

CAUSE NO. 2015-_____

KENT LANGERLAN,
Plaintiff,

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IN DISTRICT COURT OF

v.

HARRIS COUNTY, TEXAS

BAKER BOTTS, LLP,
Defendant.

____ **JUDICIAL DISTRICT**

PLAINTIFF’S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, Kent Langerlan, hereby files this action against Defendant, Baker Botts, LLP, and alleges the following:

1.0 DISCOVERY.

1.1 Plaintiff intends that discovery be conducted under Discovery Level 2 and requests the Court issue a Scheduling Order.

2.0 PARTIES.

2.1 Plaintiff Kent Langerlan is a resident of Texas.

2.2 Defendant Baker Botts, LLP is a limited liability partnership doing business in Texas, and can be served with process by serving any general partner of Baker Botts in their capacity as the registered agent for such entity at 910 Louisiana Street, One Shell Plaza, Houston, Texas 77002.

3.0 VENUE & JURISDICTION.

3.1 Venue is proper in Harris County, Texas, pursuant to TEXAS CIVIL PRACTICE & REMEDIES CODE § 15.002(a)(1) and (3) as Harris County is the county in

which all or a substantial part of the events or omissions giving rise to this claim occurred.

3.2 This Court has jurisdiction over Defendant because Defendant purposefully availed itself of the privileges and benefits of conducting business in Texas by (1) engaging in business in Texas, and (2) by committing a tort, which is the subject of this suit, in whole or in part in Texas.

4.0 FACTS.

4.1 On April 30, 2014 Plaintiff Kent Langerlan emailed Baker Botts' attorney Shira Yoshor requesting legal representation. His request contained privileged information regarding a possible whistleblower claim against Langerlan's employer, the Texas Commission on Environmental Quality (TCEQ). Langerlan also inquired about possible claims his girlfriend, Audra Benoit, may have against TCEQ, also a former TCEQ employee.

4.2 Langerlan reached out to Yoshor based on her Baker Botts online attorney profile, which lists your expertise in the field of employment law. His email reads, "Given the reputation of Baker Botts, especially within TCEQ, we would like to contact you and your firm for representation." The email further details Langerlan's knowledge of confidential information that "discredits the TCEQ Enforcement Division." Langerlan typed Ms. Yoshor's email address into an email, but did not use the Baker Botts' email link. Langerlan expected that this communication enjoyed the privileges associated with communicating with an attorney regarding a potential legal matter.

4.3 That same day Yoshor declined representation of Benoit and Langerlan by responding to Langerlan's email stating that Baker Botts "will not take on the representation of Ms. Benoit in this matter." At some point between April 30, 2014 and May 6, 2014, Langerlan's confidential email was forwarded to TCEQ.

4.4 On or about May 6, 2014 a TCEQ interoffice memorandum was sent from Kathryn Saucedo to Ramiro Garcia, both TCEQ employees. The memo recommends the discharge of Langerlan based on his contact with a "Houston Law firm." The language found in the interoffice memo mimics the confidential email sent by Langerlan to Yoshor. Up until May 6, 2014 Langerlan had not contacted any other attorneys regarding this potential matter other than Yoshor.

4.5 That same day Langerlan received a "Notice of Intent to Terminate Employment" from TCEQ based on his contact with a "Houston Law firm." Again, the same language in Langerlan's confidential email to Yoshor is contained in this notice. On May 20, 2014 Langerlan's employment was terminated by TCEQ.

4.6 Baker Botts offers a myriad of reasons for why it was entitled to violate Langerlan's privilege.

4.7 First, Baker Botts argues that Langerlan has no expectation of privilege when sending the email. That is not the law—lawyers must maintain a potential client's privilege, even if they subsequently decline representation. There need not be an attorney-client relationship for privilege to attach to a potential client's initial inquiry for legal services.

4.8 Second, Baker Botts argues that a disclosure statement notifies a potential client that unsolicited communication is not privileged. But this disclosure does not appear on any attorney profile, but only reveals itself upon clicking an email link for a particular attorney. As Langerlan did in this case, anyone can see a Baker Botts' attorney's email and copy or type that email address without utilizing the link, thus never seeing the disclosure statement.

4.9 Finally, Baker Botts argues that Langerlan's communication is subject to the crime-fraud exception to attorney-client privilege and that Baker Botts was required to inform on him to TCEQ. Baker Botts' argument is unfounded and has been thoroughly rejected. If that were the case, any qui tam or whistleblower plaintiff's communications would be unprivileged.

4.10 Langerlan sought legal counsel for something he knew little about—the legal issues involving a whistleblower claim against a governmental agency. He reached out to an attorney at a white shoe firm, expecting guidance. At the very least, Langerlan expected that his communication would be protected by privilege and not forwarded to his employer. Unfortunately these expectations were misplaced. Rather than adhere to Defendant's professional duties, Baker Botts got Langerlan fired by advising TCEQ of the contents of his email.

5.0 RESPONDEAT SUPERIOR & AGENCY.

5.1 At the time of the incident described above, Yoshor was the agent, servant and/or employee of Baker Botts. Yoshor was acting within the course and scope of her employment as agent, servant and/or employee of Baker Botts as an attorney. As an

attorney, Yoshor owed professional duties to Plaintiff, and instituted policies and procedures on behalf of Baker Botts concerning the maintaining of confidential and privileged communications from prospective clients that Baker Botts had knowledge of and consented to, giving Yoshor actual permission and/or implied permission of Baker Botts to operate as an attorney. Therefore, the Defendant Baker Botts is joint and severally liable for Plaintiff's damages under the doctrine of *respondeat superior* because the negligence of Baker Botts employees, agents and/or representatives was a proximate cause of the breach of standard of care and resulting damages described herein.

5.2 In addition to and without waiving the foregoing, the Plaintiff would show that at the time of the incident mentioned herein, Yoshor was the agent of Baker Botts and was acting within the course and scope of her implied and/or express authority as such agent. Therefore, Baker Botts is jointly and severally liable for Plaintiff's damages under the doctrine of *respondeat superior*.

6. CAUSES OF ACTION.

6.1 **Negligence.** Throughout the relationship between Plaintiff and Defendant, Yoshor was an agent and employee of Baker Botts LLP. All of her acts were done with full authorization or ratification of Defendant Baker Botts or were done in the normal routine and scope of her employment. Defendant is estopped from denying the agency of Yoshor, a shareholder.

6.2 Defendant and Yoshor have a legal duty to maintain privileged communications, even those from *prospective* clients. Defendant breached that duty when it forwarded Langerlan's privileged communication to Langerlan's employer, TCEQ.

6.3 **Gross Negligence.** Defendant was grossly negligent when it communicated Plaintiff's confidential and privileged communication to TCEQ, Plaintiff's employer at the time, thus ensuring his termination. Defendant was consciously aware of the actual risk of harm this action would cause Plaintiff, but nevertheless continued with conscious indifference to Plaintiff.

7. **DAMAGES.** Plaintiff's damages include mental anguish, lost wages and loss of future earning capacity, consequential damages, attorney's fees, and exemplary damages. Although it is not possible to know exactly what the total of Plaintiff's damages are at the time of the filing of this pleading, especially since the award of damages is within the province of the jury, Plaintiff believes his total damages are within the jurisdictional limit of this Court, and are more than \$300,000.00 excluding pre-judgment and post-judgment interest and taxable court costs.

8. **JURY TRIAL.** Plaintiff hereby demands a trial by jury.

9. **DISCOVERY.** Pursuant to TEX. R. CIV. P. 194, Defendant is requested to disclose to Plaintiff, at the office of the undersigned counsel for Plaintiff, all information or material described in Rule 194.2 within 50-days of service of citation.

Further, pursuant to TEX. R. CIV. P. 196, 197 and 198, Defendant is served, simultaneously with the service of this Plaintiff's Original Petition and citation, the following specified discovery requests and notices, to which answers and responses will be due within fifty (50) days from the date of service:

1. Plaintiff's First Set of Interrogatories to Defendant;
2. Plaintiff's First Request for Production to Defendant; and,

3. Plaintiff's First Request for Admissions to Defendant.

10. PRAYER. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that on final hearing Plaintiff shall be awarded a judgment against Defendant, as well as pre-judgment and post-judgment interest, reasonable attorneys' fees, costs of court, and for such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

JOSH DAVIS LAW FIRM

By: /s/ J. P. Davis

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