

Cause _____

Joseph Jordan, et al §
v. §
Percy Lawayne “Wayne” Isgitt, et al §

In the District Court of
Harris County, Texas
Judicial District

Original Petition and
Request for Temporary Restraining Order, Injunctive, and Other Equitable Relief

Joseph Jordan and Michael Jordan, Plaintiffs, bring causes of action against Percy Lawayne “Wayne” Isgitt and Isgitt and Associates PC, seeking recovery of their actual damages, exemplary damages, attorney’s fees, appointment of a receiver, and other equitable relief, and show the Court and Jury as follows:

1. The Jordans state, under Rule 47, they seek monetary relief of more than \$200,000 but less than \$1,000,000 (at this time). Discovery is to be conducted under Level III.
2. Joseph Jordan is a resident of Harris County, Texas.
 - 2a. Michael Jordan is a resident of Hays County, Texas.
3. Percy Lawayne “Wayne” Isgitt, Defendant, is a resident of Harris County, Texas, and is an attorney. His address on file with the State Bar of Texas is 800 Sawyer St., Houston, Harris County, Texas 77007, and he may be served with process there or wherever he may be found.
 - 3a. Isgitt and Associates PC purports to be a Texas professional corporation.
4. This Court has jurisdiction over the parties and the amount in controversy.
5. In 2013 and into January 2014, Defendant served as the lawyer for members of the Jordan Family in connection with their sale of their interests in a Houston business. The transaction for the sale closed in late January 2014. Generally, the proceeds from the sale were to be disbursed in five equal shares, one share to each of the four adult children of Thomas and Patricia Jordan, and one share to The Thomas R. and Patricia A. Jordan 2010 Trust. The adult children of Thomas and Patricia Jordan are Joseph, Michael, Mary Pat, and Val.

6. To provide for potential claims that had not been resolved as of the date of the closing, the members of the Jordan Family agreed to set aside approximately \$240,000 of the sales proceeds to be used for potential contingencies (sometimes referred to as the “Contingency Proceeds”). Defendant Isgitt, as lawyer for the Jordan Family, stated he would set up a separate account to hold the Contingency Proceeds, which were to be disbursed under the direction of the Jordan Family members only. The sales proceeds were directed to be wire transferred to the Allegiance Bank on Beltway 8.

7. Over the ensuing nine months, several small sums were directed to be disbursed from the Contingency Proceeds, and were disbursed by Defendant Isgitt. Over those same ensuing nine months, additional funds exceeding \$40,000 were received for the benefit of the Jordan Family and were delivered to Defendant Isgitt to be added to the Contingency Proceeds. More than \$260,000 of Contingency Proceeds owned by the Jordan Family remained with Defendant Isgitt.

8. Starting in the summer of 2014, requests were made of Defendant Isgitt for an accounting of the Contingency Proceeds, but none was given. Defendant Isgitt was directed to pay a specific Dunn & Bradstreet bill of approximately \$7,000 from the Contingency Proceeds, but the bill was never paid and went into collection. In October 2014, members of the Jordan Family began trying to obtain disbursement of the Contingency Proceeds from Defendant Isgitt. However, despite telephone calls and email communications starting October 14, 2014, requesting and directing the disbursement of the Contingency Proceeds to the Jordan Family members, the Contingency Proceeds have not been disbursed. Defendant Isgitt stated the payments would be made by October 17. Defendant Isgitt failed and refused to disburse the funds and failed to provide actual evidence the Contingency Proceeds had not been stolen. For

example, Defendant Isgitt claimed the funds were in a “certificate of deposit” at one bank and that he would have to break the CD and obtain a cashier’s check which would have to be deposited at a different bank so that the funds could be wire transferred, as requested by the Jordan Family members, but that the “wire transfer bank” would place a hold on the deposited cashier’s check from the other alleged bank. As recently as Friday, October 31, 2014, when Joseph Jordan communicated with Defendant Isgitt, the excuse was that Defendant Isgitt was being admitted to Methodist Hospital for an unspecified gastrointestinal ailment and was not available to give the clients their money. The Jordan Family has been unified in directing the payment of the Contingency Proceeds, but Defendant Isgitt has failed and refused to fully account for the money and has failed and refused to deliver the money, which solely belongs to the Jordan Family members.

9. Tragically, the Jordan Family members trusted Defendant Isgitt because of long time friendships: Mary Pat Jordan had been an elementary school classmate with Defendant Isgitt’s daughter resulting in years of friendship between the parents. The friendship and trust extended to the point that Defendant Isgitt was appointed to be the sole Trustee of The Thomas R. and Patricia A. Jordan 2010 Trust which was created in 2010. The fiduciary relationship which exists began on the basis of a close personal relationship and then included trustee relationships and lawyer-client relationships.

Breach of Fiduciary Duty

10. Defendants have breached their fiduciary duties to the Jordans. Defendants and the Jordans had a fiduciary relationship. Defendants breached their fiduciary duties to Plaintiffs which breaches have resulted in injury to Plaintiffs or benefit to the Defendants.

11. Defendants owed Plaintiffs, generally, the duty of loyalty and utmost good faith, the duty of candor, the duty to refrain from self-dealing, the duty to act with integrity of the strictest kind, the duty of fair, honest dealing, and the duty of full disclosure. Defendant Isgitt has breached these general duties.

12. Defendant Isgitt owed, more specifically because of the attorney-client relationships, the duty to act with absolute perfect candor, openness, and honesty, and without any concealment or deception, the duty to inform the clients of matters material to the representation, the duty to turn over funds belonging to the client, and the duty to follow the clients' instructions. Defendant Isgitt has breached these specific duties.

13. The Jordans are entitled to recovery of their actual, economic damages. The Jordans are also entitled to recovery of exemplary damages, because the breaches have been intentional and repeated.

14. In addition to recovery of their actual and exemplary damages, the Jordans seek the imposition of a constructive trust on all proceeds, funds, or property obtained as a result of the breaches of fiduciary duty. The Jordans further seek fee forfeiture ordering that Defendants forfeit all fees collected by Defendants because of the breaches of fiduciary duties.

15. The Jordans further seek the appointment of a receiver, at Defendants' cost and expense. Because Defendants received the funds at issue in trust, Plaintiffs seek the appointment of a receiver to trace the funds so that in the event any property was purchased with the funds that the Court can determine equitable title.

Conversion

16. Defendants have converted property belonging to the Jordans. Specific money was delivered to Defendants for safekeeping, the money was intended to be kept segregated, the

money was to be kept in the form in which it was received or in an intact fund, and the money was not subject to any claim by Defendants. The Jordans have made specific demand for the return of the money, Defendants have failed and refused to return the money and therefore Defendants have and are wrongfully exercising dominion and control over the property belonging to the Jordans in a manner inconsistent with their rights.

17. The Jordans seek recovery of their property plus all additional actual damages. The Jordans also seek recovery of exemplary damages for the conversion committed by Defendants because Defendants have acted with malice.

Temporary Restraining Order and Temporary Injunction

18. The Jordans seek a temporary restraining order and a temporary injunction ordering Defendants Percy Lawayne “Wayne” Isgitt and Isgitt and Associates PC and their officers, agents, servants, employees, attorneys, and all persons acting in concert or cooperation or participating with them are restrained and enjoined from accessing, transferring, disbursing, commingling, or expending any of the funds received by any Defendant from or for the benefit of Joseph Jordan, Michael Jordan, Mary Pat Jordan, Valerie Hagee, Thomas R. Jordan, Patricia A. Jordan, and The Thomas R. and Patricia A. Jordan 2010 Trust, in any manner, without first obtaining the express written consent of the Jordan Family members or this Court, pending final trial or hearing on this matter.

19. The Jordans have made repeated requests to Defendant Isgitt demanding that Defendant Isgitt return their money. Defendant Isgitt has failed and refused to return the money, asserting a variety of excuses including that \$250,000 of the money is in a “CD” at a different bank than where the funds were originally deposited. The original funds were deposited by wire transfer to what is believed to be an Interest on Lawyers Trust Account (IOLTA) at Allegiance

Bank, 8727 W. Sam Houston Parkway N., Suite 100, Houston, Texas 77040. The IOLTA account was indicated, on the wire transfer of funds notice of an incoming domestic wire transfer, to be in the name of "Isgitt and Associates PC" and end in the numbers xxx-1346, on January 31, 2014.

20. Because Defendant has failed and refused to transfer the client funds to the client despite repeated demands, and because funds can easily be transferred or disbursed by an account holder with little or no notice, the Jordans seek a temporary restraining order without notice to Defendants. Because the local rules require a conference with the opposing party to give the opposing party notice prior to seeking a temporary restraining order, counsel for the Jordans placed calls to the cellular and office telephone numbers of Defendant Isgitt on November 3, 2014, at approximately 3:45 p.m., and when no person answered the calls, left voice messages for Defendant Isgitt. Counsel for the Jordans also placed a call to a lawyer who has shared offices with Defendant Isgitt and who shared a firm name for many years until recently, seeking to make contact with Defendant Isgitt. On the morning of November 4, 2014, at approximately 8:00 a.m., another call was placed to Mr. Isgitt, who answered, and directed that all communications regarding this matter be directed to his attorney, Dick DeGuerin.

21. The Jordans have reason to believe and do believe that because of the failure of Defendants to return the money belonging to the Jordans to the Jordans, that Defendants have misapplied or stolen the money or have transferred or expended it in a manner that diminishes its likely recovery, resulting in irreparable harm and injury to the Jordans by having their money illegally taken by Defendants.

Evidence in Support of TRO and TI

22. Plaintiffs attach hereto and incorporate by reference as though set forth verbatim here the affidavit of Joseph Jordan, identified as Plaintiffs' Exhibit 100, to verify the factual allegations set forth herein pursuant to Rule 682.

Prayer

Wherefore, premises considered, Plaintiffs pray that Defendants be served with process, that a temporary restraining order issue on the terms set forth above, that a temporary injunction issue on the terms set forth above, that the Court appoint a receiver to trace the funds so that in the event any property was purchased with the funds that the Court can determine equitable title, that the Court impose constructive trusts on all proceeds, funds, or property obtained as a result of the breaches of fiduciary duty, that upon final trial or hearing that judgment be rendered against Defendants, jointly and severally, for all actual damages suffered by Plaintiffs, for exemplary damages, for attorney's fees, for costs of court, and for such other and further relief to which Plaintiffs may show themselves justly entitled, at law or in equity.

Respectfully submitted,

/s/ Brad Beers

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