

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

E. A. RENFROE & COMPANY, INC., )	)	
Plaintiff, )	)	CIVIL ACTION NO.
-vs- )	)	2:06-CV-06-WMA-1752-S
CORI RIGSBY MORAN and )	)	Judge William M. Acker, Jr.
KERRI RIGSBY )	)	
Defendants. )	)	
_____ )	)	

**RENFROE’S RESPONSE TO DEFENDANTS’  
MOTION FOR SUMMARY JUDGMENT  
(LACK OF SUBJECT MATTER JURISDICTION)**

Plaintiff E. A. Renfroe & Company, Inc. (“Renfroe”) files this Response to Defendants Cori Rigsby Moran’s and Kerri Rigsbys’ (“Defendants” or “Rigsbys”) Motion for Summary Judgment (Lack of Subject Matter Jurisdiction) (Dkts # 216-218) and would show the Court that the Motion should be denied because the amount in controversy exceeds the jurisdictional limit of \$75,000 as required by 28 U.S.C. § 1332(a).

## **I. AMOUNT IN CONTROVERSY WAS ESTABLISHED AT THE TIME SUIT WAS FILED.**

### **A. Authorities and Analysis**

A federal court's diversity jurisdiction depends on facts as they exist when the complaint is filed. *State Farm Mut. Auto. Ins. Co. v. Powell*, 87 F.3d 93, 97 (3<sup>rd</sup> Cir. 1996). Subsequent events that reduce the amount in controversy below the statutory minimum do not require dismissal. *Id.* (dismissal not required even though three insurance policies had originally been in effect, but the only policy in effect at the time of the motion to dismiss did not meet the statutory requirement in place at that time). It has long been the rule that neither a plaintiff's inability to recover an amount adequate to give federal court jurisdiction, nor the fact that the complaint discloses a valid defense ousts jurisdiction. *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938).

Only if the face of pleadings shows to a "legal certainty" that the plaintiff cannot recover the amount claimed, or if the plaintiff's claim to recover the jurisdictional amount was never colorable, will the suit be dismissed for lack of subject matter jurisdiction. *Id.* Even if subsequent events that occur after the filing of the suit cause the amount in controversy to fall below the jurisdictional amount, jurisdiction is not defeated. *Id.*

## **B. Factual Support.**

Before Renfroe filed this suit on September 1, 2006, when the Rigsbys were thought to be Renfroe employees, they had appeared in newspapers and on national television on ABC's 20/20 program wearing State Farm issued jackets, showing both Renfroe and State Farm confidential documents to a nationwide audience, touting their theft of 15,000 pages of documents from State Farm and Renfroe, and, finally, revealing that they were employed by Dick Scruggs. At the time the suit was filed, Renfroe feared that it could lose its contracts with its clients because its reputation for trustworthiness in protecting their confidential and trade secret information was being destroyed.<sup>1</sup> Renfroe was also hearing that its independent adjusters were speculating on Renfroe's future and were worried that they might not have jobs because of the possible cancellations of Renfroe's insurance company clients.<sup>2</sup> On September 1, 2006, when this suit was filed, Renfroe was facing both millions of dollars in economic damages from *inter alia* the possible loss of its current business relationships with its clients and independent adjusters as well as harm to its reputation.<sup>3</sup>

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<sup>1</sup> Exhibit A, Affidavit of Jana Renfroe at ¶¶ 2-9.

<sup>2</sup> Exhibit A, ¶¶ 2-9.

<sup>3</sup> See Exhibit A at ¶¶ 2-9.

Both the Rigsbys and the Court understood that there were damages at stake well in excess of the jurisdictional minimum. The Rigsbys, in their Answer (Dkt. # 14 at ¶ 4), did not challenge the jurisdictional amount and admitted this Court's jurisdiction pursuant to 28 U.S.C. § 1332. At a hearing on November 14, 2006, this Court said it anticipated sophisticated damages testimony from experts to quantify economic damages and warned the Rigsbys through their counsel that they may be "exposed to the big one." (Dkt. 46 at pp. 43-46).

It is clear that Renfroe, in good faith, believed that its entire corporate existence had been threatened by the Rigsbys' publicized actions, the Rigsbys had accepted the amount in controversy in excess of the jurisdictional minimum, and this Court understood that the Rigsbys were exposed to a significant judgment. The amount in controversy at the time the case was filed met the requirements of 28 U.S.C. § 1332(a).

## **II. DAMAGES FOR BREACH OF CONTRACT EXCEED THE JURISDICTIONAL MINIMUM.**

### **A. Authorities and Analysis**

The Rigsbys erroneously claim that Renfroe's stipulation that it does not seek lost profits or lost business opportunity damages has eliminated all claims for money damages. There are three judicially recognized measures of damages for breach of contract: (1) "expectation interest" which is

having the benefit of the bargain; (2) “reliance interest” which is reimbursement for losses resulting from the breach; and (3) “restitution interest” which is restoration to the plaintiff of any benefit conferred on the other party as a result of the breach. Restatement (Second) of Contracts § 344; *see e.g. Quigley v. Bennett*, 227 S.W.3d 51, 56 (Tex. 2007); *see also Snow v. Compass Bancshares, Inc.*, 2000 WL 33598653 \*3 (Ala. Cir. Ct. Dec. 13, 2000), *rev’d on other grounds* 823 So.2d 667 (Ala. 2001) (recognizing restitution of benefits as possible remedy for breach of contract). The measure of the restitution is the value of the benefit to the defendant. *David M. Somers & Assoc., P.C. v. Busch*, 927 A.2d 832, 409 (Conn. 2007) (citations omitted).

Renfroe has stipulated that it does not seek breach of contract damages based on its financial losses, but it has preserved its right to seek restitution of the benefits gained by the Rigsbys’ as a result of the breach of their contracts.<sup>4</sup> “Restitution measures the remedy by the defendants’ gain” whereas expectation and reliance damages “measures the plaintiff’s loss.” 1 D. Dobbs, *Dobbs Law of Remedies* § 4.1(1) p. 455 (West 1993); *Nat’l Rural*

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<sup>4</sup> Exhibit B, a true and correct copy of Renfroe’s Supplement to Plaintiff’s Initial Disclosures at ¶ 3 in which Renfroe specifically ties its arguments regarding punitive damages and the recovery of attorneys’ fees to provisions of the Alabama Trade Secrets Act, but does not limit its recovery of the Rigsbys’ ill-gotten “benefits” solely to that statute.

*Telecomm. Coop. v. DirectTV, Inc.*, 319 F. Supp. 1059, 1080-81 (C.D. Cal. 2003).

“[W]here an employee wrongly profits from the use of information obtained from his employer, the measure of damages may be the employee’s gain.” *Storage Technology Corp. v. Cisco Systems, Inc.*, 395 F.3d 921, 925 (8<sup>th</sup> Cir. 2005). Restitution is based on the concept of unjust enrichment. “A person who has been unjustly enriched at the expense of another is required to make restitution to the other.” Restatement (First) of Restitution § 1; *Blue Cross/Blue Shield of Alabama v. Wyeth Pharmaceuticals, Inc.*, 2006 WL 1241019 \*11 (Ala. Cir. Ct. Feb. 27, 2006).

### **B. Factual Support.**

The Rigsbys have admitted that the only reason they were in a position to “consult” for their attorney/employer Richard Scruggs and the Scruggs Katrina Group was because of what they had learned as Renfroe employees.<sup>5</sup> The only knowledge the Rigsbys had of the documents they stole or the significance, if any, of the information on those documents was learned in their capacity as Renfroe employees.<sup>6</sup> The topics on which they were hired to consult required the Rigsbys’ knowledge of the significance of

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<sup>5</sup> Exhibit E, a true and correct copy of excerpts from Cori Rigsby’s January 2007 deposition (“Cori Depo I”) at 158:21-159:2; Exhibit F, a true and correct copy of excerpts from Kerri Rigsby’s January 2007 deposition (“Kerri Depo I”) at 120:1-5.

<sup>6</sup> *Id.*

the stolen documents and the way Renfroe and State Farm conducted their businesses.<sup>7</sup>

The Employment Agreements and Codes of Conduct signed by both Defendants required that they not disclose or misappropriate any documents or information related to the business of Renfroe or its clients.<sup>8</sup> By disclosing State Farm's and Renfroe's confidential information in the news media and to Richard Scruggs and his colleagues for use in their private, for profit lawsuits, the Rigsbys misappropriated confidential documents and information. *E. A. Renfroe & Co., Inc. v. Moran*, 249 Fed. Appx. 88, 92 (11<sup>th</sup> Cir. 2007). By law, Renfroe is entitled to a remedy for the damages it suffered as a result of the Rigsbys' breach. *See Claybrook v. Cent. United Life Ins. Co.*, 387 F. Supp. 2d 119, 1204 (M.D. Ala. 2005). Renfroe, as plaintiff, has elected to seek the remedy of restitution.

The United States District Court for the Southern District of Mississippi has found that the payment of "consulting fees" to Rigsbys by Richard Scruggs or the Scruggs Katrina Group was inextricably tied to the Rigsbys' misappropriation of the documents and information in this case.<sup>9</sup>

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<sup>7</sup> Exhibit E, Cori Depo I at 157:12-159:2; Exhibit F, Kerri Depo I at 117:20-120:5.

<sup>8</sup> *See e.g.*, Exhibit C, true and correct copy of Employment Agreement at ¶ 6a; true and correct copy of Exhibit D, Code of Conduct at p. 2.

<sup>9</sup> Exhibit I, a true and correct copy of the April 4, 2008 Memorandum Opinion on Motion to Disqualify Members of the Katrina Litigation Group and Associated Counsel at p. 2 and Order of Disqualification and for the Exclusion of Evidence issued by the

Disgorgement and restitution of those “consulting fees” which total at least \$450,000 are, *inter alia*, appropriate damages for the Rigsbys’ breaches of their employment contracts and their violations of the Alabama Trade Secrets Act.

**III. RENFROE’S CLAIM AGAINST THE RIGSBYS FOR VIOLATION OF THE ALABAMA TRADE SECRETS ACT IS A VIABLE CLAIM FOR MORE THAN \$75,000.**

**A. Authorities and Analysis**

The Rigsbys argue that, because they have filed a motion for summary judgment challenging Renfroe’s claim that the Rigsbys violated the Alabama Trade Secrets Act (“ATSA”),<sup>10</sup> the Court should dismiss all amounts in controversy attributable to that claim.<sup>11</sup> First, as more fully presented in Renfroe’s Motion for Partial Summary Judgment Regarding Violation of the Alabama Trade Secrets Act and Opposition to Defendants’ Motion for Summary Judgment (Dkt. No. 268 which is fully incorporated herein by reference), Renfroe – not the Rigsbys – is entitled to judgment as a matter of law granting recovery on the ATSA claim. Second, “[when] issues of jurisdictional amounts are intertwined with the merits of the case, courts should be careful not to decide merits under the guise of determining

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United States District Court for the Southern District of Mississippi, Judge Senter presiding.

<sup>10</sup> Ala. Code §§ 8-27-1 et seq.

<sup>11</sup> Dkt. No. 217 at p.3.



jurisdiction, without the ordinary incidents of a trial.” *Johns-Manville Sales Corp. v. Mitchell Enterprises, Inc.*, 417 F.2d 129, 131 (5<sup>th</sup> Cir. 1969).<sup>12</sup> The Rigsbys’ allegations in a motion do not divest this Court of jurisdiction.

### **B. Factual Support**

As shown in Dkt. No. 268 and 269, Renfroe has established all elements of its ATSA claim (some of those elements are further established with the help of the Rigsbys’ own experts).<sup>13</sup> Renfroe is, therefore, entitled to recover all “benefits” acquired by the Rigsbys as a result of their misappropriation of trade secrets.<sup>14</sup> At the very least, Renfroe is entitled to recover the \$450,000 the Rigsbys have admitted receiving as “consulting fees” from July 2006 through January 2008 for their services attributable to the misappropriated documents and information based solely on what they learned as Renfroe employees.<sup>15</sup> Renfroe also contends that the attorneys fees paid on their behalf by Richard Scruggs and possibly others are also recoverable “benefits” under the ATSA. The recoverable \$450,000 in

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<sup>12</sup> Decisions of the Fifth Circuit, as that court existed on September 30, 1981, are binding as precedent on all federal courts within the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206 (11<sup>th</sup> Cir. 1981).

<sup>13</sup> See Dkt. No. 269 at pp. 17-40.

<sup>14</sup> Ala. Code § 8-27-4.

<sup>15</sup> Exhibit E, Cori Rigsby Depo I at 149:12-18; 158:21-159:2; Exhibit G, true and correct copies of excerpts from Cori Rigsby’s January 2008 deposition (“Cori Depo II”) at 11:25-12:4; 85:22-86:14; Exhibit F, Kerri Depo I at 116:5-12; 120:1-5; Exhibit H, true and correct copy of excerpts from Kerri Rigsby’s January 2008 (“Kerri Depo II”) at 3:19-23.

“consulting fees” alone are clearly in excess of the jurisdictional amount as to both the breach of contract claim and the statutory claim.

#### **IV. Constructive Trust.**

In addition to the remedies discussed in Sec. II and III above, Renfroe seeks the imposition of a constructive trust on the benefits the Defendants acquired through their misappropriations. (Dkt. #2 at ¶ 64(c)). The Rigsbys wrongly acquired documents that were either owned by Renfroe or were entrusted to Renfroe by State Farm. The Rigsbys then used the wrongly acquired documents and information and became Scruggs’ highly paid consultants to the detriment of Renfroe and its client State Farm. “A constructive trust is, then, the remedial device through which preference of self is made subordinate to loyalty to others.” *American Family Care, Inc. v. Irwin*, 571 So.2d 1053, 1059 (Ala. 1990) citing *Meinhard v. Salmon*, 249 N.Y. 458, 164, 545, 548 (1928), Cardozo, J.

Defendants may not retain the beneficial interest in that misappropriated property. “When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee.” *Brown v. Brown* 604 So. 365, 370 (Ala. 1992) (emphasis in the original) (citations omitted). In *Brown*, the former wife of a deceased insured sued the

insured's widow seeking to impose a constructive trust on the proceeds of two life insurance policies of which the first wife's son was, by divorce decree, supposed to have been the beneficiary. *Id.* at 366-67. In violation of the divorce decree, the husband had allowed the two policies addressed in the divorce decree to lapse and took out another policy naming the current wife as his beneficiary. *Id.* After the husband's death, the Alabama Supreme Court determined that the husband was not free to simply change the beneficiary on the policy in derogation of the divorce decree. *Id.* at 369. Consequently, the court imposed a constructive trust in favor of the son on the proceeds of the remaining life insurance policy of which the second wife was the beneficiary. *Id.* at 370.

Similarly, this Court should impose a constructive trust on the proceeds and benefits the Rigsbys received through their misappropriation of confidential documents and information in derogation of their contractual acknowledgements and obligations to Renfroe. The Rigsbys may not be allowed in good conscience to retain benefits from their misappropriation any more than they were entitled to retain the stolen property itself. Those benefits belong to Renfroe, and those benefits are greatly in excess of the minimum jurisdictional amount under 28 U.S.C. § 1332(a).

## V. CONCLUSION

At the time this suit was filed on September 1, 2006, the damages to Renfroe, as understood by Renfroe, the Rigsbys, and this Court, greatly exceeded the minimum jurisdictional limits. Even if subsequent events were to later reduce the amount in controversy below the minimum (which has not happened here), dismissal is not required. The method of determining the amount in controversy is entirely within the discretion of the trial court. *Foret v. Southern Farm Bureau Life Ins. Co.*, 918 F.2d 534, 537 (5<sup>th</sup> Cir. 1990) (citations omitted). Renfroe is entitled to restitution damages or the imposition of a constructive trust on the “benefits” acquired by the Rigsbys as a result of their breaches of their employment contracts. Renfroe is further entitled to recover the “benefits” acquired by the Rigsbys for their misappropriation of trade secrets. These “benefits” greatly exceed the minimal jurisdictional amount. Subject matter jurisdiction in this Court is, therefore, proper.

ACCORDINGLY, Renfroe respectfully requests that this Court deny Defendants’ Motion for Summary Judgment claiming lack of subject matter jurisdiction and grant Renfroe whatever additional relief in law or equity to which it is justly entitled.

Respectfully submitted this 9<sup>th</sup> day of May, 2008.

By: /s/ Jack E. Held

Jack E. Held

Alabama Bar No. 6188-H65J

jackheld@sirote.com

/s/ J. Rushton McClees

J. Rushton McClees

Alabama Bar No. ASB-8805-C39J

rmcclees@sirote.com

SIROTE & PERMUTT, P.C.

2311 Highland Avenue South

Birmingham, Alabama 35205

205-930-5100

205-930-5101

And

By: /s/ Barbara Ellis Stanley

Barbara Ellis Stanley

Admitted Pro Hac Vice

Texas Bar No.: 19043800

bstanley@helmsgreene.com

HELMS & GREENE, LLC

One City Centre, Suite 1290

1021 Main Street

Houston, Texas 77002

713-651-0277

713-651-0288 (Fax)

bstanley@helmsgreene.com

**ADDITIONAL CO-COUNSEL FOR PLAINTIFF:**

Victoria L. Helms, Esq.

(Admitted to Practice *Pro Hac Vice*)

Georgia Bar No. 344228

vhelms@helmsgreene.com

Steven S. Greene, Esq.  
(Admitted to Practice *Pro Hac Vice*)  
Georgia Bar No. 308715  
sgreene@helmsgreene.com

Helms & Greene, LLC  
115 Perimeter Center Place  
Suite 635  
Atlanta, GA 30346  
tel: (770) 206-3371  
fax: (770) 206-3381

CERTIFICATE OF SERVICE

I hereby certify that on this the 9<sup>th</sup> day of May, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel of record:

Robert E. Battle, Esq. / rbattle@bfgwc.com  
Harlan F. Winn, III, Esq. / hwinn@bfgwc.com  
Jon H. Patterson, Esq. / jpatterson@bfgwc.com  
Battle Fleenor Green Winn & Clemmer LLP  
The Financial Center  
505 North 20th Street  
Suite 1150  
Birmingham, AL 35203

Frank M. Bainbridge, Esq. / fbainbridge@bainbridgemims.com  
Bruce F. Rogers, Esq. / brogers@bainbridgemims.com  
Bainbridge, Mims, Rogers & Smith, LLP  
Post Office Box 530886  
Birmingham, AL 35253

John W. Keker, Esq. / jwk@kvn.com  
Brook Dooley, Esq. / bdooley@kvn.com  
Keker & Van Nest, LLP  
710 Sansome Street  
San Francisco, CA 94111-1704

/s/ Barbara Ellis Stanley