

EXHIBIT A

to

Complaint

*Bears' Complaint filed in Hendricks County,
Indiana*

STATE OF INDIANA) HENDRICKS COUNTY SUPERIOR COURT
) SS:
COUNTY OF HENDRICKS) CAUSE NO.: 32D05-1306-PL-62

RICH AND STEPHANIE BEAR)
)
 Plaintiffs,)
)
 vs.)
)
 MICHAEL P. SHANAHAN,)
 MPS ULTRA, LLC,)
)
 Defendants.)

FILED
CLERK OF COURT
7
SEP 24 2015
HENDRICKS COUNTY

COMPLAINT

I. NATURE OF ACTION

Rich and Stephanie Bear bring this action against Michael P. Shanahan for legal malpractice and undue influence. At all critical times, Shanahan was a partner in the well-respected law firm of Stewart & Irwin and was acting in the scope of his duties for Stewart & Irwin. Finally, Mr. Bear seeks wages from Mr. Shanahan's company called MPS Ultra LLC under the Indiana Wage Payment Statute.

II. PARTIES

1. Rich and Stephanie Bear are husband and wife and former owners of Ultra Property Services, LLC, a landscaping and snow removal business that was located in Avon, Indiana.

2. Michael P. Shanahan, is an attorney licensed to practice law in the State of Indiana and was formerly a partner in the law firm of Stewart & Irwin, P.C.

3. MPS Ultra LLC is a company incorporated in the State of Indiana and owned by Michael P. Shanahan. It was formed for the sole purpose of purchasing from Rich and Stephanie Bear the assets owned by Ultra Property Services, LLC.

4. For a time after its formation, Mr. Bear worked for MPS Ultra LLC. After he resigned, the company and Mr. Shanahan failed to pay him wages as required by Indiana's Wage Payment Statute.

III. BACKGROUND FACTS

5. For many years, Rich and Stephanie Bear owned and operated a landscaping and snow removal business in Avon, Indiana entitled Ultra Property Services LLC. It was Mr. Bear's sole source of income. He was good at his job. He had many loyal customers and his business was profitable.

6. In 2009 and 2010, following the financial crisis and housing downturn, many of Ultra Property Services' landscaping and snow removal clients declared bankruptcy.

7. One such client was KB Homes that owed the company in excess of \$200,000.

8. As a consequence, Rich and Stephanie Bear were unable to pay payroll taxes as required by Indiana businesses.

9. In August 2010, Ultra Property Services LLC received notice of a tax levy from Premiere Credit of North America, LLC, a collection agency hired to assist the Indiana Department of Revenue in collecting outstanding warrants.

10. At that time, Premiere Credit was requesting funds in the amount of \$1,878.57 from the company's bank account.

11. The Indiana Department of Revenue also obtained a tax judgment against Ultra Property Services, LLC in April 2010 in the amount of \$2,711.64.

12. In February 2011, Rich and Stephanie Bear received notice that the Department of Revenue intended to levy against their personal accounts.

13. Also in February 2011, the Internal Revenue Service appeared at Ultra Property Services and requested that Rich and Stephanie submit various forms (including 433-A and 433-B) to the IRS within three weeks.

14. As a result, they sought the services of Michael P. Shanahan to assist them with their IRS problems.

IV. CLIENT RELATIONSHIP

15. Mr. and Mrs. Bear met with Michael P. Shanahan on February 25, 2011. At that time, they explained to him that time was of the essence and he needed to contact the IRS immediately in order to stave off further tax levies and damage to their business.

16. On February 25, 2011, Rich and Stephanie Bear signed an engagement letter.

17. Mr. Shanahan made clear that he would not begin any work on their behalf until he had received a retainer in the amount of \$2,500. Accordingly, Mr. and Mrs. Bear proceeded directly to their bank and obtained a certified check in the amount of \$2,500 that very day.

18. Despite the specific requests to contact the IRS as promptly as possible, and despite the payment of the retainer, Mr. Shanahan did not attempt to contact the IRS until June 29, 2011, more than four months later.

19. By that time, the IRS had provided notice of additional levies and had levied additional monies from Rich and Stephanie Bear and their company.

20. On June 30, 2011, when Mr. Shanahan finally reached the IRS, he was asked to submit financial documentation, including Forms 433-A and 433-B. Mr. Shanahan did not submit this information until September 2, 2011.

21. By this time, the IRS had grown tired of the delays and had threatened additional levies, including the personal bank accounts of the Bears containing more than \$13,000.

22. The levy on their personal bank accounts prevented the Bears from making payments on their house and their car, resulting in foreclosure proceedings and repossession.

23. In late 2011 and early 2012, Mr. Shanahan informed the Bears that the IRS intended to seize the assets of Ultra Property Services and also their home. This was not true.

24. In March 2012, thinking that they were facing the loss of their home and their business unless a payment could be made to the IRS, Mr. Shanahan offered to purchase the assets of Ultra Property Services LLC from Rich and Stephanie Bear.

25. Mr. and Mrs. Bear did not wish to sell Ultra Property Services. Landscaping and snow removal was a business that Rich had been engaged in for many years and he knew the business well.

26. Nonetheless, fearing they would lose their house if they did not sell, Rich and Stephanie Bear sold the assets of Ultra Property Services LLC to Mr. Shanahan and his assigns for \$40,000 (far less than it was worth), permitting a payment to the IRS in the amount of \$24,228.01. A large lien still existed following this payment.

27. Almost \$11,000 of the \$40,000 was paid to Ford Motor Credit Company to pay off a truck that was being purchased by Mr. Shanahan so that Mr. Shanahan could receive the truck free and clear.

28. Upon being notified (for the first time) of Mr. Shanahan's actions and about his purchase of Ultra Property Services LLC's assets, Stewart & Irwin refunded to Rich and Stephanie Bear the amounts of money they paid to Stewart & Irwin.

V. ATTORNEY MALPRACTICE

29. Mr. Shanahan owed Mr. and Mrs. Bear a duty.

30. Mr. Shanahan failed to promptly contact the IRS, provide it with critical information and develop a constructive dialogue that would stave off levies and enforcement proceedings.

31. Mr. Shanahan failed to keep Mr. and Mrs. Bear informed of the communications he was having with the IRS, and improperly informed them that the IRS intended to take their home and their business if they did not make a substantial payment.

32. As part of these failures, Rich and Stephanie Bear were injured.

VI. UNDUE INFLUENCE

33. Mr. Shanahan utilized his superior position to make the Bears believe that the IRS was in the process of taking their business and home.

34. Mr. Shanahan utilized his superior position to purchase the assets of Ultra Property Services LLC for substantially less than they were worth.

35. The transactions entered into during the existence of a fiduciary relationship are presumptively invalid as the product of undue influence.

36. Transactions between an attorney and client are presumed to be fraudulent, so that the attorney has the burden of proving the fairness and honesty of the transaction.

37. The Bears were damaged by the undue influence of Mr. Shanahan.

VII. CLAIM FOR UNPAID WAGES

38. Mr. Shanahan and MPS Ultra LLC failed to pay Mr. Bear his final paycheck required by the Indiana Wage Payment Statute.

39. Defendants owe Mr. Bear \$923.08 in unpaid wages.

40. Since the wages were not paid in a timely manner, Defendants also owe Mr. Bear double damages and attorney fees pursuant to Ind. Code § 22-2-5-1(b).

WHEREFORE, Rich and Stephanie Bear, by counsel, pray for a judgment against the Defendants in an amount sufficient to compensate them for their losses, for punitive damages, treble damages and attorney fees and for all other proper relief.

Respectfully submitted,

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

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