

3. C. Faulkner

CAUSE NO. 11-14241

ORIGINAL FILED

CHRISTOPHER FAULKNER,

Plaintiff,

v.

JAMES ECKELS, ERIN BULLOCK, AND CASSIOPEIA INTERNET, INC.,

Defendants.

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IN THE DISTRICT COURT OF

GARY FITZSIMMONS
DISTRICT CLERK
DALLAS CO., TEXAS

Berynda W. WOODRUFF
JUDICIAL DISTRICT

101st-E

DALLAS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION, APPLICATION FOR INJUNCTIVE RELIEF AND REQUEST FOR TEMPORARY RESTRAINING ORDER, APPLICATION FOR APPOINTMENT OF RECEIVER, PETITION FOR ACCOUNTING, PETITION FOR ENFORCEMENT OF SECTION 21.218 OF THE TEXAS BUSINESS ORGANIZATIONS CODE, AND REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Christopher A. Faulkner, Plaintiff in the above-styled and numbered cause ("Plaintiff"), and files this, his Original Petition, Application for Injunctive Relief and Request for Temporary Restraining Order, Application for Appointment of Receiver, Petition for Accounting, Petition for Enforcement of Section 21.218 of the Texas Business Organizations Code, and Request for Disclosure, complaining of James Eckels ("Eckels"), individually, Erin Bullock ("Bullock"), individually, and Cassiopeia Internet, Inc. ("Cassiopeia"), Defendants in the above-styled and numbered cause, and in support thereof would respectfully show the Court the following:

**I.
DISCOVERY CONTROL PLAN**

1. Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, Plaintiff affirmatively pleads that discovery in this matter is intended to be conducted in accordance with

PLAINTIFF'S ORIGINAL PETITION, APPLICATION FOR INJUNCTIVE RELIEF AND REQUEST FOR TEMPORARY RESTRAINING ORDER, APPLICATION FOR APPOINTMENT OF RECEIVER, PETITION FOR ACCOUNTING, PETITION FOR ENFORCEMENT AND REQUEST FOR DISCLOSURE

discovery control plan, Level 3, pursuant to Rule 190.4 of the Texas Rules of Civil Procedure, and Plaintiff hereby moves for the entry of a scheduling order.

II.
PARTIES AND SERVICE

2. Plaintiff is an individual residing in Tarrant County, Texas.

3. Defendant, James Eckels, is an individual residing in Denton County, Texas, and may be served with process at his place of business located at 7570 John Carpenter Freeway, Dallas, Texas, 75247, or wherever he may be found.

4. Defendant, Erin Bullock, is an individual residing in Dallas County, Texas, and may be served with process at her place of employment located at 7570 John Carpenter Freeway, Dallas, Texas, 75247, or wherever she may be found.

5. Defendant, Cassiopeia Internet, Inc., is a Texas corporation, does business in Dallas County, and has its principal place of business at 7570 John Carpenter Freeway, Dallas, Texas 75247, and may be served with process by serving its registered agent for service, Timothy Trickey, at 5750 North Balcones Drive, Suite 108, Austin, Texas 78731.

III.
JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action because the amount in controversy is within the jurisdictional limits of the Court.

7. This Court has personal jurisdiction over Defendants because they are residents of Texas, are Texas business entities organized under the laws of Texas, were doing business in Texas when the acts or omissions complained of occurred, or have otherwise submitted to the jurisdiction of the Court and because this suit, in part, concerns acts or omissions of Defendants in the State of Texas.

8. Venue is proper in Dallas County, Texas pursuant to Section 15.002(a)(1) of the Texas Civil Practices and Remedies Code because all or a substantial part of the events or omissions giving rise to Plaintiff's claim occurred in Dallas County, Texas, and pursuant to Section 15.005 of the Texas Civil Practice and Remedies Code because this Court has venue over Defendants in all claims or actions arising out of the same transaction, occurrence, or series of transactions or occurrences.

IV. ORIGINAL PETITION

A. Background Facts

9. Plaintiff Christopher Faulkner was Chief Executive Officer and Chairman of the Board for CI Host, Inc. CI Host, Inc. provided internet services and web hosting. CI Host, Inc. stopped operating in 2006. Cassiopeia Internet, Inc. is a company that was formed in late 2006 and took over the premises previously owned by CI Host, Inc. Plaintiff is a majority shareholder in Cassiopeia but is not an employee.

10. Plaintiff had an office on the premises of Cassiopeia until he left on or about January 16, 2010. After his departure, Plaintiff was given an old, out of commission server for his personal electronic mail accounts. The old server was located on the premises of Cassiopeia. Plaintiff had exclusive rights to the server holding his electronic mail accounts and was the sole manager of the accounts on the server. Those electronic mail accounts and the electronic communications routed through the server were of personal nature and not related to the business or interests of Cassiopeia. Cassiopeia had its own network and Plaintiff set up a completely distinct network named "Chris Faulkner" to operate as his server.

11. James Eckels ("Eckels") is corporate counsel for Cassiopeia. Erin Bullock ("Bullock") is a shareholder and officer in Cassiopeia.

12. Beginning on or about February 19, 2010, and continuing until approximately September 1, 2011, Eckels and Bullock, acting individually and on behalf of Cassiopeia, and with the help of another employee of Cassiopeia, intercepted, read, diverted, and stored the personal electronic mail communications of Plaintiff without his consent or knowledge. Hundred, if not thousands of personal communications were diverted by Defendants.

13. Defendants' actions violated the Texas Criminal Wiretap Act and Plaintiff's right to privacy.

B. Causes of Action

i. TEXAS CRIMINAL WIRETAPPING ACT

14. Paragraphs 1 through 13 of this pleading are incorporated herein by reference, the same as if fully set forth verbatim.

15. Plaintiff, by sending electronic mail communications through a server, made an electronic communication as defined by the Tex. Pen. Code § 16.02.

16. Defendants intentionally intercepted, and or solicited others to intercept, the contents of Plaintiff's communications in violation of Tex. Pen. Code § 16.02 and Tex. Code of Crim. Pro. Art. 18.20.

17. As a result of Defendants' intentional interception of Plaintiff's electronic communications, Plaintiff is entitled to statutory damages and punitive damages. Tex. Code of Crim. Pro. Art. 18.20, § 16(a)(2) and Tex. Civ. Prac. & Rem. Code § 41.001. Additionally, Plaintiff is entitled to recover reasonable attorneys' fees and court costs. Tex. Code of Crim. Pro. Art. 18.20, § 16(a)(3).

ii. INVASION OF PRIVACY

18. Paragraphs 1 through 17 of this pleading are incorporated herein by reference, the same as if fully set forth verbatim.

19. Defendants intruded upon Plaintiff's private affairs and concerns by intentionally intercepting, storing and reading his personal electronic mail communications. Such actions on the part of the Defendants are highly offensive to a reasonable person. In fact, Defendants intercepted and read personal electronic mail communications between Plaintiff and his attorneys.

20. Moreover, the intrusion into Plaintiff's electronic communications was unreasonable, unjustified, or unwarranted. More shockingly, Eckels, as attorney for Cassiopeia, intercepted private e-mails from the opposing side of a currently litigated matter with Cassiopeia.

21. As a result of Defendants' intrusion, Plaintiff has suffered injuries for which he now seeks to recover. Plaintiff seeks to recover damages in excess of the minimal jurisdiction of this Court, for which he now sues.

22. Additionally, Plaintiff seeks injunctive relief to prevent Defendants from further interception, attempted interception, or divulgence or used of information obtained by interception.

iii. BREACH OF FIDUCIARY DUTIES

23. Eckels as corporate counsel for Cassiopeia and Bullock as officer and shareholder of Cassiopeia owed a fiduciary duty to Faulkner. Eckels and Bullock breached their fiduciary duties by intentionally intercepting and reading the personal electronic communications of Faulkner, including those between he and his attorneys. Those breaches caused Faulkner injury and were of benefit to Defendants.

iv. ATTORNEYS' FEES AND COSTS

24. Plaintiff has retained the law firm of David, Goodman & Madole, P.C. to represent him in connection with this matter, and Plaintiff has agreed to pay for such reasonable and necessary services. Plaintiff is entitled to and seeks to recover from Defendants, jointly and severally, all of its reasonable and necessary attorneys' fees and costs incurred and to be incurred in bringing this suit, as permitted by law or in equity, or pursuant to Tex. Code of Criminal Procedure Article 18.20, Section 16(a)(3).

25. Plaintiff is also entitled to recover its reasonable attorneys' fees from and against each Defendant should there be an appeal from judgment rendered by this Court. In the event of an appeal to the Court of Appeals, Plaintiff will incur and be entitled to an additional reasonable attorneys' fees in the amount of \$15,000 for any appeal to the Court of Appeals, \$5,000 for any Writ to the Texas Supreme Court, and \$15,000 for any appeal to the Texas Supreme Court; and which Plaintiff requests the Court award from Defendants, jointly and severally, as allowed by law.

26. Plaintiff also seeks to recover costs of court authorized by Texas Code of Criminal Procedure Article 18.20, Section 16(a)(3).

iv. EXEMPLARY DAMAGES

27. Plaintiff is entitled to recover punitive damages as authorized by Tex. Code of Criminal Procedure Article 18.20, Section 16(a)(2) and the Texas Civil Practice and Remedies Code Section 41.001. Plaintiff hereby makes a claim for exemplary damages because Defendants' acted intentionally, willfully, wantonly, and maliciously in their interception of Plaintiff's electronic communications. Defendants' blatant, abusive conduct should be punished.

Plaintiff respectfully requests an exemplary damage award against Defendants for **FIVE MILLION DOLLARS (\$5,000,000.00)**.

V.
APPLICATION FOR INJUNCTIVE RELIEF AND
REQUEST FOR TEMPORARY RESTRAINING ORDER

A. Background Facts

28. This Application for Injunctive Relief and Request for a Temporary Restraining Order is brought by Faulkner, the Chief Executive Officer, Chairman of the Board, and a sixty-five (65%) majority shareholder in Cassiopeia. In these positions, Faulkner is entitled to a copy of the shareholders' agreement and other corporate documents, inspect the books and records of Cassiopeia, participate in the negotiations to sell, transfer or otherwise dispose of the assets of the corporation, inspect the legal files of the corporation, and otherwise be involved in, or at least informed, of the operations of the corporation. Faulkner seeks injunctive relief because despite repeated requests for information, Bullock and Cassiopeia have frozen Faulkner out of all aspects of the corporation and refuse to send him a copy of the shareholders' agreement, refuse to allow him to inspect the books and records, refuse to provide him an accounting of the corporation, fail to hold meetings of the Board, and refuse to apprise him of the ongoing negotiations to sell, transfer or otherwise dispose of all assets of the corporation. Faulkner seeks a temporary restraining order, and upon hearing, a temporary injunction preventing the sale or transfer of any assets, other than in the ordinary course of business, preventing the sale or transfer of ownership in Cassiopeia, and preventing the sale or transfer of any assets or stock. Faulkner believes there are of ongoing negotiations to sell the corporation or its assets and if Faulkner is not awarded injunctive relief the imminent sale or transfer will be done without his consent or involvement and cause him irreparable harm and injury, for which there is no adequate remedy at law.

C. Conditions Precedent

29. All condition precedents to Plaintiff's right to the relief sought herein have been performed, have occurred, and/or have been waived.

D. Relief Requested

30. Paragraphs 27 through 31 of this pleading are incorporated herein by reference, the same as if fully set forth verbatim. Also, attached hereto and fully incorporated herein by this specific reference is the Verification of Christopher Faulkner in support of this application.

31. Plaintiff files this application pursuant to and in accordance with the Texas Rules of Civil Procedure and Chapter 65 of the Texas Civil Practice and Remedies Code.

32. Plaintiff requests the Court to issue a temporary restraining order and/or a show cause order, compelling Defendants, Eckels, Bullock and Cassiopeia to show cause, if any they have, why they and any of their respective agents, servants, employees, representatives, attorneys, and those acting in concert therewith and/or on behalf thereof should not be temporarily restrained and/or enjoined from directly or indirectly:

- (1) destroying, damaging, removing, concealing, secreting, transferring, assigning, wasting, encumbering, burdening, alienating, harming, reducing, selling, or otherwise disposing of any proceeds, funds, assets, or monetary funds of the corporation, other than in the ordinary course of business; and
- (2) destroying, damaging, removing, concealing, secreting, disposing, or otherwise hiding any documents or tangible things relating to the corporation, including but not limited to documents or tangible things evidencing or relating to any proceeds, funds, assets, liabilities, or ongoing litigation of the corporation.

33. As set forth above, Faulkner is filing this application to seek immediate and temporary relief from this Court in order to preserve the status quo and the rights of Plaintiff during the pendency of this proceeding.

34. If Defendants are not enjoined and restrained as requested herein, Plaintiff will suffer immediate and irreparable damage and harm in that Defendants will continue to take actions to sell, transfer, and dispose of assets and/or proceeds without the consent or knowledge of the CEO, Chairman of the Board, and majority shareholder of the corporation.

35. For the damage and harm that will occur unless the Court intervenes, Plaintiff has no adequate remedy at law and cannot be adequately compensated once the Company as been sold, or the assets of the company otherwise transferred or disposed of without his knowledge. The rights involved are unique and irreplaceable, so that it will be impossible to accurately measure damages, in monetary terms, as Defendants refuse to provide an accounting or any information to Faulkner.

36. Because Defendants have not provided Faulkner with any information or even an opportunity to discuss or participate in any of the business affairs or negotiations, it is probable that Plaintiff will suffer irreparable and imminent harm and injury if the injunctive relief sought herein is not granted.

37. By this application, Plaintiff has demonstrated that immediate and irreparable injury, loss, harm, and/or damage will result to him before notice can be served and a hearing had thereon; thus, Plaintiff should be entitled to maintain the status quo through the granting of a temporary restraining order pursuant to Rule 680 of the Texas Rules of Civil Procedure and Section 65.011 of the Texas Civil Practice and Remedies Code.

38. After Bullock and Cassiopeia have been cited to appear and answer and appropriate hearings have been held, Plaintiff requests the Court to enter a temporary and then permanent injunction to enjoin Defendants, from taking any and all actions specified above.

39. Plaintiff requests no bond or a very minimal bond, as the actions sought to be restrained will not or should not cause Defendants any harm.

VI.
APPLICATION FOR APPOINTMENT OF RECEIVER

40. Paragraphs 28 through 39 of this pleading are incorporated herein by reference, the same as if fully set forth verbatim. Plaintiff files this application pursuant to and in accordance with Chapter 64, Sections 64.001(a)(5) and (6) and 64.002(b) of the Texas Civil Practice and Remedies Code.

41. By and through this application, Plaintiff seeks the Court to appoint a receiver with the authority to: (1) perform an inventory and accounting of any and all assets of Cassiopeia; (2) provide the Court with the inventory and accounting, with true and correct copies of same to be provided to Plaintiff and Defendants; (3) sell the Company or otherwise handle the affairs of the company; (4) collect the gross proceeds from the sale; (5) pay the reasonable and necessary expenses associated with the sale of such company, including the receiver's reasonable and necessary fees; and (6) hold the net proceeds from the sale of such property in trust for Plaintiff and distribute such proceeds to the parties as is eventually ordered by this Court. Plaintiff will suffer substantial damage or injury unless a receiver is appointed to take charge of the company.

VII.
ATTORNEYS' FEES AND COSTS

42. Plaintiff has retained the law firm of David, Goodman & Madole, P.C. to represent it in connection with this matter, and Plaintiff has agreed to pay for such reasonable and necessary services. Plaintiff is entitled to and seeks to recover from Defendants, jointly and

severally, all of its reasonable and necessary attorneys' fees and costs incurred and to be incurred in bringing this suit and in all appeals of this suit, as permitted by law or in equity.

VIII.
PETITION FOR AN ACCOUNTING

43. Plaintiff incorporates by reference all prior paragraphs as if set forth fully here.

44. Faulkner as CEO, Chairman of the Board, and majority shareholder of Cassiopeia is entitled to inspect the corporation's books and be apprised of its financial affairs. He has requested on numerous occasions an accounting of the assets, expenses and liabilities of the corporation and Cassiopeia and Bullock have refused, and continue to fail and refuse, to render an accounting of the corporation's financial state of affairs to Faulkner.

45. Plaintiff now requests the Court order Cassiopeia to allow Faulkner to inspect the corporation's books and records and to also provide Faulkner with a full accounting of the corporation's financial status including all assets, liabilities, funds, accounts receivable, cash flow statement, and net worth.

IX.
**PETITION TO ENFORCE SHAREHOLDER'S RIGHTS UNDER SECTION 21.218 OF
THE TEXAS BUSINESS ORGANIZATIONS CODE**

46. Plaintiff incorporates by reference all prior paragraphs as if set forth fully here.

47. Faulkner as a majority shareholder of Cassiopeia is entitled to inspect the corporation's books and records pursuant to Texas Business Organizations Code Section 21.218. He has requested on numerous occasions a reasonable time to examine and copy Cassiopeia's relevant books, records of account, minutes, and other corporate records. Cassiopeia has refused to comply with the Texas Business Organizations Code and allow Faulkner access to the corporate records and books.

48. Pursuant to Section 21.222 of the Texas Business Organizations Code, Faulkner seeks to enforce Section 21.218 and requests the Court order Cassiopeia to make its books and records available for inspection and copying.

49. Also, pursuant to Section 21.222 of the Texas Business Organizations Code, Faulkner seeks an award of his attorneys' fees in bringing this action to enforce provision 21.218 of the Texas Business Organizations Code.

X.
REQUEST FOR DISCLOSURE

50. Pursuant to the Texas Rules of Civil Procedure, Plaintiff has requested Defendants to produce and disclose the information and material set forth in and required by Rule 194.2(a)-(1) of the Texas Rules of Civil Procedure. Defendants are directed to serve their disclosure responses, as well as any amendments or supplements thereto, to the undersigned counsel within the time prescribed by the Texas Rules of Civil Procedure.

XI.
PRAYER

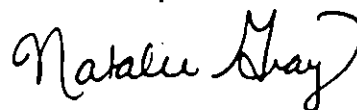
WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that Defendants be cited to appear and answer herein, that Plaintiff, upon final trial of this cause, have judgment against Defendants, jointly and severally, and be awarded the following:

- (1) Actual damages in the maximum amount allowed by law;
- (2) Maximum amount of statutory damages under the Texas Code of Criminal Procedure article 18.20;
- (3) Reasonable and necessary attorneys' fees and court costs;
- (4) That Plaintiff be awarded \$15,000 for any appeal to the Court of Appeals, \$5,000 for any Writ to the Texas Supreme Court, and \$15,000 for any appeal to the Texas Supreme Court;

- (5) Pre- and post-judgment interest as allowed law;
- (6) Exemplary damages;
- (7) injunctive relief against Defendants to prevent future interception of Plaintiff's electronic communications;
- (8) an accounting of Cassiopeia;
- (9) a temporary restraining order and/or permanent injunction preventing Bullock and Cassiopeia from selling, transferring and/or disposing of assets without Faulkner's consent and involvement;
- (10) an order compelling Cassiopeia to make its books and records available for inspection or copying;
- (11) an award of attorneys' fees for seeking an enforcement of Section 21.218 of the Texas Business Organizations Code; and
- (12) such other and further relief, both general and special, at law and in equity, to which Plaintiff may show itself to be justly entitled.

Respectfully submitted,

DAVID, GOODMAN & MADOLE
A Professional Corporation



By _____

Mark A. Goodman
State Bar No. 08156920
Natalie M. Gray
State Bar No. 24036673
Two Lincoln Centre
5420 LBJ Freeway, Suite 1200
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972-992-0889
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF CONFERENCE

Counsel for Faulkner has called counsel for Cassiopeia, James Eckels, in an effort to confer about the temporary restraining order sought in this application; however, Mr. Eckels has not returned those telephone calls. Counsel for Plaintiff will again attempt to contact Mr. Eckels prior to requesting a temporary restraining order from the Court.



Natalie M. Gray

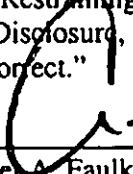
VERIFICATION

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Before me, the undersigned notary, on this day personally appeared, Christopher a. Faulkner, the affiant, a person whose identity is known to me. After I administered the oath to affiant, affiant testified:

"My name is Christopher A. Faulkner. I am over the age of eighteen years, have never been convicted of a felony, and am competent to make this Verification."

"I have read Paragraph 28 in the above and foregoing Plaintiff's Original Petition, Application for Injunctive Relief and Request for Temporary Restraining Order, Application for Receivership, Petition for Accounting, and Request for Disclosure, and such information contained therein is within my personal knowledge, true and correct."



Christopher A. Faulkner

On this the 9th day of November, 2011, before me, a Notary Public, personally appeared Christopher A. Faulkner, known to me to be the person whose name is subscribed to the within instrument, and acknowledged executing the same.





Notary Public In and For the State of Texas

My Commission Expires: 12/17/13