXcon, and Red Industrial and Susan Ring, individually and as agent for Texas Construction & Demo, TexXcon; Grant-Hill, Inc.

35. Glen Gay, the principal of Grant-Hill, knew the representations in the Grant-Hill invoices to Talon were false or were reckless as to the truth of the representations and intended Talon to rely on the representations made in the invoices.

36. Jose Perez, the principal of J.N.I. Contractors, knew the representations in the J.N.I. Contractor invoices were false or were reckless as to the truth of the representations and intended Talon rely on the representations made in the invoices.

37. Talon relied on the representations made in the statements and issued payments: to Texas Construction & Demo in the amount of \$114,284 (less applicable credits); to Grant-Hill, Inc. in the amount of \$162,090; to Quality Construction and Home Improvement in the amount of \$124,756; and to J.N.I. Contractors in the amount of \$191,800. Portions of the payments made by Talon to TexXcon, Grant-Hill, Inc. and Quality Construction and Home Improvement were paid by them to Kevin Cashman individually and/or Red Industrial. It is further believed that portions of the payments to J.N.I. Contractors were paid by it to Kevin Cashman individually, and/or Red Industrial.

38. Talon was injured by its reliance on the false representations because it paid money for labor or materials not provided, for labor or material provided by others, or paid for labor provided by Kevin Cashman while on the Talon payroll and in violation of his fiduciary duties to Talon.

SECOND CAUSE OF ACTION: BREACH OF FIDUCIARY DUTY

39. Talon reasserts the allegations set forth in paragraphs 2 through 38 above as if restated herein.

40. From June 30, 2009 through December 17, 2012, Kevin Cashman was an employee of Talon. As a Project Manager, Kevin Cashman was delegated significant responsibility in the selection of subcontractors, the supervision of subcontractors, and the oversight and approval of subcontractor billings and invoices.

41. As an employee, Kevin Cashman owed a fiduciary duty to Talon with respect to the performance of his duties and in his dealings with the company. As an employee, Kevin Cashman's fiduciary duty to Talon included the following:

- a. the duty to act in Talon's best interest;
- b. the duty of loyalty and utmost good faith;
- c. the duty to refrain from self-dealing;
- d. the duty of fair and honest dealing; and
- e. the duty of full disclosure.

42. Kevin Cashman's actions, as alleged above, breached his fiduciary duty.

43. Through his actions in breach of his fiduciary duty, Kevin Cashman obtained benefits for himself and the other Defendants.

44. Kevin Cashman's breaches of his fiduciary duties create a presumption of unfairness, and he bears the burden of proof to show his conduct was fair to Talon.

45. Talon is entitled to an accounting of Kevin Cashman's, Texas Construction & Demo's, and Red Industrial's records to determine the benefit gained by Kevin Cashman due to the breach of his fiduciary duty; the disgorgement of all profits and benefits derived by Kevin Cashman, Texas Construction & Demo, Red Industrial, and those acting in concert with Kevin Cashman, along with exemplary damages and Talon's equitable attorneys' fees.

THIRD CAUSE OF ACTION: MONEY HAD AND RECEIVED

46. Talon reasserts the allegations set forth in Paragraphs 2 through 45 above as if fully set forth herein.

47. Kevin Cashman, Susan Ring, Megan Cashman, and Ethel Cashman, Texas Construction & Demo, and Red Industrial received money from Talon based on fraudulent representations and as the result of Kevin Cashman's breaches of fiduciary duty. ~~Collectively, they have improperly received in excess of \$340,000.~~

48. Grant-Hill, Inc. received money from Talon based on fraudulent representations. Grant-Hill, Inc. has improperly received payments of \$162,090.

49. J.N.I. Contractors received money from Talon based on fraudulent representations. J.N.I. Contractors has received payments of \$191,800. Talon is entitled to recover that portion of the payments that were not properly due J.N.I. Contractors.

50. Because the money was received as the result of fraudulent representations and/or as the result of Kevin Cashman's breach of his fiduciary duty to Talon, it in equity and good conscience the money, or the fruits of those proceeds belong to Talon and should be disgorged by Defendants.

51. Talon is entitled to recover the above sums from Defendants, along with pre-judgment interest and exemplary damages.

FOURTH CAUSE OF ACTION: CONSPIRACY

52. Talon reasserts the allegations set forth in Paragraphs 2 through 51 above as if fully set forth herein.

53. Kevin Cashman and Susan Ring, along with Texas Construction & Demo, Inc., TexXcon; Grant-Hill, Inc.; J.N.I. Contractors; Megan Cashman; and Ethel Cashman conspired to commit fraud on Talon through the use of fraudulent invoices for labor and materials either not provided, provided by others or provided by Kevin Cashman while on the Talon payroll and by directing Talon's payments be paid over to Kevin Cashman and/or Red Industrial.

54. Susan Ring; Megan Cashman; Ethel Cashman; Texas Construction & Demo, TexXcon; Red Industrial, Inc.; Grant-Hill, Inc.; and J.N.I. Contractors knew Kevin Cashman was an employee of Talon, knew Kevin Cashman owed fiduciary duties to Talon and that Kevin Cashman's actions were in breach of his duty to Talon or acted recklessly and in disregard of Kevin Cashman's duty to Talon.

55. Kevin Cashman; Susan Ring; Megan Cashman; Ethel Cashman; Texas Construction & Demo, Inc., TexXcon; Grant-Hill, Inc.; J.N.I. Contractors; and Red Industrial, Inc. conspired to commit fraud on Talon through the use of fraudulent invoices to be billed by other subcontractors for labor and materials either not provided, provided by others or provided by Kevin Cashman while on the Talon payroll and passed through to Talon and by directing the Talon payments be paid over to Kevin Cashman and Red Industrial .

56. Kevin Cashman; Susan Ring; Megan Cashman; Ethel Cashman; Texas Construction & Demo, Inc., TexXcon; Grant-Hill, Inc.; J.N.I. Contractors; and Red Industrial,

Inc. conspired to breach Kevin Cashman's fiduciary duties to Talon and to receive money and benefits for themselves.

DAMAGES

57. Talon reasserts the allegations set forth in Paragraphs 2 through 56 above as if fully set forth herein.

58. Talon is entitled to the following damages:

- a. disgorgement of all benefits received by Kevin Cashman; Susan Ring; Megan Cashman; Ethel Cashman; Texas Construction & Demo, Inc., TexXcon; Red Industrial, Inc.; Jose Perez d/b/a J.N.I. Contractors; and Grant-Hill, Inc. as the result of Kevin Cashman's breach of his fiduciary duty to Talon;
- b. an accounting of all money and benefit received by any Defendant from Talon or any Talon subcontractor, and damages for money had and received which in good faith belongs to Talon;
- c. damages for money paid to Defendants by Talon due to fraudulent representations;
- d. equitable attorneys' fees;
- e. exemplary damages;
- f. pre-judgment interest; and
- g. such other damages to which Talon shows itself to be justly entitled.

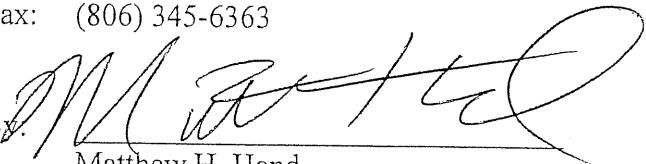
PRAYER

59. Talon prays that Defendants be cited to appear herein and upon final hearing, Plaintiff have judgment against Defendants as set forth in Paragraph 58 above.

Respectfully submitted,

Matthew H. Hand
State Bar No. 08897150
mhand@bf-law.com
Conrad D. Hester
State Bar No. 24066562
cdhester@bf-law.com
BROWN & FORTUNATO, P.C.
P. O. Box 9418
Amarillo, TX 79105-9418
Tel: (806) 345-6300
Fax: (806) 345-6363

By:

A handwritten signature in black ink, appearing to read 'M. H. Hand', written over a horizontal line.

Matthew H. Hand

ATTORNEYS FOR PLAINTIFF

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