

CAUSE NO. _____

**GREG SCHENCK, AS EXECUTOR OF
THE ESTATE OF JANET A. KING,
Plaintiff,**

V.

**FRANK H. HOLCOMB, INDIVIDUALLY,
FRANK H. HOLCOMB, P.C.,
GREG B. ENOS, INDIVIDUALLY, AND
THE ENOS LAW FIRM,
Defendants.**

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, T E X A S

_____ **JUDICIAL DISTRICT**

PLAINTIFF’S ORIGINAL PETITION

Greg Schenck, as Executor of the Estate of Janet A. King (“Plaintiff”) files this Original Petition complaining of Frank H. Holcomb, Greg B. Enos, and the Enos Law Firm (collectively “Defendants”).

PARTIES

1. Greg Schenck is an individual resident of Harris County, Texas. The last three digits of his Texas Driver’s License number are 246.

2. Frank H. Holcomb (“Holcomb”) is an individual resident of Harris County, Texas and can be served at his usual place of business at 1330 Post Oak Blvd., Suite 2930, Houston, Texas 77056.

3. Frank H. Holcomb, P.C. is a law firm with its principal place of business located in Harris County, Texas and can be served at 1330 Post Oak Blvd., Suite 2930, Houston, Texas 77056.

4. Greg B. Enos (“Enos”) is an individual resident of Galveston County, Texas and can be served at his usual place of business at 17207 Feathercraft Lane, Houston, Texas 77598.

5. The Enos Law Firm, P.C. is a law firm with its principal place of business located in Harris County, Texas and can be served at 17207 Feathercraft Lane, Houston, Texas 77598.

6. Holcomb and Enos were at all relevant times acting within the scope of their duties as attorneys with their respective law firms.

VENUE

7. Venue in this proceeding in Harris County is proper under Section 15.002 and Section 15.005 of the Texas Civil Practices & Remedies Code in that: (i) all or a substantial part of the events or omissions giving rise to the claims set forth below occurred in Harris County; (ii) Defendant Holcomb resides in Harris County and resided in Harris County at the time the causes of action set forth below accrued; (iii) the principal office of The Enos Law Firm, P.C. is in Texas is located in Harris County at 17207 Feathercraft Lane, Houston, Texas 77598; (iv) the principal office of Frank H. Holcomb, P.C. is located in Harris County at 1330 Post Oak Blvd., Suite 2930, Houston, Texas 77056; and (v) all the claims or causes of action set forth below arise out of the same transaction, occurrence or series of transactions or occurrences.

DISCOVERY CONTROL PLAN

8. Plaintiff pleads that discovery should be conducted in accordance with Level Two pursuant to Rule 190.3 of the Texas Rules of Civil Procedure.

9. Plaintiff seeks monetary relief of over \$1,000,000.

FACTUAL BACKGROUND

A. OVERVIEW

i. HOLCOMB REPRESENTATION

10. On or about 1983, decedent, Janet King (“King”), retained Holcomb to draft prenuptial agreement meant to protect her separate property rights to certain property, both real

and personal, before her marriage to Ed King. On or about May 1984, on behalf of King, Holcomb drafted a postnuptial agreement. Again, on or about December 1984, on behalf of King, Holcomb drafted a second postnuptial agreement. The December 1984 post nuptial agreement was meant to convert all but a small amount of separate property into community property. In 2001, on behalf of King, Holcomb draft a third postnuptial agreement purported to identify all property as separate property of each respective party without any provision/agreement for partition of any of the existing community property. Finally, in or around 2010, Holcomb prepared spreadsheets listing each party's separate property that purported to supplement the 2001 postnuptial agreement he drafted.

ii. ENOS REPRESENTATION

11. On September 6, 2018, Janet King filed a petition for declaratory judgment seeking a declaration that transfers to her children from a previous marriage were made from her separate property as described in the agreements and spreadsheet drafted by Holcomb. Enos represented King in this lawsuit.

12. Ed King answered and filed a counterclaim seeking a declaration that none of the agreements drafted by Holcomb were enforceable as alleged by Janet King for various reasons.

13. On or about March 1, 2019, Ed King filed a petition for divorce. Janet King answered. However, Ed King passed away on or about August 30, 2019, and Janet King passed away on or about January 28, 2021, before the conclusion of the litigation. As a result, the property issues raised in the declaratory judgment and divorce actions were transferred to Probate Court and proceeded between the estates of Janet and Ed King with the Estate of Janet King, through its executor, Greg Schenck, represented by Enos.

14. Upon information and belief, Enos advised Schenck that Ed King's arguments regarding the enforceability of the agreements drafted by Holcomb were meritorious. Additionally, Enos advised Schenck that the Estate of Janet King had a potential legal malpractice claim against Holcomb for any acts, errors, and/or omissions arising out of his representation of Janet King in drafting these agreements. Moreover, Enos advised Schenck that the statute of limitation on any cause of action against Holcomb based on that legal malpractice was tolled until the divorce litigation was finally resolved. Schenck relied on this advice and did not revisit the potential of bringing claims against Holcomb until after the divorce and probate litigation was finally resolved. At or around the end of March 2021, Schenck was informed for the first time that the statute of limitation for negligence claims against Holcomb was, in fact, not tolled during the pendency of the underlying litigation and had already expired.

CAUSES OF ACTION

A. NEGLIGENCE

15. All preceding paragraphs are incorporated herein by reference.

16. In connection with Holcomb's representation described herein, Plaintiff asserts that the agreements drafted by Holcomb failed to meet legal requirements to make them enforceable as intended. These acts or omissions were each collectively or singularly a proximate cause damage to Plaintiff, including, among other things:

- (a) Failing to draft enforceable agreements to partition community property, convert or transform the characterization of property based on agreement of the parties and/or correctly memorialize, characterize, or identify existing separate property as between Janet King and Ed King;
- (b) Failing to recognize that the Texas Constitution did not allow for reclassifying separate property as community property by agreement until in or around 2000;
- (c) Failing to properly partition community property;

- (d) Failing to keep Plaintiff reasonably informed of material changes in the law directly relevant to the representation provided;
- (e) Failing to provide Plaintiff with sufficient and/or reasonably accurate information for the Plaintiff to make informed decisions regarding the timing, content, and execution of marital agreements;

17. As a result of such negligent acts and omissions, Plaintiff has suffered damages in an amount in excess of the minimum jurisdictional limits of this court, including without limitation consequential damages, plus pre-judgment interest, post-judgment interest, and costs as provided by law. Specifically, Plaintiff was forced to settle its claims regarding separate and community property characterizations with the Estate of Ed King and received approximately \$2,000,000 less than it would have otherwise been entitled to but for Holcomb's drafting unenforceable agreements relating to marital property.

18. In connection with the representation provided by the Enos Defendants, Plaintiff asserts, in the alternative to claims asserted hereinabove against Holcomb, to the extent the estate's negligence causes of action against Holcomb based upon the allegations made herein are time barred, Plaintiff alleges the following acts, errors, and/or omissions of Enos and The Enos Law Firm were each collectively or singularly a proximate cause of damage to Plaintiff, including, among other things:

- a. Failing to properly, accurately, and/or timely advise Plaintiff regarding any applicable statute of limitation on causes of action arising out of Holcomb's negligence relative to his drafting of the marital agreements.
- b. Advising Plaintiff that the statute of limitation on causes of action arising out of Holcomb's negligence relative to his drafting of the marital agreements was tolled during the pendency of the divorce litigation.

19. As a result of such negligent acts and omissions, Plaintiff has suffered damages in an amount in excess of the minimum jurisdictional limits of this court, including without limitation

consequential damages, plus pre-judgment interest, post-judgment interest, and costs as provided by law.

JURY DEMAND

20. Plaintiff desires to have a jury decide this case and makes this formal request pursuant to TEX. R. CIV. P. 216. The appropriate jury fee was paid contemporaneously with the filing of the original petition.

DISCOVERY RULE & EQUITABLE TOLLING

21. Plaintiffs affirmatively plead the application of the Discovery Rule as established and understood under Texas law as to Plaintiffs' claims against Defendants set forth hereinabove.

22. Additionally, Plaintiff affirmatively plead application of equitable tolling pursuant to Texas law as established in *Hughes v. Mahaney & Higgins*, 821 S.W.2d 154, 157 (Tex. 1991).

PRAYER

23. Wherefore, Plaintiff requests that Defendants be required answer these claims and that judgment be entered against Defendants in favor of Plaintiff for:

- (1) Actual damages in an amount in excess of the minimum jurisdictional limits of this Court;
- (2) Consequential damages resulting naturally, but not necessarily, from Defendants' negligence, breaches of fiduciary duty, or misrepresentations;
- (3) Prejudgment and post-judgment interest as provided by applicable law;
- (4) All costs in prosecuting this litigation; and
- (5) Any additional relief, legal and equitable, general or special, to which Plaintiff may be justly or equitably entitled.

Respectfully submitted,

/s/ Brett Wagner

Brett Wagner

State Bar No. 20654270

brett@dwlawyers.com

Ryan W. Smith

State Bar No. 24063010

ryan@dwlawyers.com

DOHERTY WAGNER

13810 Champion Forest Drive, Suite 225

Houston, Texas 77069

281-583-8700 Telephone

281-583-8701 Facsimile

ATTORNEYS FOR PLAINTIFF