

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
_____ DIVISION

GARY HEATHCOTT

PLAINTIFF

V. NO. _____

CRANFORD JOHNSON ROBINSON WOODS, INC.,
An Arkansas corporation

DEFENDANT

VERIFIED COMPLAINT

Comes now the Plaintiff, Gary Heathcott (“Plaintiff” or “Heathcott”), by and through his attorneys, Jack Nelson Jones, P.A., and for his Verified Complaint against Defendant Cranford Johnson Robinson Woods, Inc. (“Defendant” or “CJRW”) states:

THE PARTIES

1. Gary Heathcott is a resident of San Antonio, Texas.
2. Cranford Johnson Robinson Woods, Inc. is an Arkansas corporation with its principal place of business at 300 Main Street, Little Rock, Arkansas.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the parties and subject matter of this cause of action pursuant to Ark. Code Ann. §16-13-201, and venue is proper pursuant to Ark. Code Ann. §§ 16-60-104.

FACTS

4. Heathcott realleges paragraph nos. 1-3 and incorporates them herein by reference as if set out word for word.
5. At all relevant times herein, Defendant has been in the business of providing marketing, advertising and public relations services to its clients.

6. Heathcott has been an advertising, marketing and public relations professional for over forty years. He was the founder and owner of Heathcott Associates, Inc., an advertising, marketing and public relations agency which competed with Defendant. In 2015 Defendant acquired certain assets of Heathcott Associates, primarily Heathcott Associates client list and engaged Heathcott to serve as a consultant to Defendant and to continue to play a key role in the servicing of Heathcott Associates' clients and help develop new business for Defendant.

7. Heathcott and Defendant entered into the Consulting Agreement dated April 1, 2015 and attached hereto as Exhibit A. It was Heathcott's intent to serve as a consultant for around six months to ensure an orderly transfer of the Heathcott Associates accounts to Defendant.

8. In his role as a consultant to Defendant, Heathcott was responsible for not only transitioning the accounts from Heathcott Associates but also acquired significant new business for Defendant including such accounts as the Arkansas Health Care Marketplace, the Arkansas Economic Development Commission, and the Arkansas Lottery Commission, among others. This resulted in millions of dollars in additional revenue to Defendant.

9. Desiring to ensure Heathcott's continued services, Defendant agreed to new and superseding Consulting Agreements on at least two occasions. The agreement attached as Exhibit A was later superseded by the Consulting Agreement effective August 1, 2016, a copy of which is attached as Exhibit B. This agreement was replaced and superseded by the Consulting Agreement effective September 26, 2016, attached hereto as Exhibit C ("the Agreement"). The Agreement was amended on October 24,

2016 to increase Heathcott's salary to \$234,000.00 per annum. The Agreement was then amended by the Commission Addendum executed as of November 17, 2016, a copy of which is attached hereto as Exhibit D.

10. The Agreement provides that it shall continue for a period of up to five years and that "Heathcott shall retain exclusive and sole right to terminate this Agreement at any time during the period September 26, 2016 and until September 30, 2021 by providing not less than thirty days (30) days prior written notice to CJRW. Notwithstanding, CJRW retains the right to enforce any violation by Heathcott of other elements within this agreement as well as violations of the published employee handbook."

11. On or about September 13, 2017, Heathcott was told by CJRW's CEO, Darin Gray, to vacate the CJRW offices and to not contact CJRW employees because of alleged complaints from employees.

12. A special meeting of Defendant's Board of Directors was called for November 15, 2017 to act on the CEO's recommendation that Heathcott's contract be terminated. On information and belief, this meeting was in violation of the Defendant's corporate bylaws and the Board's action in approving the termination of the Agreement was invalid.

13. By letter dated November 15, 2017, Defendant unilaterally terminated the Agreement alleging that the Agreement was terminable at will by CJRW and alleging that he violated CJRW's acceptable methods and procedures and CJRW's published employee handbook. Moreover, Defendant unilaterally ceased paying Heathcott

commissions pursuant to the Commission Addendum, Exhibit D hereto, for business already generated.

14. The Consulting Agreement between Heathcott and the Defendant clearly stated that Heathcott was a “consultant, not an “employee.” Heathcott was unaware of any published CJRW employee handbook.

15. On the day that Heathcott was barred from the Defendant’s offices on September 13, 2017, he confirmed with Defendant’s Director of Human Resources that there had been no previous complaints filed with Defendant’s human resources office regarding Heathcott’s conduct.

16. On information and belief, Defendant has established procedures regarding the filing and investigation of complaints regarding harassment and other offensive behavior. These procedures were never followed by Defendant with respect to any alleged complaints against Heathcott.

17. After September 13, 2017, Defendant’s CEO, Darin Gray, or his agent or other person acting on Defendant’s behalf, actively solicited female employees to make complaints of harassment against Heathcott. Employees who refused were subject to retaliatory action including discharge.

18. Heathcott was an independent contractor and not an employee of Defendant. While he had an office on Defendant’s premises, most of his equipment and furniture, including his personal desktop computer, were personally owned by Heathcott and were not property of Defendant.

19. Some time after September 13, 2017, agents of Defendant accessed his personal desktop computer without notifying him and without his permission. When

Heathcott discovered this unauthorized breach of his personal computer, the computer was rendered unusable by Heathcott. This action has left Heathcott without the use of his personal desktop computer for more than twelve months.

20. When his computer equipment was returned to him at his request at the end of November 2017, Heathcott had a computer forensics expert to review his equipment and determine what had been done to his equipment, programs and data. It was determined that Defendant may have imbedded some type of software or an unknown system, commonly known as *spyware*, on Heathcott's computer in order to retain remote access to his personal desktop computer for the purpose of monitoring Heathcott's computer activities. Additionally, it was determined that all data on his computer had been downloaded to a separate system.

21. Heathcott maintained paper files on his personal desk and credenza, in credenza drawers and file boxes in his office and in two safes that were in storage facilities leased by Defendant. When his personal belongings were returned almost 90 days later, Defendant had removed certain paper files along with digital files from one of the safes and they were not returned to him.

CAUSES OF ACTION

COUNT I: BREACH OF CONTRACT

22. Plaintiff realleges paragraph nos. 1 through 21 and incorporates them herein by reference as if set out word for word.

23. Based upon the foregoing facts, Defendant has breached its contract with Heathcott as set forth in the Agreement and Commission Addendum thereto.

24. Plaintiff is entitled to compensatory damages for the losses he has incurred, which exceed \$1.3 million, as a result of Defendant's breach of this Agreement.

COUNT II: COMPUTER TRESPASS

25. Plaintiff realleges paragraph nos. 1 through 24 and incorporates them herein by reference as if set out word for word.

26. Based on the foregoing facts, Defendant violated Ark. Code Ann. § 5-41-101, *et seq.*, by committing computer trespass as defined by Ark. Code Ann. 5-41-104. Specifically, Defendant violated Ark. Code Ann. § 5-41-101, *et seq.* by accessing, altering, duplicating and/or deleting portions of Heathcott's computer system, programs and data intentionally and without authorization.

27. As a result of its unauthorized access to Heathcott's computer system, network, programs and data, Defendant has misappropriated his electronic files and data, which include Heathcott's confidential and personal files.

28. As a direct and proximate cause of computer trespass by Defendant, Heathcott has incurred damages.

29. Heathcott is entitled to punitive damages for the intentional, or deliberately indifferent, conduct of Defendant from which malice may be inferred.

30. Based on the foregoing, pursuant to Ark. Code Ann. § 5-41-106, Heathcott requests that the Court grant injunctive relief to include the return of his electronic files and data; the destruction of any of his files or data from any of Defendant's systems; the provision of assurances that none of Heathcott's files or data remain in the possession or control of Defendant, its agents or employees or any other person or entity which would permit Defendant access; the identification of any files or

data which were accessed, altered or deleted; the identification of all persons who reviewed or had access to his files or data; the identification of the person or persons who accessed his computer, copied, altered or deleted his files; and the identification of the person or persons who directed Defendant's employees or agents to gain entry into his computer.

COUNT III: CONVERSION

31. Plaintiff realleges paragraph nos. 1 through 30 and incorporates them herein by reference as if set out word for word.

32. Based on the foregoing facts, Defendant has committed conversion against Heathcott by exercising dominion over Heathcott's property in violation of his rights which property includes but is not limited to the commissions to which he is entitled for business already generated as well as computer equipment, files and software.

33. As a direct and proximate cause of Defendants' conversion, Heathcott has incurred damages.

34. Plaintiff is entitled to punitive damages for Defendant's intentional conduct from which malice may be inferred.

35. Plaintiff reserves the right to make further amendments as additional information is ascertained through discovery.

36. PLAINTIFF REQUESTS A JURY TRIAL ON ALL ISSUES WHERE TRIAL BY JURY IS PERMITTED.

WHEREFORE, Plaintiff prays for:

- (a) Actual damages in an amount to be determined at trial but which exceed \$1.3 million;

- (b) Punitive damages;
- (c) Injunctive relief as described above;
- (d) Costs of litigation including reasonable attorney's fees; and
- (e) any other just and proper relief.

Respectfully submitted,

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