

CAUSE NO. DC-14-10061

JANA WECKERLY	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
vs	§	134 TH JUDICIAL DISTRICT
	§	
JERRY JONES, DALLAS	§	
COWBOYS FOOTBALL CLUB LTD.,	§	
LEVI MCCATHERN, AND	§	
MCCATHERN LAW FIRM	§	
	§	
Defendants.	§	DALLAS COUNTY, TEXAS

PLAINTIFF’S FIRST AMENDED ORIGINAL PETITION

TO THE HONORABLE DISTRICT COURT JUDGE:

COMES NOW, Plaintiff, JANA WECKERLY, and files her Plaintiff’s First Amended Original Petition complaining of Defendants, JERRY JONES, DALLAS COWBOYS FOOTBALL CLUB LTD, LEVI MCCATHERN, and MCCATHERN LAW FIRM and would show the Court the following:

I.

DISCOVERY CONTROL PLAN

1. Plaintiff intends to conduct discovery under Level 3 of Texas Rule of Procedure 190.4, and be controlled by a scheduling order to be agreed upon by the parties and the Court.

II.

PARTIES

2. Plaintiff JANA WECKERLY is an individual who resides in Ardmore, Carter County, Oklahoma.

3. Defendant JERRY JONES is an individual who resides in Dallas, Dallas County, Texas, and service of process may be perfected on him individually at his home or place of employment at 1 Cowboys Parkway, Irving, Texas 75063.

4. Defendant DALLAS COWBOYS FOOTBALL CLUB LTD (hereinafter referred to as "COWBOYS") is a business operating in the State of Texas and service of process may be perfected by serving its registered agent for service C T Corporation System, 1999 Bryan Street, Ste. 900, Dallas, Texas 75201-3136.

5. Defendant LEVI MCCATHERN is an individual who on information and belief resides in Dallas, Dallas County, Texas, and service of process may be perfected on him individually at his home or place of employment at MCCATHERN LAW FIRM, 3710 Rawlins, Suite 1600, Dallas, Texas 75219.

6. Defendant MCCATHERN LAW FIRM is a business operating in the State of Texas and service or process may be perfected by serving its registered agent Arnold Shokouhi, 3710 Rawlins, Suite 1600, Dallas, Texas 75219. Upon information and belief, Defendant MCCATHERN LAW FIRM has recently changed its name from McCathern, Mooty, Grinke LLP.

III.

JURISDICTION

7. The court has jurisdiction over this action because the facts giving rise to this action occurred in whole or in part within Dallas County, Texas and the damages sought by Plaintiff are well in excess of the minimum jurisdictional limits of this Court.

IV.

VENUE

8. Venue is proper in Dallas County, Texas pursuant to Texas Civil Practice and Remedies Code § 15.002(a)(1) because all or a substantial part of the events or omissions occurred in Dallas County, Texas.

V.

SEXUAL ASSAULT

9. Sometime in May or June 2009, Defendant JERRY JONES intentionally and knowingly sexually assaulted Plaintiff without her consent. JERRY JONES'S misconduct was known, or with the exercise of reasonable care, should have been known by Defendant COWBOYS.

10. Defendant JERRY JONES intentionally, knowingly, and forcibly rubbed and/or grabbed Plaintiff's buttocks multiple times. Defendant JERRY JONES performed these acts without the consent of Plaintiff.

11. Defendant JERRY JONES intentionally, knowingly, and forcibly rubbed and/or grabbed Plaintiff's breasts multiple times. Defendant JERRY JONES performed these acts without the consent of Plaintiff.

12. Defendant JERRY JONES intentionally and knowingly forced Plaintiff to touch and/or rub on his penis multiple times. Defendant JERRY JONES forced Plaintiff to perform these acts without the consent of Plaintiff.

13. Defendant JERRY JONES intentionally, knowingly, and forcibly kissed Plaintiff on her neck multiple times without the consent of Plaintiff.

14. Defendant JERRY JONES intentionally, knowingly, and forcibly kissed Plaintiff on her shoulder multiple times without the consent of Plaintiff.

15. Defendant JERRY JONES intentionally, knowingly, and forcibly kissed Plaintiff on her lips multiple times without the consent of Plaintiff.

16. Defendant JERRY JONES intentionally, knowingly, forcibly penetrated Plaintiff's vagina with his fingers without the consent of Plaintiff.

17. Defendant JERRY JONES intentionally and knowingly received oral sex from another female while in the presence of Plaintiff. When Defendant JERRY JONES intentionally and knowingly received oral sex from the female, he knew that Plaintiff was present and intentionally and knowingly wanted Plaintiff to see said oral sex act.

Plaintiff did not want to see Defendant JERRY JONES receive oral sex from the female.

18. The conduct of Defendant JERRY JONES was in violation of state and federal criminal statutes regarding sexual abuse including, but not limited to, Texas Penal Code §22.011 and §43.05.

19. The acts of Defendant JERRY JONES pled in Paragraphs 9-18 herein proximately caused injuries to Plaintiff.

VI.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

20. Defendant JERRY JONES'S sexual assault of Plaintiff constitutes extreme and outrageous conduct. For the COWBOYS to facilitate its president in his sexual predations constitutes extreme and outrageous conduct. Defendants JERRY JONES and COWBOYS intentionally caused severe emotional distress to Plaintiff, and Plaintiff suffered severe injuries as a direct and proximate result.

VII.

NEGLIGENCE

21. Defendant COWBOYS committed acts of omission and commission, which collectively and severally, constituted negligence and gross negligence, which was the proximate cause of the injuries and damages to Plaintiff.

22. Defendant COWBOYS failed to use reasonable care to prevent the negligent and grossly negligent acts from occurring. Specifically, Defendant COWBOYS, through their employees and officers, were negligent and grossly negligent in the following (but not limited to) respects:

- a. Supervising, assigning, and retaining JERRY JONES;
- b. Failing to provide adequate monitoring of JERRY JONES;
- c. Failing to institute and implement policies for the protection of females;
- d. Failing to investigate allegations of inappropriate conduct;
- e. Failing to report crimes against Plaintiff and others to law enforcement;
- f. Tampering with criminal evidence;
- g. Threatening victims and witnesses to deter criminal complaints;
- h. Making decisions which reflected that the reputation of JERRY JONES and COWBOYS and the desire to avoid scandal were vastly superior and more important to the COWBOYS than the welfare of the Plaintiff and other victims who had been sexually abused by JERRY JONES;
- i. Fostering an environment and culture where abuse of females could flourish and in which it was clearly understood that there was no accountability for such criminal acts toward females.

- j. Failing to warn Plaintiff or the public of the dangerous sexual propensities of JERRY JONES toward females;
- k. Retaining JERRY JONES in a position of trust, confidence and authority as president in direct contact with females when it knew or should have known of his dangerous sexual propensities.

23. Defendant COWBOYS bears vicarious liability for the acts and omissions of its agents, employees and officers under theories of respondeat superior and/or apparent authority. In particular, Defendant COWBOYS bears vicarious liability for the acts and omissions of JERRY JONES.

24. The conduct of Defendant COWBOYS was in violation of state and federal criminal statutes regarding sexual abuse which constitutes negligence per se, including, but not limited to, Texas Penal Code §22.011 and §43.05.

25. The acts of Defendant JERRY JONES and COWBOYS pled in Paragraphs 21-24 herein proximately caused injuries to Plaintiff.

VIII.

CONSPIRACY TO COVER UP SEXUAL ASSAULT

26. Defendants JERRY JONES, COWBOYS, LEVI MCCATHERN, and MCCATHERN LAW FIRM conspired to cover up the sexual assault against Plaintiff.

27. Instead of reporting JERRY JONES'S crimes, Defendant JERRY JONES, COWBOYS, LEVI MCCATHERN, MCCATHERN LAW FIRM and other possible yet to be determined actors entered into an agreement to conceal this sexual assault of Plaintiff and keep it secret at the expense of Plaintiff.

28. Defendants JERRY JONES, COWBOYS, LEVI MCCATHERN, and MCCATHERN LAW FIRM threatened Plaintiff so that she would not tell the police.

29. Defendants JERRY JONES , COWBOYS, LEVI MCCATHERN, and MCCATHERN LAW FIRM intimidated Plaintiff and told her to keep quiet and not tell anyone else “or else”.

30. Defendants JERRY JONES, COWBOYS, LEVI MCCATHERN, and MCCATHERN LAW FIRM bullied Plaintiff into believing that she would somehow be in trouble if she told anyone about the sexual assault.

31. Defendants JERRY JONES, COWBOYS, LEVI MCCATHERN, and MCCATHERN LAW FIRM intimidated Plaintiff into signing documents against her will, without giving her copies, or access to legal counsel.

32. Defendants JERRY JONES, COWBOYS, LEVI MCCATHERN, and MCCATHERN LAW FIRM paid Plaintiff money she did not ask for to keep her from reporting the crimes to the police.

33. Defendants JERRY JONES, COWBOYS, LEVI MCCATHERN, and MCCATHERN LAW FIRM paid Plaintiff money she did not ask for to keep her from filing her lawsuit before any applicable statute of limitations deadlines.

34. Upon information and belief, Defendants JERRY JONES, COWBOYS, LEVI MCCATHERN, and MCCATHERN LAW FIRM sent payments to Plaintiff’s bank account from 2009 at least through July 2013. Proof of the payments are supported by Plaintiff’s bank records. Upon information and belief, payments to Plaintiff were made from the IOLTA bank account of McCathern, Mooty, and Grinke LLP. Upon

information and belief McCathern, Mooty, and Grinke LLP has recently changed its name to MCCATHERN LAW FIRM.

35. Upon information and belief, Defendants will assert that payments to Plaintiff were for photographs, some of which a third party admittedly stole and released to the public, or other alleged reasons unrelated to the sexual assault and related damages.

36. Defendants demanded and Plaintiff gave them the cell phone memory card which contained the photographs she took the night of the sexual assault. Defendant LEVI MCCATHERN smashed the cell phone memory card destroying it.

37. It is Plaintiff's contention that all photographs taken by her the night of the sexual assault were evidence and would surely be considered evidence by the appropriate law enforcement authorities.

38. It is Plaintiff's contention that her photographs should have been delivered to law enforcement and not destroyed.

39. Defendants JERRY JONES, COWBOYS, LEVI MCCATHERN, and MCCATHERN LAW FIRM'S actions above placed Plaintiff in imminent fear of her life, safety, and well being.

40. But for the actions of Defendants JERRY JONES, COWBOYS, LEVI MCCATHERN, and MCCATHERN LAW FIRM, Plaintiff would have immediately told the police.

41. But for the actions of Defendants JERRY JONES, COWBOYS, LEVI MCCATHERN, and MCCATHERN LAW FIRM, Plaintiff would have filed her lawsuit well before any applicable statute of limitations deadlines.

42. The acts of Defendants JERRY JONES, COWBOYS, LEVI MCCATHERN, and MCCATHERN LAW FIRM pled in Paragraphs 26-41 herein proximately caused injuries to Plaintiff.

IX.

THE COWBOYS, LEVI MCCATHERN, AND MCCATHERN LAW FIRM
WERE CRIMINALLY COMPLICIT WITHIN THE MEANING OF TEX.
CIV. PRAC. & REM. CODE ANN. §41.005(b), THEREFORE PUNITIVE
DAMAGES APPLY

43. Tex. Civ. Prac. Rem. Code § 41.005(a) does not apply to bar punitive damages in this matter because Defendants were criminally complicit. Tex. Civ. Prac. & Rem. Code § 41.005(b)(2) provides an exception when a defendant is criminally responsible as a party to the criminal act. Under Chapter 7 of the Texas Penal Code, specifically § 7.02(a), a person is criminally responsible for an offense committed by the conduct of another if:

- (2) acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense; or
- (3) having a legal duty to prevent commission of the offense and acting with intent to promote or assist its commission, he fails to make a reasonable effort to prevent commission of the offense.

44. Tex. Pen. Code. Ann. § 7.02(a)(2). The provisions of this statute are met because Defendant COWBOYS assisted and aided JERRY JONES in the commission of the sexual assault on Plaintiff by failing to report JERRY JONES to law enforcement,

conspiring to cover up the sexual assault against Plaintiff, and retaining him in a position of trust, confidence and authority as president in direct contact with females when it knew or should have known of his dangerous sexual propensities. Likewise, the provisions of this statute are also met because Defendants LEVI MCCATHERN and MCCATHERN LAW FIRM assisted and aided JERRY JONES in the commission of the sexual assault on Plaintiff by failing to report JERRY JONES to law enforcement and also conspiring to cover up the sexual assault against Plaintiff.

45. Further, Tex. Pen. Code. Ann. § 7.02(a)(3) is met because Defendants COWBOYS had a duty to prevent the sexual assault of Plaintiff. Instead, Defendant COWBOYS conspired to cover up the sexual assault of Plaintiff, knew of JERRY JONES'S problems with womanizing and proclivity with alcoholic beverages, yet he was still retained in a position of trust, confidence and authority as president in direct contact with females when it knew or should have known of his dangerous sexual propensities. Defendant COWBOYS failed to make a reasonable effort to prevent the commission of the offense. Likewise, Tex. Pen. Code. Ann. § 7.02(a)(3) is also met because Defendants LEVI MCCATHERN and MCCATHERN LAW FIRM had a duty to prevent the sexual assault and conspiracy to cover up the sexual assault of Plaintiff. Instead, Defendant LEVI MACCATHERN and MCCATHERN LAW FIRM failed to make a reasonable effort to prevent the commission of the sexual assault and conspiracy to cover up the sexual assault against Plaintiff.

46. Additionally, Tex. Pen. Code Ann. §7.21 -7.23 encompasses the criminal responsibility of corporations or associations and provides that a corporation or association is criminally responsible for the conduct of its agent if it was authorized,

performed or recklessly tolerated by a high managerial agent. The Defendant COWBOYS not only tolerated Defendant JERRY JONES'S conduct, they aided and abetted JERRY JONES in covering up the sexual assault against Plaintiff. Plaintiff would show that Defendants recklessly tolerated and allowed the conduct of Defendant JERRY JONES and are therefore, subject to punitive damages in this matter. Likewise, the Defendant MCCATHERN LAW FIRM not only tolerated Defendant LEVI MCCATHERN'S conduct, they aided and abetted LEVI MCCATHERN in covering up the sexual assault against Plaintiff. Plaintiff would show that Defendant MCCATHERN LAW FIRM recklessly tolerated and allowed the conduct of Defendant LEVI MCCATHERN and are therefore, subject to punitive damages in this matter

X.

STATEMENTS TO THE COURT

47. Plaintiff asserts that the statute of limitations has not run on these causes of action pursuant to TCPRC § 16.0045.

48. Plaintiff asserts that the statute of limitations as to these causes of action has been suspended at various times pursuant to TCPRC § 16.063. Upon information and belief, Defendant and world-renowned businessman JERRY JONES has been absent from the state at least 121 days in the last five years.

49. Plaintiff asserts that the statute of limitations as to these causes of action has been tolled on various grounds of equitable estoppel including, but not limited to, duress and intimidation. (See also, VIII Conspiracy to Cover Up Sexual Assault 26-42)

50. Plaintiff's claims against all Defendants for conspiracy are well within the statute and are not barred by limitation as each payment to Plaintiff constitutes a new accrual date.

XI.

DAMAGES

51. Defendants' egregiously wrongful conduct resulted in and proximately caused injury to the Plaintiff. Plaintiff seeks damages allowed in the State of Texas in an amount within the jurisdictional limits of the Court. The damages include past and future physical pain and mental anguish, past and future severe psychological pain and suffering, past and future emotional distress, and past and future medical expenses.

52. As a result of the conduct and incidents described herein, Plaintiff has suffered many other damages, including loss of self esteem, loss of trust, depression, substance abuse, and suicide attempts. In all reasonable probability, her social and professional adjustment in the past has been affected and in all probability her future social professional life will be adversely impacted as well.

53. Plaintiff has suffered lost wages in the past and will suffer diminished wage-earning capacity in the future.

54. The Texas Rules of Civil Procedure require that Plaintiff choose among several statements regarding the amount Plaintiff seeks. Plaintiff is suing for the amount determined to be fair and reasonable by the jury. Because the jury could potentially determine that fair and reasonable damages are in excess of \$1,000,000 in this case, Plaintiff must state that she seeks monetary relief of over \$1,000,000 so as to not limit

what the jury may award in this case. Accordingly, pursuant to Tex. R. Civ. P. 47, Plaintiff states that she seeks monetary relief of more than \$1,000,000.

XII.

GROSS NEGLIGENCE PUNITIVE DAMAGES

55. Plaintiff also seeks punitive and exemplary damages in order to punish and deter the outrageous conduct of all of the Defendants herein. Facts as alleged above will be proven by Plaintiff's clear and convincing evidence that Defendants acted fraudulently and maliciously and were grossly negligent in that, either by act or omission, they exposed Plaintiff to an extreme degree of risk of harm, considering the probability, magnitude and extent of the harm that would likely impact them and which ultimately did. Further, Defendants had real, subjective awareness of the risks involved, but nevertheless proceeded with callous indifference to the rights, safety, and welfare of Plaintiff, physically and psychologically. These damages, in concert with the conduct of JERRY JONES are described as felonies where applicable, specifically, but not limited to Tex. Pen. Code §22.011 (sexual assault), and §43.05 (compelling prostitution). They were committed knowingly, in consequence of which the punitive damages cap does not apply. *See* Tex. Civ. Prac. & Rem. Code §41.008(c).

56. To the extent that this case arises out of criminal conduct committed by JERRY JONES, an unfit employee or agent of Defendant COWBOYS, Defendant COWBOYS is liable for exemplary damages because the agent was notably unfit; COWBOYS acted with malice in employing or retaining him and in failing to supervise him; the employee or agent was employed in a managerial capacity and was acting in the scope of employment; and/or COWBOYS effectively ratified or approved his acts.

57. To the extent that this case arises out of criminal conduct committed by LEVI MCCATHERN, an unfit employee or agent of Defendant MCCATHERN LAW FIRM, Defendant MCCATHERN LAW FIRM is liable for exemplary damages because the agent was notably unfit; MCCATHERN LAW FIRM acted with malice in employing or retaining him and in failing to supervise him; the employee or agent was employed in a managerial capacity and was acting in the scope of employment; and/or MCCATHERN LAW FIRM effectively ratified or approved his acts.

XIII.

PRE-JUDGMENT AND POST-JUDGMENT INTEREST

58. Plaintiff herein claims interest in accordance with Texas Finance Code §304.001, et seq. and any other applicable law.

XIV.

DEMAND FOR JURY TRIAL

59. Plaintiff demands a jury trial and has tendered the appropriate jury fee.

XV.

PRAYER

60. For these reasons, Plaintiff asks that the Court issue citations for Defendants to appear and answer, and that Plaintiff be awarded a judgment against Defendants, jointly and severally, for all damages described herein, including actual damages, punitive damages, attorney's fees, cost of suit, interest as allowable by law and for such other relief, in law and in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

By: /s/ Thomas D Bowers

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