

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION**

<p>The Bopp Law Firm, PC, an Indiana professional corporation,</p> <p style="text-align: right;"><i>Plaintiff,</i></p> <p style="text-align: center;">v.</p> <p>Mr. Madison Cawthorn., an individual,</p> <p style="text-align: right;"><i>Defendant.</i></p>	<p>Civil Case No. 2:22-cv-00554</p>
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Complaint for Compensatory Damages

Plaintiff THE BOPP LAW FIRM, PC (“BLF”) complains against Defendant Mr. Madison Cawthorn as follows:

Introduction

1. This is a civil action for compensatory damages arising under breach of contract and account stated claims.

Jurisdiction and Venue

2. This action arises under Indiana common law for breach of contract and account stated claims.

3. This Court has original subject matter jurisdiction under 28 U.S.C. § 1332(a) because the matter in controversy exceeds \$75,000 and is between citizens of different states.

4. This Court has the authority to provide for compensatory damages under Indiana common law and Rule 54 of the Federal Rules of Civil Procedure.

5. This Court has personal jurisdiction over Mr. Cawthorn because he established contacts within the State sufficient to permit the exercise of personal jurisdiction over them via the Agreement for Legal Services (“**Agreement**”) he entered into with BLF.

6. Venue is proper in this district under 28 U.S.C. § 1391(b)(3) because Mr. Cawthorn is subject to the court’s personal jurisdiction in this District with respect to this action. Further, venue is proper because this court’s jurisdiction encompasses Vigo County, Indiana, where BLF is headquartered.

Parties

7. Plaintiff BLF is an Indiana professional corporation headquartered at The National Building, 1 South Sixth St., Terre Haute, Indiana 47807.

8. Defendant Mr. Cawthorn is an individual residing at 657 N. Rugby Rd., Hendersonville, NC 28791.

Facts

The Agreement

9. On or about January 10, 2022, BLF began representing Mr. Cawthorn in response to a challenge to Mr. Cawthorn’s qualifications as a candidate for the U.S. House of Representatives. (“**Challenge Suit**”).

10. On or about January 20, 2022, Mr. Cawthorn entered into the Agreement with BLF to represent him by defending him in the Challenge Suit, including any appeals and relevant petitions for attorneys’ fees allowed under federal law.

11. The fully executed Agreement is attached to this Complaint as Exhibit 1.

12. James Bopp, Jr. is the sole proprietor of BLF, and at all times material to this matter was

in good standing under the laws of Indiana. Mr. Bopp signed the Agreement on behalf of BLF.

13. Mr. Cawthorn served as a Congressman in the U.S. House of Representatives, is over 18 years of age, and at all times material to this matter was authorized under the laws of both North Carolina and Indiana to enter into legally enforceable contracts. Mr. Cawthorn signed the Agreement on his own behalf.

14. In the Agreement, Mr. Cawthorn agreed to pay BLF for its legal services, at agreed upon hourly rates for BLF attorneys, including James Bopp, Jr., Jeffrey P. Gallant, and Melena Siebert. Agreement at 1.

15. Mr. Cawthorn agreed to pay the corresponding hourly rates for other BLF attorneys who may assist in the legal work necessary in defending Mr. Cawthorn in the Defamation Suit. *Id.*

16. Mr. Cawthorn agreed to pay costs and expenses in addition to the hourly charges for legal services. *Id.*

17. Under the terms of the Agreement, all invoices sent to Mr. Cawthorn by BLF were due and payable within 30 days of receipt by Mr. Cawthorn. *Id.* at 1.

18. Under the terms of the Agreement, interest accrued at 1.5% per month on past due accounts until paid. *Id.*

19. Under the terms of the Agreement, Mr. Cawthorn agreed to pay all attorneys' fees and costs BLF incurred for collecting any unpaid amounts owed by Mr. Cawthorn, if legal action by BLF is necessary to collect any unpaid amounts due. *Id.*

20. Mr. Cawthorn agreed that any disputes arising under the Agreement would be governed by Indiana law without giving effect to Indiana's conflict of law principles and that any court

located in Indiana could resolve the dispute. *Id.* at 2.

BLF Performance and Mr. Cawthorn’s Breach

21. BLF provided the legal services agreed upon under the Agreement and timely sent invoices to Mr. Cawthorn on a monthly basis.

22. Beginning on January 10, 2022, when Mr. Cawthorn’s representatives contacted BLF, BLF performed extensive and time-sensitive work on Mr. Cawthorn’s behalf, researching and advising him and his campaign on all aspects of a response to the Challenge Suit.

23. This legal work began with advising Mr. Cawthorn of the regulations and rules governing a legal defense fund—to fund the litigation—and then mounting a substantive response to the challenge before the North Carolina State Election Board (“**Board**”).

24. When the Board stayed the challenge to his candidacy, BLF mounted, on Mr. Cawthorn’s behalf, a challenge in federal court to the North Carolina law under which the challenge to his qualifications was brought.

25. Along with the litigation in federal court, attorneys at BLF successfully opposed—twice—the intervention by the challengers, protected his interests in state redistricting proceedings by opposing the appointment of a special master that was counsel for intervenors, and advised the campaign in successfully navigating the change in districts.

26. After winning a permanent injunction in the district court, BLF protected Mr. Cawthorn’s interests by timely filing for attorney’s fees while also fully briefing and arguing the appeal in the Fourth Circuit by the challengers. As part of a strategic decision in the appellate process, Mr. Cawthorn agreed to withdraw his pursuit of attorneys’ fees in federal district court, agreeing to

pay those fees under the terms of the Agreement.

27. The Fourth Circuit reversed and remanded the case back to the district court, but Mr. Cawthorn ultimately lost his primary election shortly after the Fourth Circuit's decision.

Attorneys at BLF strategically moved to have the district court case dropped as moot, in order to forego a possibly adverse result that could affect any future campaigns Mr. Cawthorn might undertake.

28. To date, Mr. Cawthorn has an outstanding, unpaid balance of \$193,296.85, apart from any interest that is due and apart from any fees due for work on collecting overdue amounts, as provided under the terms of the Agreement. BLF Invoice, September 26, 2022, Ex. 9.

**COUNT I:
Breach of Contract Due to Nonpayment for Services Rendered**

29. BLF re-alleges and incorporates by reference all previous allegations.

30. Pursuant to the terms of the Agreement, Indiana law governs any dispute related to the Agreement.

31. Under Indiana law, “[t]o recover for a breach of contract, a plaintiff must prove that: (1) a contract existed, (2) the defendant breached the contract, and (3) the plaintiff suffered damage as a result of the defendant's breach.” *Collins v. McKinney*, 871 N.E.2d 363, 370 (Ind. Ct. App. 2007).

32. “The basic requirements for a contract are offer, acceptance, consideration, and a meeting of the minds between the contracting parties on all essential elements or terms of the transaction.” *Jernas v. Gumz*, 53 N.E.3d 434, 445 (Ind. Ct. App. 2016), trans. denied.

33. Consideration is a “bargained for exchange” whereby the promisor accrues a benefit or the promisee accepts a detriment. *Kelly v. Levandoski*, 825 N.E.2d 850, 860 (Ind. Ct. App. 2005).

34. The Agreement is a valid, enforceable contract. BLF offered its legal services to Mr. Cawthorn in exchange for Mr. Cawthorn’s payment of attorney fees and costs, which Mr. Cawthorn accepted. Mr. Cawthorn’s promised payment serves as consideration because Mr. Cawthorn accrued the benefit of legal services in exchange for the detriment of paying BLF’s fees. The Agreement contained all the essential elements of the terms of this contract. The offer, acceptance, consideration, and the meeting of the minds between Mr. Cawthorn and BLF are demonstrated within the Agreement itself, which was signed by Mr. Cawthorn and BLF, who were authorized under the laws of their respective states to enter into the Agreement.

35. To date, Mr. Cawthorn has not paid \$193,296.85 to BLF, apart from any interest that is due and apart from any fees due for work on collecting overdue amounts, as provided under the terms of the Agreement.

36. Because Mr. Cawthorn has not paid BLF for the attorney fees, costs, expenses and interest due, he breached the Agreement.

37. BLF suffered damage totaling \$193,296.85, plus the unpaid interest and the fees due for collecting the unpaid amounts, as a direct result of Mr. Cawthorn’s breach.

**COUNT II:
Account Stated Claim**

38. BLF re-alleges and incorporates by reference all previous allegations.

39. “The issues tried in an action on an account stated are whether or not the parties settled their accounts and agreed upon a certain amount due; whether or not there was any agreement,

express or implied, to pay such amount; and, if payment is raised as a defense, whether such payment was made.” 1 Ind. Law Encyc. Accounts and Accounting § 12.

40. An account stated is an agreement between the parties that all items of an account and balance are correct, together with a promise, express or implied, to pay the balance. *Jackson v. Trancik*, 953 N.E.2d 1087, 1091 (Ind. Ct. App. 2011).

41. An agreement that the balance is correct may be inferred if the debtor fails to object to the amount owed within a reasonable amount of time. “When the underlying material facts are undisputed, what constitutes a reasonable time to object to a statement of account is a question of law.” *Auffenberg v. Bd. of Trustees of Columbus Reg'l Hosp.*, 646 N.E.2d 328, 331 (Ind. Ct. App. 1995).

42. Under Indiana law, if a debtor fails to object to an account until after a lawsuit is filed, the court will consider this a failure to object within a reasonable time and will support an inference of the debtor's implied agreement that the account balance is correct. *Id.*

43. Pursuant to the terms of the Agreement, BLF billed Mr. Cawthorn monthly for attorney fees and costs through a monthly invoice specifying the services rendered and their cost. Beginning with the BLF invoice for services rendered in January, 2022, amounts charged to Mr. Cawthorn went unpaid and are currently unpaid. Invoices, Exs. 2 - 9.

44. Mr. Cawthorn did not object to the amount owed or services rendered on any of the BLF invoices, Exs. 2 - 9, or to the correctness of the account balance.

45. Therefore, as a matter of law, Mr. Cawthorn has given BLF its implied agreement that the accounts charged, but unpaid, on the BLF invoices are correct. Since Mr. Cawthorn has failed to

pay this balance and accrued interest, BLF should be awarded damages in the amount of \$193,296.85 on the account stated claim.

Prayer for Relief

WHEREFORE, Plaintiff prays for the relief set forth below:

1. Award compensatory damages to BLF for the unpaid legal fees and costs, in the amount of \$193,296.85 .
2. Award pre-judgment interest on any compensatory damage awarded to BLF against Mr. Cawthorn.
3. Award all accrued interest on the unpaid balance for attorneys' fees, costs, and expenses.
4. Award all attorneys' fees, costs, and expenses to BLF for prosecuting this action; and
5. Grant any other relief this Court deems appropriate.

Date: December 1, 2022

Respectfully submitted,
/s/ James Bopp, Jr.
James Bopp, Jr. IN No. 2838-84
jboppjr@aol.com
Lead Counsel for Plaintiff
Melena S. Siebert IN No. 35061-15
msiebert@bopplaw.com
Counsel for Plaintiff
THE BOPP LAW FIRM, PC
The National Building
1 South Sixth Street
Terre Haute, IN 47807-3510
(812) 232-2434 - Telephone
(812) 235-3685 - Facsimile

Certificate of Service

I hereby certify that on December 1, 2022, a copy of the foregoing and all attachments thereto were filed electronically using the Court's CM/ECF system and will be served via a service of summons in compliance with Federal Rule of Civil Procedure 4 upon:

Mr. Madison Cawthorn
657 N. Rugby Rd.
Hendersonville, NC 28791

/s/ James Bopp, Jr.
James Bopp, Jr.
Lead Counsel for Plaintiff