

CAUSE NO. 07-00168

UDO BIRNBAUM
Plaintiff,

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IN THE DISTRICT COURT

V.

294TH JUDICIAL DISTRICT

RICHARD L. RAY
Defendant.

VAN ZANDT COUNTY, TEXAS

ORIGINAL COUNTER-CLAIM

First, he brings a dispute over BEAVERS - as a violation of Section 11.06 of the Texas Water Code. Now he claims "libel" - for me bringing his scheme to light - in this Cause - and on the web.

TO THE HONORABLE JUDGE OF THIS COURT:

Defendant and Counterclaimant, RICHARD L. RAY, files this Counter Petition, complaining of Plaintiff and Counterdefendant, UDO BIRNBAUM, and respectfully shows the court the following:

I.

Pursuant to Texas Rules of Civil Procedure Rule 190.1, Counterclaimant intends to conduct discovery in this case under Level 2.

II.

Counterclaimant, RICHARD L. RAY, is an individual residing at 2799 FM 2909, Canton, Van Zandt County, Texas. Counterclaimant is an attorney at law, presently practicing in offices located at 300 South Trade Days Boulevard, Canton, Van Zandt County, Texas.

III.

Counterdefendant, UDO BIRNBAUM, is an individual residing at 540 VZCR 2916, Eustace, Van Zandt County, Texas.

IV.

Prior to the incidents and slanderous statements set forth below, Counterclaimant enjoyed an excellent professional reputation. Counterclaimant had attained high respect from clients, associates, from other members of his profession, and from the community at large.

V.

As a result of Counterclaimant's education, training, and experience, Counterclaimant, prior to the acts, conduct, and statements of Counterdefendant as alleged below, had earned and obtained the good opinion of his associates, clients, and others to whom Counterclaimant has known.

VI.

Counterclaimant graduated from Texas A & M University in 1968 with a Bachelor of Arts degree, and received his Juris Doctor at Southern Methodist University in 1974. He further was licensed by the State Bar of Texas to practice law in 1974. This training and education entitled Counterclaimant to counsel clients according to the law of the State of Texas, and to try those lawsuits which the Counterclaimant deemed in accordance with the Professional Code of Conduct as established by the State Bar of Texas. In addition, the Counterclaimant served as the County Judge of Van Zandt County from 1974 to 1982.

But his suit claimed violation of Section 11.06 of the Texas Water Code by Birnbaum in 1994 "wrongfully building and maintaining a dam". ALL FRAUD

VII.

Sometime in 1994 and 1995, William B. Jones consulted Mr. Ray in regards to the obstruction of his waterflow by the Counterdefendant, Udo Birnbaum. Mr. Jones hired Mr. Ray as his attorney in order to seek an injunction and damages against Counterdefendant **as a result of his refusal to remove the beaver dam** which obstructed the flow of a stream from Jones land on to Birnbaum land.

Count One: Slander and Libel

VIII.

On or about March 22nd 2007, and thereafter, the false, defamatory, and slanderous and libelous statements were made and published by Counterdefendant, and were widely circulated among Counterclaimant's fellow attorneys, clients, acquaintances, prospective clients and the general public. Attached hereto as Exhibit "A" is a copy of these statements.

IX.

Well, that is EXACTLY what he did!
BEAVERS don't violate the TEXAS
WATER CODE! ALL FRAUD!

Counterdefendant's statements were false and malicious, in that he selectively omits information from the publication in order to create a false impression. *Huckabee v. Time Warner Entertainment*, 19 S.W.3d 413 (Tex. 2000). A reasonable reader would be misled by the publication, www.OpenJustice.US, at the time of publication. *New Times, Inc. v. Isaacks*, 146 S.W.3d 144 (Tex. 2004). Mr. Birnbaum states in his publication, www.OpenJustice.US, that Counterclaimant is a "shyster lawyer, knowing he can't sue me over BEAVERS (they are state animals), simply changes the facts", which he published in the community of Van Zandt County, Texas, the location where Counterclaimant primarily practices law. In addition, Mr. Birnbaum slanders the Counterclaimant in his Petition which claims that Mr. Ray "schemed" his client, Mr. Jones, and Counterdefendant by extorting legal fees in the court process. Mr. Birnbaum further asserts that Counterclaimant is dishonest and has enabled legal "sharks" to obtain a judgment of almost \$200,000.00 against Mr. Birnbaum, although Mr. Ray was totally uninvolved in that process and is unfamiliar with any of the parties excepting Mr. Birnbaum. Counterdefendant's statements contained in both his publication and his Petition are of such a nature as to be unfounded, misleading, and demoralizing to the Counterclaimant. Mr. Birnbaum's slanderous and libelous statements are not limited to these two publications.

Mr. Birnbaum's statements were TRUE. Mr. Ray's business partners attorneys KNEW they were true! FRAUD of this counter-claim!

Counterdefendant made his statements regarding Counterclaimant with actual malice, in that Counterdefendant **knew that the statements were false** at the time they were made. Counterdefendant made the false statements with the malicious intent to injure Counterclaimant's personal and professional reputation, and to disgrace Counterclaimant among his associates, clients, and others in the community. Counterdefendant further intended to vex, harass, and totally ruin Counterclaimant in his profession.

XI.

All the "permission request" asked for is to go onto the area where Mr. Ray was claiming DAMAGES - and take pictures.

The Counterdefendant's slanderous statements were communicated, conveyed, and made known by the Counterdefendant's **"Permission Request"**, which was mailed to Counterclaimant, and the contents of which were mailed or published to many other persons, as a direct and proximate result of which Counterclaimant has been seriously injured in his name, reputation, and business, to Counterclaimant's damage in an amount within the jurisdictional limits of this Court. Attached hereto as Exhibit "A" is a copy of "Courthouse Vignettes" which was published or posted on the Counter-Defendant's www.OpenJustice.us web site.

Count Two: Libel

XII.

The newsletter published by Counterdefendant was an unfair, false, and malicious account of the proceedings in the 294th Judicial District Court, Van Zandt County, Texas, held in 1995 in Canton, Texas. As such, this publication was not privileged by Counterdefendant but was libelous and defamatory publication on the part of Counterdefendant. The publication has attempted to expose the Counterclaimant to public wrath, hatred, contempt, and ridicule, and has

deprived Counterclaimant of the benefits of **public confidence** and **social intercourse** and, as such, is libelous per se.

XIII.

On October 24th, 2007, Counterdefendant falsely and with malice, wrote a widely circulated newsletter (Exhibit "A") that read as follows:

Just read the transcript of the all-week trial. That is EXACTLY what he did! Search for "blow" or "blew"

The beaver dam suit against me – a wake-up call – what started it all:

Beaver Dam Bunk – I get sued because BEAVERS had built a dam on my farm? Senile neighbor (ex-military) goes to war – against beavers – with DYNAMITE? Calling them "overgrown rats", he gets mad at me too.

His shyster lawyer, knowing he can't sue me over BEAVERS (they are state animals), simply changes the facts.

Just read Ray's "Original Petition" - that is EXACTLY what he did!

Claims I had violated the TEXAS WATER CODE, by ME having built a dam, that caused "sand, driftwood, and debris" to wash upon my neighbor – when he is entirely UPSTREAM!

Civil RICO suit against the "beaver dam scheme" – judges, lawyers, etc.

Civil RICO suit against Canton lawyer (for his "beaver dam" scheme) Lawyer's Answer Started eight years ago. Lawyer still perpetrating it in our District Court as of this day.

Perpetrating a scheme to "deprive of honest service" (i.e. pattern of lying in court) violates "RICO. (Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq.*)

"RICO "is really simple. See why bad lawyers (and bad judges hate civil RICO.

XIV.

On October 24th, 2007, the Counterdefendant's newsletter was received and read by Counterclaimants' associates, clients, acquaintances, friends, and other persons who are and were part of the community. The words and language in Counterdefendant's letter were intended to mean that Counterclaimant had schemed against the Counterdefendant, is in the

practice of scheming his clients, has a dishonest character, falsely bills his clients, and is in general of such a character as to be perceived as immoral.

XV.

Counterdefendant's newsletter concerning Mr. Ray was printed, published, circulated, and distributed by Counterdefendant to the readers of the newsletter, and to other persons in the community, and through these persons to still others in Canton, Texas, and elsewhere.

XVI.

The words and charges made, printed, and published by Counterdefendant, and understood and intended to be understood by the readers of his newsletter, were false in every particular, defamatory, libelous, unprivileged, and without legal excuse, in that Mr. Birnbaum's accusations were unfounded, and were fueled by vengeance and anger towards the legal system, of which he believed (and continues to believe) himself to be a victim.

XVII.

The Counterdefendant's publication of the newsletter had a tendency to, and did, expose Counterclaimant to hatred, contempt, and ridicule by imputing to Counterclaimant an immoral, greedy, deceitful, and dishonest character. Further, the letter had a tendency to, and does, injure Counterclaimant's good name, reputation, and business in that Mr. Birnbaum states that Mr. Ray immorally conducts his business and is a person of dishonest and untrustworthy character, all to Counterclaimant's general damage in an amount within the jurisdictional limits of this Court.

XVIII.

Mr. Ray KNOWS that this HIS statement is FALSE - yet he makes it ANYWAY!

Counterdefendant published and circulated the libelous statements, some of which are quoted above, with actual malice, in that he knew the statements were false but made them anyway. Therefore, Counterdefendant's publication entitles Counterclaimant to recover

exemplary damages from Counterdefendant in an amount within the jurisdictional limits of this Court.

Count Three: Intentional Infliction of Emotional Distress

XIX.

That is EXACTLY what he did - still trying to get "attorneys fees" - when he was NOT a "winning party".

On or about March 22nd, 2007, the Counterdefendant intentionally or recklessly stated, both in print and verbally, that Mr. Ray committed a "scheme...to get Birnbaum and Mr. Jones entangled in court process to cause lots of legal fees", that Mr. Ray delivered a "dishonest closing argument to a jury", called Mr. Ray "unethical", that Mr. Ray created a "scheme to deprive of the intangible right of honest services" (implying that Mr. Ray is dishonest), accused Mr. Ray of **hiding that a client was deceased** in order to accrue attorney's fees, committed unlawful acts, and in general stated that Mr. Ray is an unethical, corrupt and immoral person after receiving an unfavorable judgment in favor of a client of Mr. Ray's.

XX.

The acts of Counterdefendant described above were extreme and outrageous.

XXI.

Even his LAWYER associates recognized what Mr. Ray had done! It was of course ALL on paper in the Court.

As a direct and proximate result of Counterdefendant's acts alleged above, Counterclaimant suffered extreme and severe emotional distress, as follows: **The community to which Mr. Ray belongs** began to read the Counterdefendant's accusations, thus injuring Mr. Ray's outstanding reputation. Mr. Ray's longstanding presence as a person of reliability, integrity, and honest business practice was injured by the statements of the Counterdefendant, as **doubt began to permeate the minds of those who heard** the Counterdefendant's unfounded and maliciously wrong statements. The perpetual lawsuits and harassment of the Counterdefendant has also **caused** the Counterclaimant to suffer from **stress, anxiety, and loss of confidence**.

XXII.

As a direct and proximate result of Counterdefendant's acts alleged above, Counterclaimant will continue in the future to suffer extreme and severe emotional distress, as follows: he will suffer anxiety in dealing with future clients and opposing parties as a result of this disturbing entanglement caused by Mr. Birnbaum, he will suffer from continual insecurity in his reputation throughout the community, he will suffer from loss of confidence from the community, and stress caused by the bitterness of the Counterdefendant's statements of dislike for Counterclaimant. aka "bad conscience"

XXIII.

As the direct and proximate result of Counterdefendant's negligence, Counterclaimant has been damaged in an amount within the jurisdictional limits of this Court.

Prayer for Relief

Therefore, Counterclaimant respectfully requests that Counterdefendant be cited to appear and answer, and that on final trial Counterclaimant have:

1. Judgment against Counterdefendant in an amount within the jurisdictional limits of this Court;
2. Punitive damages in an amount within the jurisdictional limits of this Court;
3. Ordering that the Counterclaimant recover general damages and damages for mental anguish in excess of the minimum jurisdictional limits of this Court;
4. Costs of suit; and
5. Any other relief to which Counterclaimant deems himself entitled.

Respectfully submitted,

RAY & ELLIOTT, ATTORNEYS AT LAW, P.C.

These clowns - both business partners in his home business office - KNEW that Mr. Ray had gotten caught with his "Beaver Dam Scheme" - yet filed this fraudulent document anyway.

From statements in the court - I am certain that Mr. Elliott did NOT partake in this document - that it was all between Mr. Ray and Thatcher, his daughter.

BY: 

VICTORIA RAY THATCHER

State Bar No. 24054462

JOEL C. ELLIOTT

State Bar No. 24012584

300 S. Trade Days Blvd.

Canton, Texas 75103

903/567-2051 (telephone)

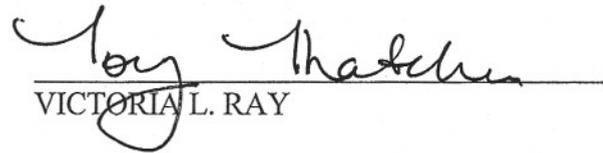
903/597-6998 (facsimile)

ATTORNEYS FOR DEFENDANT AND
COUNTERCLAIMANT HEREIN

P.S. - they no longer "office" together - "enough is enough"

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing RICHARD L. RAY'S ORIGINAL COUNTER-CLAIM was delivered by U.S. Certified Mail, return receipt requested, Label Number 7007 0710 0002 9724 0259, to Mr. Udo Birnbaum, 540 VZCR 2916, Eustace, Texas 75124, on this the 21st day of January, 2008:


VICTORIA L. RAY