

CAUSE NO. D-1-GN-10-001901

HILLCO PARTNERS,

Plaintiff,

v.

SNAPPER CARR, BRANDON
AGHAMALIAN, AND FOCUSED
ADVOCACY, LLC,

Defendants.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS,

261ST JUDICIAL DISTRICT

**DEFENDANT FOCUSED ADVOCACY, LLC'S ORIGINAL ANSWER TO PLAINTIFF'S
ORIGINAL PETITION AND APPLICATION FOR TEMPORARY INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant FOCUSED ADVOCACY, LLC ("Focused Advocacy") hereby submits this Original Answer in response to the Original Petition and Application for Temporary Injunction filed by Plaintiff HILLCO PARTNERS, L.L.P. ("HillCo Partners").

I. FACTS

1. Defendants Snapper Carr and Brandon Aghamalian were employed by HillCo Partners, LLC ("HillCo"), primarily to do lobbying work on behalf of municipalities. During their time at HillCo, Mr. Carr and Mr. Aghamalian performed valuable service, brought in profitable new business, and contributed to the success of the company.

2. HillCo's business priorities, however, made it difficult for Mr. Carr and Mr. Aghamalian to justify remaining with the company. In mid-December, 2009, they made a decision to leave. Because they were "at will" employees – not under a contract of employment – Mr. Carr and Mr. Aghamalian were permitted under Texas law to simply resign.

3. Mr. Carr and Mr. Aghamalian's resignation on January 15, 2010, was entirely proper. HillCo Partners' own "personnel policy guidelines" contains a clause that is, in essence, simply a statement of Texas law regarding at will employment: "employees are free to resign at any time for any reason." As the evidence will show, Mr. Carr and Mr. Aghamalian not only had every right to resign from HillCo, they had every right to resign when they did, in the manner they did, and for the reasons they did. And Focused Advocacy made a sound business decision – legally and ethically – ask them to join the joint the firm.

2. One of the principals of HillCo is Neal T. "Buddy" Jones. Mr. Jones is an attorney. Presumably, he was aware that Texas law recognizes the enforceability of covenants not to compete, which can prohibit employees who sign them from going into a competing business after leaving the employment. Significantly, HillCo never asked Mr. Carr or Mr. Aghamalian to sign a covenant not to compete. So, under Texas law, and under free enterprise principles that HillCo claims to support on behalf of its many "blue chip" clients, Mr. Carr and Mr. Aghamalian were not only free to leave HillCo but also to get jobs with another lobbying firm or to start their own.

3. Without a covenant not to compete, HillCo Partners has chosen to attack Mr. Carr and Mr. Aghamalian and to try to stifle competition by making an unethical threat and by advancing false allegations in this lawsuit, which are discussed below. HillCo Partners' petition in this case contains distortions of the actions and motivations of Mr. Carr and Mr. Aghamalian before and after their resignation. It is disappointing to Mr. Carr and Mr. Aghamalian that their former employer, whom they once respected, has resorted to such tactics in an apparent attempt to damage their reputations and to save face for itself in the

lobbying and legislative communities. Not only does HillCo Partners' willingness to exaggerate and fabricate reflect poorly on them as professionals, it also undermines their allegations.

4. Contrary to HillCo Partners' allegations, Mr. Carr and Mr. Aghamalian did not, at any time, solicit business away from HillCo before their resignation (as will be substantiated by third parties).

5. HillCo Partners in this lawsuit willfully misconstrues events to make innocent and readily explainable meetings, emails, and other communications sound sinister or, in the words of HillCo, a "conspiracy among all defendants." There was no conspiracy. No one "stole" HillCo's clients. No one "stole" HillCo's documents.

6. After their resignation, Mr. Carr and Mr. Aghamalian have taken care to only promote the services of and capabilities of Focused Advocacy to prospective clients, but they have never asked a third party client to end a relationship with HillCo. In short, Mr. Carr and Mr. Aghamalian have bent over backwards to conduct themselves honorably as they moved on to other employment, despite HillCo's unwarranted aggression and the bluster from its lawyers.

7. It has long been held in Texas law that employees can prepare to compete with their employers while still being employed and without providing advance notice of their plans to their current employer. *See Johnson v. Brewer & Pritchard, P.C.*, 73 S.W.3d 193, 201 (Tex. 2002); see also *Abetter Trucking Co. v. Arizpe*, 113 S.W.3d 503, 510 (Tex. App.—Houston [1st Dist.] 2003, no pet.). Even the existence of a fiduciary relationship between employee and employer "does not preclude the fiduciary from making preparations for a future competing business venture; nor do such preparations necessarily constitute a breach

of fiduciary duties.” See *Abetter Trucking*, 113 S.W.3d at 510 (citing *Bray v. Squires*, 702 S.W.2d 266, 270 (Tex. App.—Houston [1st Dist.] 1985, no writ). HillCo chooses to ignore that Mr. Carr and Mr. Aghamalian carefully, prudently, and ethically protected HillCo’s interests, even as they came to the realization that their time with HillCo was short.

8. In addition, Mr. Carr and Mr. Aghamalian did not have access to company funds while employed with Hillco, but only received reimbursement upon presenting receipts for reasonable expenses. They did not request nor did they receive expense reimbursement for any non-HillCo related work activities while employed by HillCo.

9. HillCo Partners claims that Mr. Carr and Mr. Aghamalian have used its “proprietary information” since leaving the company to “benefit themselves financially.” What HillCo Partners apparently is referring to is the information Mr. Carr and Mr. Aghamalian copied (not deleted, *copied*) from their computers that contains lists of clients and contact information, including Mr. Carr and Mr. Aghamalian’s personal information. HillCo fails to acknowledge, however, that the lobbying business – at least in the representation of municipalities – is entirely visible to the public, and client lists are no more “secret” or “proprietary” than any other data that can be easily and quickly retrieved with a Google search (see Texas Ethics Commission’s web site www.ethics.state.tx.us/dfs/loblists.htm). To call such information “proprietary” is indefensible, particularly when an average middle-school student can readily re-create HillCo’s client list with no more than a computer and an internet connection.

II. GENERAL DENIAL

8. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Focused Advocacy generally denies each and every allegation set forth in HillCo Partners' Original Petition and demands strict proof thereof by a preponderance of the evidence.

III. AFFIRMATIVE DEFENSES AND SPECIFIC DENIALS

Focused Advocacy restates and re-alleges the matters set forth in paragraphs 1-8 above, as if fully set forth herein, and would further show the Court that the following defenses and affirmative defenses bar plaintiff's recovery, in whole or in part, as follows:

9. Focused Advocacy denies that "injunctive relief is also necessary in order to protect the status quo." In fact, the granting of injunctive relief would destroy the status quo that has existed since the time Mr. Carr and Mr. Aghamalian resigned. It is important to note that even though the resignations took place on January 15, 2010, this lawsuit and application for temporary injunction were not filed until June 8, 2010, almost 5 months after the resignations.

10. HillCo Partners' claims are therefore barred, in whole or in part, by the doctrine of waiver.

11. HillCo Partners' claims are also barred, in whole or in part, by the doctrine of equitable estoppel.

12. HillCo Partners' claims are also barred, in whole or in part, by the doctrine of laches.

13. The law requires that "those seeking equity must do equity." HillCo has failed to "do equity." HillCo and its attorneys have engaged in conduct that, under this doctrine, defeats any claims for alleged damages or injunctive relief under any of its legal or

equitable theories, assuming the legal viability of such claims. Under the doctrine of “unclean hands,” a claimant such as HillCo is not entitled to obtain an equitable remedy such as the injunction sought here because it has acted unethically with respect to the subject of the case—that is, with “unclean hands.”

14. Focused Advocacy denies that anything is necessary “to preserve the status quo” as alleged in paragraph 99 at p. 23 of Plaintiff’s Original Petition.

15. Pursuant to Rule 93 of the Texas Rules of Civil Procedure, Focused Advocacy states that there is a defect of parties and specifically denies that HillCo Partners has the legal capacity to sue, that HillCo Partners is a partnership as alleged, and that HillCo Partners is entitled to recover in the capacity in which it sues.

16. The claims in Plaintiff’s Original Petition and Application for Temporary Injunction are barred, in whole or in part, because the plaintiff has suffered no damages as a result of any of the alleged acts or omissions by Focused Advocacy or any of the other defendants.

17. Upon information and belief, Plaintiff’s Original Petition, in whole or in part, and the purported claims for relief therein, fail to state a claim upon which relief can be granted in that any and all conduct of which HillCo Partners complains and which is attributed to the defendants was regulated by good faith under the circumstances then existing, and was not in violation of any rights of the plaintiff under any applicable law or contract.

18. Any injury or damage the plaintiff may have suffered is due, in whole or in part, to its own actions or inaction and its failure to mitigate damages.

19. Focused Advocacy denies that all conditions precedent to HillCo’s right to recover herein have been performed or have occurred.

20. Focused Advocacy denies the existence and applicability of TEXAS CIVIL PRACTICE AND REMEDIES CODE, Sec. 65.001(1),(2),(3), and (5) cited by HillCo Partners in its petition at page 18, paragraph 92.

21. Focused Advocacy denies that Hillco Partners is entitled to injunctive relief under Sec. 65.011, TEXAS CIVIL PRACTICE AND REMEDIES CODE. Plaintiff can show no immediate harm, nor can it show that it will ultimately prevail on the merits.

22. Focused Advocacy denies that Hillco Partners is entitled to the relief requested in paragraph 93, pp. 18-19 of its petition, because it is not sufficiently specific as to the actions or conduct that it seeks to prohibit; it is too broad; HillCo Partners has not alleged by a pleading supported by affidavit, nor does it have proof of the defendants “using Client Confidences” or “trade secrets” or “company work product”; any claim of confidence or privilege belongs to the client—not Hillco Partners; it would constitute a violation of the Texas Rules of Disciplinary Conduct to restrict defendants’ counsel’s representation of clients; and it constitutes a violation of defendants’ right to free speech.

23. Focused Advocacy denies (and hereby specially excepts and objects to) the overbroad allegations contained in paragraph 95, at pp. 20-21 of HillCo’s Partners’ petition and denies that HillCo Partners has standing to assert the enforceability of the alleged confidentiality agreements or personnel policy guidelines as having any legal effect on the rights of the parties in this case.

24. Focused Advocacy denies (and hereby specially excepts and objects to) the broad and conclusory allegations contained in paragraph 96, at p. 21 of HillCo’s Partners’ petition; and it denies there is any “imminent harm,” or any “need or requirement” for

“immediate injunctive relief.” Focused Advocacy denies that HillCo is “entitled” to anything.

25. Focused Advocacy denies that HillCo has made any showing of “irreparable harm” and hereby specially excepts to the conclusory allegations in paragraph 97, at pp. 21-22 of Plaintiff’s Original Petition.

26. Focused Advocacy denies HillCo Partners’ allegations in paragraph 98, p. 22 of Plaintiff’s Original Petition, that “there is no adequate remedy at law for injury to HillCo.” Focused Advocacy denies any “illegal conduct.” Focused Advocacy denies that “HillCo does not have a legal remedy that is adequate in lieu of injunctive relief.” Focused Advocacy denies that any “legal remedy. . .will be limited and inadequate.”

27. Focused Advocacy is presently without information concerning the availability and applicability of any other affirmative defenses in addition to those pled above and reserves the right to amend to plead any such affirmative defenses or matters of avoidance that may be revealed as discovery progresses or as such information otherwise becomes available.

28. Upon information and belief, Plaintiff’s Original Petition and the purported claims for relief therein fail, in whole or in part, to state a cause of action.

IV. COUNTERCLAIM

29. Focused Advocacy is entitled to recover court costs and reasonable and necessary attorneys’ fees as a prevailing party for a suit brought under Chapter 134, TEXAS CIVIL PRACTICE AND REMEDIES CODE.

V. JURY DEMAND

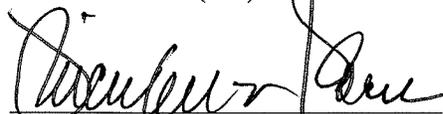
30. Focused Advocacy hereby respectfully requests and makes this its formal demand for jury and respectfully requests a jury trial in this cause of action on all issues.

VI. PRAYER

WHEREFORE, all premises considered, Defendant FOCUSED ADVOCACY, LLC respectfully asks that its special exceptions be sustained, and that the Court (i) dismiss this suit or render judgment that Plaintiff HILLCO PARTNERS take nothing; (ii) assess all costs against Plaintiff HILLCO PARTNERS; and (iii) award all such other and further relief, at law or in equity, to which Defendant FOCUSED ADVOCACY, LLC may be justly entitled.

Respectfully submitted this 6th day of July, 2010.

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**ATTORNEYS FOR DEFENDANT
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AFFIDAVIT

STATE OF TEXAS)
COUNTY OF TRAVIS)

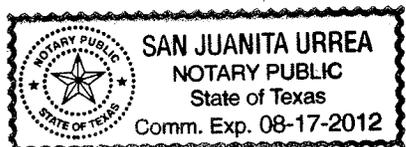
Before me, the undersigned notary public, on this day personally appeared Curtis Seidlits, who being by me first duly sworn, upon his oath stated as follows:

“I am Curtis Seidlits, a duly authorized representative of the defendant Focused Advocacy, LLC, in this case. I am over the age of 18, am of sound mind, and am fully qualified in all respects to make this affidavit.

“I have reviewed the allegations in Paragraph 15 of **DEFENDANT FOCUSED ADVOCACY, LLC’S ORIGINAL ANSWER TO PLAINTIFF’S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY INJUNCTION**, and the allegations therein based upon public record filings with the Texas Secretary of State, are true and correct.”

Curtis Seidlits
AFFIANT

SUBSCRIBED AND SWORN THIS 5th DAY OF July, 2010.



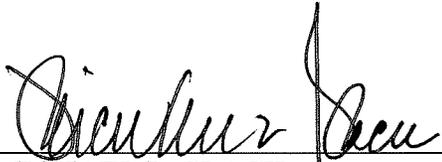
San Juanita Urrea
NOTARY PUBLIC, STATE OF TEXAS

MY COMMISSION EXPIRES:
08/17/2012.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true copy of **DEFENDANT FOCUSED ADVOCACY, LLC'S ORIGINAL ANSWER TO PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY INJUNCTION** was served via ProDocefile.com, a court approved website, and via Certified Mail on this the 6th day of July, 2010, on:

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