



24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON
STATE OF LOUISIANA

NO. 701-083

SPYRIDON C. CONTOGOURIS and STEPHEN A. BALDWIN

VERSUS

OCEAN THERAPY SOLUTIONS, L.L.C.

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DEPUTY CLERK

FIRST SUPPLEMENTAL AND AMENDING PETITION FOR DAMAGES

NOW INTO COURT, through undersigned counsel, come Plaintiffs, Spyridon C. Contogouris (hereinafter "Contogouris") and Stephen A. Baldwin (hereinafter "Baldwin") (Contogouris and Baldwin sometimes collectively referred to herein as "Plaintiffs"), who desire to supplement and amend their original Petition for Damages (hereinafter "Petition") filed herein as follows:

I.

Plaintiffs adopt and reallege all of the allegations previously asserted in their Petition, a copy of which is attached hereto as Exhibit "A".

II.

Plaintiffs supplement and amend their Petition by adding the following paragraphs, 3A, 3B and 3C to name additional Defendants:

3A.

Also made defendant herein is John W. Houghtaling, II (hereinafter "Houghtaling"), a person of the full age of majority who, upon information and belief, is domiciled in the Parish of Orleans, State of Louisiana, and who also maintains a law practice in the Parish of Jefferson, State of Louisiana.

3B.

Also made defendant herein is Gauthier, Houghtaling & Williams, LLP (hereinafter "GHW") which, upon information and belief, is a registered Louisiana limited liability partnership with its principal place of business in the Parish of Jefferson, State of Louisiana.

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3C.

Also made defendant here in XYZ Insurance Company which, upon information and belief is a licensed Louisiana insurance company who may be served through its agent for service and whom at all pertinent times maintained a policy of legal malpractice insurance errors and omission coverage for all claims prayed.

III.

Plaintiffs supplement and amend their Petition by replacing paragraphs 4-25 of the Petition with the following paragraphs 4-42:

JURISDICTION AND VENUE

4.

Jurisdiction is vested in this Court as this controversy involves certain contractual agreement(s) conected in part by and between Plaintiffs and OTS in the Parish of Plaquemines, State of Louisiana for work to be performed by Plaintiffs, in part, in the Parish of Plaquemines, State of Louisiana.

5.

Jurisdiction is further vested in this Court as this controversy also involves certain negligent and/or wrongful actions or omissions by Houghtaling and/or GHW as well as certain breach(es) of various duties owed to Plaintiffs by Houghtaling and/or GHW, which actions, omissions and/or breach(es) took place, in part, in the Parish of Plaquemines, State of Louisiana.

6.

Venue is proper in this judicial district pursuant to Louisiana Code of Civil Procedure article 76.1 as the key negotiations in connection with execution of the aforesaid contractual agreement(s) by and between Plaintiffs and OTS took place in the Parish of Plaquemines and certain of the work to be performed pursuant thereto took place or was to take place in the Parish of Plaquemines.

7.

Venue is further proper in this judicial district pursuant to Louisiana Code of Civil Procedure article 74 as certain of the wrongful conduct by Houghtaling and/or GHW occurred in the Parish of Plaquemines, State of Louisiana.

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BACKGROUND

8.

On April 17, 2010, a drilling rig known as DEEPWATER HORIZON exploded in the Gulf of Mexico, causing a massive oil spill. Earlier in his career, Contogouris had worked to market a centrifuge technology developed by actor Kevin Costner (hereinafter "Costner") in the early 1990s. Contogouris felt that this technology could be of use to British Petroleum (hereinafter "BP"), which had been designated by the U.S. Coast Guard as the responsible party charged with cleaning up the spill, and to that end, successfully negotiated to obtain exclusive marketing rights to the technology in the Gulf of Mexico.

9.

On April 26, 2010, Houghtaling hosted a lunch with Plaintiffs in New Orleans. During lunch, Houghtaling and Plaintiffs discussed the formation and execution of two joint venture agreements for two separate business partnerships in connection with the BP oil spill and clean up. Houghtaling represented to Contogouris that he could provide access to BP. Following lunch, Plaintiffs, along with Franco Valobra, a personal friend of Houghtaling's (hereinafter "Valobra"), went with Houghtaling to the offices of GHW, in which firm Houghtaling is a member and owner, to memorialize the aforesaid joint venture agreements.

10.

Joint Venture Agreement No. 1 involved that certain partnership to develop, produce, own and distribute a documentary film about the oil industry and the BP oil spill (hereinafter "The Will to Drill Joint Venture Agreement"). Joint Venture Agreement No. 2 involved the formation of that certain partnership, OTS, for the purpose of marketing the aforesaid centrifuge technology developed by Costner.

11.

During this April 26, 2010 meeting at GHW's offices, Houghtaling specifically represented to Plaintiffs that he was acting as Plaintiffs' attorney-in-fact in connection with both The Will to Drill Joint Venture Agreement and the OTS Joint Venture Agreement. Trusting Houghtaling and relying on his legal advice in connection therewith, Plaintiffs each executed The Will to Drill Joint Venture Agreement and the OTS Joint Venture Agreement.

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12.

On May 13, 2010, Contogouris caused OTS to be formed with the Louisiana Secretary of State, and on that same date, signed the exclusive marketing contract with C.I.N.C. Industries (hereinafter "CINC"), the company which had acquired the centrifuge technology from Costner.

13.

Contogouris felt that bringing in other members in OTS would be indispensable to successfully marketing the centrifuge technology to BP. In addition to Houghtaling, as previously discussed, Contogouris also approached Costner and Costner's business partner, Patrick Smith (hereinafter "Smith"), about joining the company, as well as Frank Levy (hereinafter "Levy"), an executive with experience in the oil industry. Levy was also an investor and party to The Will to Drill Joint Venture Agreement. Contogouris also asked his friend, Baldwin, also an actor, to join as a member. The company was initially owned in the following percentages: Contogouris, 28%; Houghtaling, 21.5%; Westpac Resources, LLC, a limited liability company owned by Smith and Costner (hereinafter "Westpac"), 20%; Levy, 15.5%; Baldwin, 10%; and Francisco Valobra, 5%. Houghtaling was named as Chief Executive Officer of OTS.

14.

Pursuant to the OTS Operating Agreement, OTS agreed to make certain commission payments to Contogouris in connection with Contogouris' efforts with regard to the centrifuge units including, but not limited to, Contogouris' marketing, advertising, licensing and selling of the centrifuge units, which OTS failed to do.

15.

On May 24, 2010, unbeknownst to Plaintiffs, Levy instituted suit against Houghtaling and Baldwin in connection with the aforesaid "The Will to Drill" movie project based, in part, on Houghtaling's breach of his agreement to guarantee Levy's investment in the movie project. Plaintiffs were further unaware of any agreement by and between Houghtaling and Levy by which Houghtaling agreed to guarantee Levy's investment in the movie project.

16.

On or about June 4, 2010, and unbeknownst to Plaintiffs, Levy, on behalf of L&L Properties X, LLC, executed and forwarded a settlement offer to Houghtaling with regard to the Levy Lawsuit, which was thereafter executed by Houghtaling and others, which settlement included the transfer of L&L Properties X, LLC's membership interest in OTS to Houghtaling in exchange for Houghtaling's {N0472232 -}

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agreement to release Levy from his obligations in connection with the aforesaid "The Will to Drill" movie project. The settlement further included a certain indemnification from OTS for Levy's involvement in the oil spill clean-up venture. Levy then ceded L&L Properties X, LLC's 15.5% interest in OTS to Houghtaling and L&L Properties X, LLC withdrew from OTS.

17.

At no time during Houghtaling and Levy's settlement discussions were Plaintiffs aware of the Levy Lawsuit. Houghtaling, though, was aware that Baldwin was made a party to the Levy Lawsuit and was further aware that Baldwin had not been served with the Levy Lawsuit. Houghtaling withheld these facts from Plaintiffs while he settled the Levy Lawsuit with Levy without the consent of Baldwin and to the detriment of Baldwin, and further acquired L&L Properties X, LLC's membership interest in OTS solely for his own benefit, without rightfully offering a pro rata increase in ownership in OTS to the other members of OTS, including Plaintiffs, based on L&L Properties X, LLC's previously held 15.5% interest, to the detriment of Plaintiffs.

18.

Shortly after learning of the aforesaid wrongful transfer of the shares previously held by L&L Properties X, LLC, Plaintiffs notified Houghtaling that such transfer was improperly effected as it was executed without the knowledge or consent of the other members of OTS, that it was in derogation of the OTS Operating Agreement, and that in so executing the aforesaid transfer, Houghtaling violated the reciprocal fiduciary obligations owed by Houghtaling as a member of OTS and the fiduciary obligations owed by Houghtaling as CEO of OTS. Indeed, the transfer of L&L Properties X, LLC's shares to Houghtaling resulted in a change in the voting rights of OTS and a shift of control of company as it made Houghtaling the largest shareholder of OTS and, together with his friend Valobra's interest, gave Houghtaling an absolute veto of any super majority vote.

19.

In late May and early June, 2010, Houghtaling advised Plaintiffs that a cash call would be needed to fund the operations of the company. However, Houghtaling could not articulate why the cash call was necessary. Baldwin and Contogouris were asked to pay \$1.14 million to Westpac, ostensibly to fund OTS' operations or face dilution of their shares. The cash call was, in fact, completely unnecessary and was wrongfully and negligently used by Houghtaling as a device to pressure Plaintiffs to sell their interest in OTS.

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20.

On June 7, 2010, Houghtaling met with Doug Suttles, the point person for BP who was overseeing clean up operations, at Houghtaling's home in New Orleans. During this meeting, Suttles verbally committed to order \$52 million worth of centrifuge units from OTS, and signed a letter of intent indicating that BP would make an advance deposit of \$18 million in connection with the order. Although this advance deposit would make OTS self-funding and obviate the need for a cash call, Houghtaling continued to wrongfully and negligently represent to Contogouris that he and Baldwin would have to make the \$1.14 million cash call or face dilution of their shares. Houghtaling's wrongful and negligent representations to Plaintiffs in this regard were in derogation of Houghtaling's fiduciary obligations to Plaintiffs as Plaintiffs' attorney and as CEO and majority shareholder in OTS. Plaintiffs were excluded from the June 7, 2010 meeting by Costner, Smith and Houghtaling. The next day, Houghtaling told Contogouris that they had "no deal" with BP.

21.

On June 11, 2010, both Plaintiffs signed agreements which would transfer their collective 38% interest to Smith or his designee upon receipt of payment for the price agreed on of \$1.9 million. A 10% deposit against the purchase price was made on that date. The balance was to be paid within seven days. (Transfer, Withdrawal, Release and Indemnity Agreement hereinafter the "Agreement").

22.

On June 12, 2010, BP issued a purchase order for \$52 million to OTS, which included a commitment to make an \$18 million advance deposit. Despite Houghtaling's status as Plaintiffs' attorney and as CEO of OTS, Houghtaling failed to advise Plaintiffs of the aforesaid BP purchase order or the advance deposit. On or about June 16, 2010, the deposit was wired to an unauthorized account created by Costner, Smith, Houghtaling or others working at their direction in Rabobank, N.A., a bank located in California. Upon receipt of the funds, and at the direction of Houghtaling as CEO of OTS, OTS made an immediate multi-million dollar distribution to Houghtaling, Westpac and Valobra. Although both Contogouris and Baldwin were still members of OTS, since they had not received the balance of the purchase price, no distributions were made to them. Contogouris and Baldwin did not learn of these facts until July, 2010.

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23.

On June 16, 2010, Smith notified Plaintiffs that he had the balance of the purchase price. The balance was paid on June 18, 2010 and Contogouris and Baldwin signed the papers transferring their interest to Smith or his designee on that date. The funds used to acquire the centrifuge units came directly from the monies paid to OTS as part of the \$18 million deposit.

24.

On December 22, 2010, Plaintiffs instituted suit against Westpac, Smith, Costner and Rabobank, N.A. in the United States District Court for the Eastern District of Louisiana seeking, among other forms of relief, a rescission of the transfer of their respective ownership interests in OTS as set forth in the Agreement (hereinafter referred to as the "Federal Litigation"). This suit further alleged fraud claims against Costner, Smith and Westpac Resources.

FIRST CAUSE OF ACTION

25.

Plaintiffs adopt, reallege, and incorporate the preceding allegations of this pleading as if copied herein *in extenso*.

26.

Upon information and belief, OTS made various unauthorized distributions to the members of OTS, beginning on or about June 11, 2010 through the present date. As set forth more fully herein and in the Agreement, the transfer of Plaintiffs' respective membership interests in OTS did not become effective until Friday, June 18, 2010 at 5:00 CDT, at the earliest; as such, Plaintiffs were shareholders of OTS at all times prior to, at the very earliest, Friday, June 18, 2010 at 5:00 p.m. CDT.

27.

Based on the foregoing, Plaintiffs are entitled to receive from OTS any and all dividends or distributions that would have been made to them as 38% owners of OTS at any time prior to the effective date of the transfer of Plaintiffs' respective membership interests in OTS as well as any and all distributions that should have been made to them as the rightful 38% owners of L&L Properties X, LLC 's previously held 15.5% membership interest in OTS, or such other reasonable compensation as may be due to them.

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28.

Alternatively, and to the extent the court in the Federal Litigation orders that the transfer of Plaintiffs' respective ownership interests in OTS as set forth in the Agreement be rescinded, Plaintiffs are entitled to receive from OTS any and all dividends or distributions that would have been made to them as 38% owners of OTS, and as the rightful 38% owners of L&L Properties X, LLC 's previously held 15.5% membership interest in OTS, at any time, through and including the present date, or such other reasonable compensation as may be due to them.

SECOND CAUSE OF ACTION

29.

Plaintiffs adopt, reallege, and incorporate the preceding allegations of this pleading as if copied herein *in extenso*.

30.

OTS agreed to make certain commission payments to Contogouris in connection with Contogouris' efforts with regard to the centrifuge units including, but not limited to, Contogouris' marketing, advertising, licensing and selling of the centrifuge units, which OTS failed to do.

31.

In the event the court in the Federal Litigation finds that the transfer of Contogouris' ownership interest in OTS as set forth in the Agreement be upheld, Contogouris is entitled to any and all unpaid commissions which are due and owing to him through and until the present date, or such other reasonable compensation as may be due to him.

32.

Notwithstanding the foregoing, and even if the court in the Federal Litigation finds that the transfer of Contogouris' ownership interest in OTS as set forth in the Agreement be upheld, Contogouris is entitled to any and all unpaid commissions which were due and owing to him at any time prior to the effective date of the transfer of Contogouris' membership interest in OTS, or such other reasonable compensation as may be due to him.

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THIRD CAUSE OF ACTION - AGAINST HOUGHTALING
LEGAL MALPRACTICE

33.

That, at all pertinent times, Houghtaling maintained an attorney client relationship with each of the Plaintiffs. Houghtaling violated his fiducially duties as attorney for the Plaintiffs in the following non-exclusive acts of commission and/or omission:

1. Failing to keep Plaintiffs informed;
2. Failing to promptly comply with Plaintiffs' reasonable requests for information;
3. Failing to provide Plaintiffs with sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued;
4. Representing Plaintiffs despite a concurrent conflict of interest;
5. Failing to obtain the informed consent of Plaintiffs regarding a concurrent conflict of interest;
6. Entering into a business transaction adverse to Plaintiffs in which:
 - a. The transaction and terms were not fair and reasonable to Plaintiffs and were not fully disclosed to Plaintiffs;
 - b. Plaintiffs were not given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
 - c. Plaintiffs did not give informed consent to the terms of the transaction and Houghtaling's role in the transaction;
7. Using information relating to the representation of Plaintiffs to the disadvantage of Plaintiffs without Plaintiffs' informed consent;
8. Entering into a binding settlement without Plaintiffs' authorization; and
9. Failing to exercise independent professional judgment and render candid advice to Plaintiffs.
10. Self dealing to the detriment of Plaintiffs;
11. Negligent misrepresentation;
12. Negligent misinformation;
13. Any and all other negligent acts and/or omissions constituting legal malpractice that will be determined through discovery prior to trial.

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FOURTH CAUSE OF ACTION – AGAINST GHW
LEGAL MALPRACTICE

34.

At all pertinent times, Houghtaling was a member and owner of GHW. Houghtaling represented that he was the Plaintiffs' attorney and that the Plaintiffs would be represented by his firm GHW. Plaintiffs assert that the firm of GHW, through its member and owner, Houghtaling, committed legal malpractice in the following non-exclusive acts of commission and/or omission:

1. Failing to keep Plaintiffs informed;
2. Failing to promptly comply with Plaintiffs' reasonable requests for information;
3. Failing to provide Plaintiffs with sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued;
4. Representing Plaintiffs despite a concurrent conflict of interest;
5. Failing to obtain the informed consent of Plaintiffs regarding a concurrent conflict of interest;
6. Entering into a business transaction adverse to Plaintiffs in which:
 - a. The transaction and terms were not fair and reasonable to Plaintiffs and were not fully disclosed to Plaintiffs;
 - b. Plaintiffs were not given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
 - c. Plaintiffs did not give informed consent to the terms of the transaction and Houghtaling's role in the transaction;
7. Using information relating to the representation of Plaintiffs to the disadvantage of Plaintiffs without Plaintiffs' informed consent;
8. Entering into a binding settlement without Plaintiffs' authorization; and
9. Failing to exercise independent professional judgment and render candid advice to Plaintiffs.
10. Self dealing to the detriment of Plaintiffs;
11. Negligent misrepresentation;
12. Negligent misinformation;

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13. Failing to supervise the actions of Houghtaling with regard to the legal representation of Plaintiffs;
14. Failing to take appropriate remedial measures to avoid conflicts of interest;
15. Any and all other acts of negligence constituting legal malpractice that will be determined through discovery prior to trial.

**FIFTH CAUSE OF ACTION – AGAINST HOUGHTALING IN
HIS CAPACITY AS AN OTS MEMBER**

35.

Houghtaling violated his fiduciary duties as a member and as CEO of OTS as set forth in the following acts of commission and/or omission:

1. Failing to exercise his duties in good faith;
2. Failing to offer OTS and the members of OTS a pro rata increase in their respective membership shares in OTS following Houghtaling's wrongful and unauthorized acquisition of the OTS membership shares previously held by L&L Properties X, LLC;
3. Failing to account to OTS and its members for profit derived by him without the informed consent of its members, and more particularly, of Plaintiffs;
4. Acting with an indifference to the best interests of the members of OTS, and more particularly, of Plaintiffs;
5. Failing to fulfill his duties in good faith by:
 - a. Having a conflict of interest; and
 - b. Acting without a rational belief that his actions were in the best interests of OTS members, and more particularly, of Plaintiffs;
6. Self dealing to the detriment of Plaintiffs;
7. Wrongfully using OTS assets and OTS rights for personal gain to increase Houghtaling's own membership shares in OTS to the detriment of the members of OTS, and more particularly, to the detriment of Plaintiffs;
8. Wrongfully making distributions to Houghtaling himself, as well as to other members of OTS, and not to Plaintiffs, following Houghtaling's wrongful acquisition of the OTS membership shares previously held by L&L Properties X, LLC, to the detriment of Plaintiffs;

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- 9. Negligent misrepresentation;
- 10. Negligent misinformation;
- 11. Any and all other acts of negligence that will be determined through discovery prior to trial.

**SIXTH CAUSE OF ACTION – AGAINST HOUGHTALING, OTS AND GHW
CONVERSION**

36.

Plaintiffs assert that their respective rights, interests and ownership in OTS and in The Will to Drill Joint Venture Agreement were converted in an unauthorized manner by and for the benefit of the Defendants, which has caused and continues to cause Plaintiffs to suffer significant economic losses and damages.

**SEVENTH CAUSE OF ACTION – AGAINST HOUGHTALING, OTS AND GHW
DETRIMENTAL RELIANCE**

37.

Plaintiffs assert that they relied on the representation of Houghtaling as their attorney, as a member of GHW and as CEO of OTS, to the detriment of Plaintiffs, which has caused and continues to cause Plaintiffs to suffer significant economic losses and damages.

**EIGHTH CAUSE OF ACTION – AGAINST HOUGHTALING, OTS AND GHW
CONSPIRACY**

38.

Plaintiffs assert that Defendants negligently conspired to convert the Plaintiffs' rights, interest and ownership in OTS and The Will to Drill Joint Venture Agreement for the sole benefit of the Defendants, which has caused and continues to cause Plaintiffs to suffer significant economic losses and damages.

**NINTH CAUSE OF ACTION – AGAINST HOUGHTALING, OTS AND GHW
ABUSE OF RIGHTS**

39.

Plaintiffs assert that Defendants abused their respective rights and authority to cause Plaintiffs harm for no legitimate motive (except greed) which abuse violates moral rules, good faith and/or elementary fairness for purposes other than what any right and/or authority was granted. Plaintiffs further assert that said abuse of rights has caused and continues to cause Plaintiffs to suffer significant economic losses and damages.

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**TENTH CAUSE OF ACTION – AGAINST HOUGHTALING, OTS AND GHW
ABUSE OF PROCESS**

40.

Plaintiffs assert that the Defendants misused the legal process to obtain results not proper under the law for the sole benefit of the Defendants and to the detriment of the Plaintiffs, which has caused and continues to cause Plaintiffs to suffer significant economic losses and damages.

XYZ INSURANCE COMPANY

41.

At all pertinent times defendants, Houghtaling and GHW maintained a policy of insurance issued by XYZ Insurance Company for any and all acts of negligence, legal malpractice, errors & omissions and any and all claims in this matter that will provide coverage for Plaintiffs' respective damages as more fully set forth herein.

42.

Plaintiffs pray for a trial by jury on all issues so triable.

IV.

Plaintiffs supplement their Petition to supplement and amend their prayer for relief to read as follows:

“**WHEREFORE**, Plaintiffs, Spyridon C. Contogouris and Stephen A. Baldwin, pray that their First Supplemental and Amending Petition for Damages be deemed good and sufficient and that after due proceedings are had there be a judgment rendered herein in favor of Plaintiffs and against Defendants, Ocean Therapy Solutions, L.L.C., John W. Houghtaling, II and Gauthier, Houghtaling & Williams, LLP, and XYZ Insurance Company for any and all damages established at trial, plus any and all costs incurred by Plaintiffs in prosecuting this claim and for attorney's fees and for any and all other general and/or equitable relief to which Plaintiffs will otherwise be deemed entitled.”

V.

Plaintiffs supplement the caption of this action to read as follows: “Spyridon C. Contogouris and Stephen A. Baldwin v. Ocean Therapy Solutions, L.L.C., John W. Houghtaling, II and Gauthier, Houghtaling & Williams, LLP”.

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Respectfully Submitted,

~~PALAZZO LAW FIRM~~

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*Attorney for Plaintiffs, Spyridon C.
Contogouris and Stephen A. Baldwin*

PLEASE HOLD SERVICE

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