

CAUSE NO. _____

DRILLING STRUCTURES
INTERNATIONAL, INC. and
PHILIP RIVERA,

Plaintiffs,

vs.

FROST BROWN TODD LLC and TERRA
MASTER INC.,

Defendants.

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IN THE _____

JUDICIAL DISTRICT COURT

OF HARRIS COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

NOW COME Plaintiffs Drilling Structures International, Inc. ("Drilling Structures") and Philip Rivera ("Rivera," and collectively with Drilling Structures, "Plaintiffs"), complaining of and about the law firm Frost Brown Todd LLC ("Frost") and Terra Masters Inc., a Texas formed company ("Terra," and collectively with Frost, "Defendants"), and for cause of action show unto the Court the following:

DISCOVERY-CONTROL PLAN

1. Plaintiffs intend to conduct discovery under Level 3 of Texas Rule of Civil Procedure and affirmatively plead that this suit is not governed by the expedited-actions process in Tex. R. Civ. P. 169 because Plaintiffs seek monetary relief in excess of \$100,000.00.

CLAIM FOR RELIEF

2. Plaintiffs seek monetary relief in excess of \$1,000,000.00.

PARTY IDENTIFICATION INFORMATION

3. Plaintiff Drilling Structures International, Inc. is a Texas limited liability corporation. Its sole member is Philip Rivera, who also serves as its manager.

4. Plaintiff Philip Rivera is an individual and is a resident of Harris County, Texas.

5. Defendant Frost Brown Todd LLC is an Ohio limited liability corporations and its main business is the operation of a law practice.

6. Defendant Terra Master Inc. is a Texas limited liability corporation.

SERVICE

7. Frost Brown Todd LLC may be served at its offices at 10 West Broad Street, Suite 2600, Columbus, Ohio 43215, or wherever it may be found. **Citation is Requested.**

8. Terra Master Inc. may be served at its offices at 3318 Highway 365 #233, Nederland, Texas 77627, or wherever it may be found. **Citation is Requested.**

FACTS

9. Drilling Structures is in the business of manufacturing drilling equipment. In the course of its business, it enters into ventures with companies located in foreign countries, including Colombia.

10. As is the case with most similarly-situated enterprises, it seeks and secures financing for new projects. Once it secures a source of financing, Drilling Structures reasonably relies on the promised financing while entering into the business relationships necessary to pursue the project and, in the natural course, foregoes other profitable opportunities.

11. Defendant Terra holds itself out to be a funding manager, that is, a company in the business of obtaining funding for various industrial projects. Upon information and belief, those funds are typically bonds underwritten by or through Stern Brothers and Co., which is registered to do business in the state of Texas.

12. Well Built Capital, through its principal Bob Postma, holds itself out to be a company that serves as a client locator and intermediary for Terra.

13. In the regular course, once Well Built Capital identifies a potential client, it furnishes the client a term sheet provided by Terra, as was done for Plaintiffs.

14. Once the client signs the term sheet, the client is instructed to place a substantial escrow deposit with Frost Brown Todd LLC to secure re-payment, which Plaintiffs did.

15. In or about the spring of 2016, DSI and Phillip Rivera identified and secured a potentially lucrative project in Colombia.

16. To finance the project, Plaintiffs sought out funding through Well Built Capital, provided Plaintiffs with a term sheet provided by Terra

17. On or about May 2016, Plaintiffs entered into an agreement contract with Terra who entered into an Escrow Agreement with Frost on June 6, 2016.

18. On or about June 15, 2016, as part of their performance of their obligations, DSI sent \$500,000.00 and after the professional fees were deducted the balance was \$445,000.00 to be held in escrow, and Phillip Rivera sent his \$500,000.00 to Frost to be held in the same escrow account. The attorney overseeing this matter was Jason George, a member of Frost. The Escrow Agreement is attached and incorporated as **Exhibit A** to this Petition

19. However, Terra never provided financing pursuant to its obligations.

20. After recognizing that Terra would be unable to perform its part of the agreement and provide the financing, DSI and Phillip Rivera demanded that Frost return the escrow money.

21. Despite repeated demands, Frost has declined to return the escrow money. Terra likewise has declined to return Plaintiffs' funds. Frost filed a lawsuit in the State of Ohio against Terra and obtained a default judgment.

22. Upon information and belief, Frost and/or an attorney practicing with the firm and acting under the firm's authority and as agent for the firm improperly transferred these spent the escrow

funds to Terra. Terra and attorney Jason George made numerous statements to return the escrow funds after its due date under the Escrow Agreement of September 6, 2016. Terra and attorney Jason George stated they would return the escrow funds out of separate and unrelated transactions they were working on. In the meantime, the firm and/or the attorney(s) acting under the firm's and as its agent(s) wrongfully led Plaintiffs to believe that the money had not been diverted and that it was forthcoming.

23. As a consequence of Defendants' actions, Plaintiffs have lost the funds placed in escrow as well as the money they would have earned on the business opportunities foregone as a consequence of Defendants' failure to perform and to secure the promised financing.

DISCOVERY RULE

24. The nature and extent of the fraudulent activities, including but not limited to the diversion of funds were inherently undiscoverable, in that it is difficult, if not impossible, for Plaintiffs to have discovered the activities of Defendants earlier as they detrimentally relied on the misrepresentation of the Defendants regarding their activities and motives.

25. The parties entered into a tolling agreement, extending limitations to April 15, 2019, attached and incorporated as **Exhibit B** which allowed for extending limitations for Frost to bring its lawsuit against Terra. Notwithstanding, the discovery rule applies to delay accrual of Plaintiffs causes of action for fraud, conversion, breach of fiduciary duty, and breach of contract until Plaintiffs knew or in the exercise of reasonable diligence should have known, of the wrongful acts and resulting damages.

RESPONDIAT SUPERIOR

26. At all times during which the damages to Plaintiffs occurred, Jason George and all other persons employed by or associated with Defendant(s) acted as agents, representatives and/or employees of Defendant(s).

ALTER-EGO

27. Attorney Jason George and the law firm Frost Brown Todd LLC served as an alter-ego of Terra Master Inc and Well Built Capital. "Where a corporation is organized and operated as a mere tool or business conduit of another corporation, it is an alter ego of that other entity. *Castleberry v. Branscum*, 721 S.W.2d 270, 272 (Tex.1986). This should also apply "when there is such unity between corporation and an individual that the separateness of the corporation has ceased and holding only the corporation liable would result in injustice." *Id.*

EXEMPLARY DAMAGES

28. Defendants' actions were willful and malicious, and exemplary damages are warranted. Tex. Civ. Prac. & Rem. Code §134A.004(b).

COUNT 1 - BREACH OF FIDUCIARY DUTY

29. Plaintiffs incorporate the foregoing paragraphs as if fully set forth herein.

30. Defendants owed Plaintiffs a fiduciary duty. Defendants agreed to accept monies from Plaintiffs to hold in escrow as a fiduciary pending the issuance of the bonds.

31. Defendants breached their fiduciary duty to Plaintiffs. When the bonds were not issued, Plaintiffs requested the return of their monies held in escrow by Defendants. Defendant Frost refused because they had transferred the monies to Terra entrusted to them by Plaintiffs and failed to disclose this material fact to Plaintiffs.

32. Defendants' breach of their fiduciary duty is the proximate cause of harm to Plaintiffs and inured to the benefit of Defendants. Defendants knowingly transferred the monies entrusted to them by Plaintiffs, thereby depriving Plaintiffs of the possession, use, benefit, and enjoyment of the monies that were to be held in escrow by Defendants.

33. Plaintiffs have been damaged, at least, in the amount of the monies entrusted to Defendants to be held in escrow, as set forth below. Plaintiffs also claim available special damages, consequential damages, and exemplary damages.

34. Defendants are jointly and severally liable for the breach of the fiduciary duty owed to Plaintiffs. See *Kinzbach Tool Co. v. Corbett-Wallace Corp.*, 160 S.W.2d 509, 514 (Tex. 1942) ("A third party knowingly participating in a breach of duty by a fiduciary becomes a joint tortfeasor with the fiduciary and is liable as such.").

COUNT 2 - FRAUD BY NONDISCLOSURE

35. Plaintiffs incorporate the foregoing paragraphs as if fully set forth herein.

36. During the course of the contractual period in which they claimed to be obtaining financing for Plaintiffs, Defendants on one or more occasions, fraudulently and without authorization, failed to disclose material information to Plaintiffs, particularly failing to disclose that funding had not been obtained and that all or part of the escrow funds had unlawfully been diverted from the law firm's escrow account. See *Bradford v. Vento*, 48 S.W.3d 749, 755 (Tex.2001).

37. Because of the nature of the relationship between Defendants and Plaintiffs, Defendants had a duty to disclose this material information.

38. Defendants' breach of this duty was the proximate cause of harm and damage to Plaintiffs. As a consequence, Plaintiffs have been denied to the possession, use, benefit, and enjoyment of the monies entrusted to Defendants. Plaintiffs' damages are, at least, in the amount of the monies

entrusted to Defendants, as set forth below, in addition to available special damages, consequential damages, and exemplary damages.

COUNT 3 - FRAUD

39. Plaintiffs incorporate the foregoing paragraphs as if fully set forth herein.

40. Defendants made material statements about the availability and use of the funds Plaintiffs in good faith placed in escrow. These representations were false and were made recklessly as positive assertions and without knowledge of the truth, or alternatively intentionally with knowledge they were false.

41. Defendants and their agents and representative made the false statements with the intent that Plaintiffs rely on them. Plaintiffs did justifiably rely on the false statements and non-disclosures to their detriment.

42. Defendants' false representations and non-disclosures directly and proximately caused injury to Plaintiffs, which resulted in the damages set out below. Plaintiffs seek all damages, as set forth below, in addition to special damages, consequential damages, and exemplary damages, within the jurisdictional limits of this Court.

COUNT 4 - NEGLIGENT MISREPRESENTATION

43. Plaintiffs incorporate the foregoing paragraphs as if fully set forth herein.

44. Defendants and others employed by or acting as representatives or agents of Defendants made the statements in the course of Defendants' business operations. Defendants made the representations in the course of a transaction in which Defendants had a pecuniary interest. Defendants made the representations for the guidance of others.

45. Defendants and their employees, representatives and agents' misrepresentations were misstatement of fact. Defendants' misrepresentations included a failure to disclose information

when Defendants had a duty to do so, as well as lies. Defendants did not use reasonable care in communicating the information. Plaintiffs justifiably relied on Defendants' representations when seeking information regarding the funds they placed in escrow.

46. Defendants and their employees, representatives and agents' misrepresentations proximately caused injury to Plaintiffs. Plaintiffs seek damages, as set forth below, in addition to special damages, consequential damages, and exemplary damages, within the jurisdictional limits of this Court.

COUNT 5 - CONVERSION AND STATUTORY THEFT-CONVERSION

47. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

48. There are four elements to the claim: (1) Plaintiffs owned, had legal possession of, or was entitled to possession of the property; (2) Defendants assumed and exercised dominion and control over the property in an unlawful and unauthorized manner, to the exclusion of and inconsistent with Plaintiffs' rights; (3) Plaintiffs made a demand for the property; and (4) Defendants refused to return the property. *Apple Imports, Inc. v. Koole*, 945 S.W.2d 895, 899 (Tex. App.--Austin 1997, writ denied).

49. Texas Theft Liability Act. The Texas Theft Liability Act provides that a person who commits a theft is liable for damages resulting from the theft. Tex. Civ. Prac. & Rem. Code Ann. § 134.003(a). A person found to have committed theft can be forced to pay back the damages sustained from the theft. Id. § 134.005(a)(1). The prevailing party in case under this statute shall also recover court costs and reasonable and necessary attorney's fees. Id. § 134.005(b).

50. Defendants and their agents and employees denied and delayed the return of the funds Plaintiffs placed in escrow. Defendants' actions effectively converted the funds used in the various transactions, for which Defendants may sue.

DAMAGES

51. As a direct and proximate result of the occurrence made the basis of this lawsuit Plaintiffs have been deprived of least \$945,000.00, plus interest.

52. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiffs have been deprived of business opportunities valued at over \$10,000,000.00.

JURY DEMAND

53. Plaintiffs demand a jury trial and tender the appropriate fee with this petition.

REQUEST FOR DISCLOSURE

54. Under Tex. R. Civ. P. 194, Plaintiffs requests that Defendants disclose, within 50 days of the service of this request, the information or material described in Tex. R. Civ. P. Rule 194.2.

PRAYER

Drilling Structures International and Phillip Rivera pray the Court issue citation and after notice and hearing, enter judgment in favor of Plaintiffs and award them all actual and punitive damages, costs of court, pre-judgment and post-judgment interest, attorney's fees, and such other and further relief as they may be entitled to in law or in equity.

Respectfully submitted,

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