

CAPITAL MANAGEMENT)	
CONSULTANTS, INC.)	
)	16 th Judicial District Court,
Petitioner,)	
)	
)	Parish of St. Mary
)	No: _____
Versus)	Division “_____”
)	STATE OF LOUISIANA
Michael Aloise, Jr.)	Deputy Clerk
)	
)	
)	
Defendant.)	
)	
)	
Filed: _____, 2015)	

PETITION FOR DAMAGES

NOW COMES, CAPITAL MANAGEMENT CONSULTANTS, INC. a domestic corporation licensed to and doing business in the Parish of St. Mary, State of Louisiana who files its Petition for Damages as follows:

1.

Made defendant herein is:

Michael Aloise, Jr. (hereinafter referred to as “Aloise”) a resident of the full age of majority of the Parish of St. Mary, State of Louisiana, an attorney licensed to practice law in the State of Louisiana and a notary public, a duly commissioned officer and qualified within and for the Parish of St. Mary and under the laws of the state of Louisiana. Aloise was at all times relevant hereto legal counsel to Capital Management Consultants, Inc. and represented Capital Management Consultants, Inc. with respect to a number of matters including, but not limited to, numerous real estate transactions wherein he drafted mortgages, notes, Cash Deeds and other legal documents which he, on most occasions, also notarized.

2.

On or about January 9, 2004 Aloise invoiced Capital Management Consultants, Inc., for the preparation of a Cash Deed for Lot 11, Block 2, Willowcrest subdivision. For his legal

services he charged Capital Management Consultants, Inc. \$200.00 for the Cash Deed preparation illegally transferring Lot 11-B to James Scott Tucker and/or Nelson-Tucker, Ltd. now Nelson-Tucker, LLC, \$25.00 for the recording of the Plat and \$33.00 for the recording of the Cash Deed. Capital Management Consultants, Inc. paid the Aloise's invoice in full. See Exhibit 1 attached here to and incorporated herein by reference.

3.

On or about January 27, 2004 Aloise, on behalf of Capital Management Consultants, Inc., prepared a Cash Deed transferring Lot 11-A Track "CDEFAC" in the subdivision known as Willowcrest from Capital Management Consultants, Inc. to Thane Gerald Aucoin and his wife Sunya Jo Flesch Aucoin. The consideration was \$168,900.00. For his legal services, Aloise invoiced Capital Management Consultants, Inc. \$200.00 for the preparation of the Cash Deed and \$33.00 for the recording fees. Capital Management Consultants, Inc. paid Aloise's invoice in full. See Exhibit 2 attached here to and incorporated herein by reference.

4.

From at least October 31, 2006 through June 20, 2014 Aloise performed legal services for Capital Management Consultants, Inc. regarding the Mortgage Note R.J. Businelle Co., Inc. to Capital Management Consultants, Inc. See Exhibit 3 attached here to and incorporated herein by reference.

5.

On or about September 2, 2011 Aloise provide legal services to Capital Management Consultants, Inc. regarding the Hedgerow Subdivision Ownership and Act of Correction. Aloise invoiced Capital Management Consultants, Inc. for his legal services in the amount of \$1,000.00. Capital Management Consultants, Inc. paid Aloise's invoice in full. See Exhibit 4 attached here to and incorporated herein by reference.

6.

Upon information and belief, Aloise assisted James Scott Tucker and Karen Duhon in the drafting of an illegal Resolution appointing James Scott Tucker as President and Karen M.

Duhon as Secretary of Capital Management Consultants, Inc., knowing that they did not have authority to do so, had not been elected by the Board of Directors of Capital Management Consultants, Inc. to serve in such capacities; and at all times knowing that they did not have the authority to act in such capacity. This illegal Resolution purported to, among other things, authorize and empower James Scott Tucker and Karen M. Duhon jointly or either one of them to purchase immovable property, sell, convey, or transfer immovable property as well as transferring mineral, gas, oil and sulphur rights that were owned by Capital Management Consultants, Inc. The timing of this particular act was just prior to James Scott Tucker transferring, with the assistance of Aloise, to himself mineral rights that were owned by Capital Management Consultants Inc. See Exhibit 5 and Exhibit 7 attached here to and incorporated herein by reference.

7.

Because James Scott Tucker knew of an offer to lease Lot 11-A Track "CDEFAC" in the subdivision known as Willowcrest for exploration and extraction of natural resources including, minerals and oil and gas and in order to make his percentage of royalties/lease payments greater, as he owned other Lots in the same area, he had to devise a scheme with Aloise to reacquire this Lot from Thane Gerald Aucoin and his wife Sunya Jo Flesch Aucoin so that he could transfer the mineral rights to his company Nelson-Tucker, Ltd., now Nelson-Tucker, LLC. In furtherance of their scheme, on or about November 12, 2008 Aloise, in concert with James Scott Tucker, prepared a Cash Deed transferring Lot 11-A Track "CDEFAC" in the subdivision known as Willowcrest from Thane Gerald Aucoin and his wife Sunya Jo Flesch Aucoin to Capital Management Consultants, Inc. James Scott Tucker used Capital Management Consultants, Inc. money to pay Thane Gerald Aucoin and his wife Sunya Jo Flesch Aucoin \$375,000.00. This is the same property that Capital Management sold to Thane Gerald Aucoin and his wife Sunya Jo Flesch Aucoin on or about January 27, 2004 for \$168,900.00 a difference of \$206,100.00. See Exhibit 6 attached here to and incorporated herein by reference.

8.

In furtherance of their scheme, Aloise, in concert with James Scott Tucker, on or about November 15, 2008, three days after Aloise recorded the Cash Deed from Thane Gerald Aucoin

and his wife Sunya Jo Flesch Aucoin to Capital Management Consultants, Inc., prepared and recorded a Mineral Transfer from Capital Consultants, Inc. to Nelson-Tucker, Ltd. Aloise was fully aware the Nelson-Tucker, Ltd. was owned and controlled by James Scott Tucker and his wife as he notarized the original Articles of Incorporation and he prepared the application to convert it to an LLC and knew that this was not an arm's length transaction. The consideration set forth by Aloise on the Mineral Transfer document was \$1.00. During the period of November 12, 2008 through November 15, 2008 Aloise and James Scott Tucker had numerous discussions and emails discussing the Mineral Transfer including the legal description and consolidating Capital Management Consultants, Inc.'s mineral interests with his mineral interests so that James Scott Tucker would control the largest parcel in order to receive the greatest royalties. Aloise also prepared the necessary Resolution for Karen Duhon to sign that would be attached to the sale. Aloise knew that this was not an arm's length transaction and knew that James Scott Tucker was stealing, by fraudulent means, the property owned by Capital Management Consultants, Inc. See composite Exhibit 7 attached here to and incorporated herein by reference.

9.

On April 27, 2012, Aloise, in concert with James Scott Tucker, prepared, notarized and recorded a Cash Deed transferring Lot 11-A of Block 2 of Willowcrest Subdivision from Capital Management Consultants, Inc. to Nelson-Tucker, Ltd. The consideration set forth by Aloise on Cash Deed was \$10.00 and other valuable consideration. This is the same lot repurchased in the fraudulent transfer scheme by conceived by James Scott Tucker and Aloise. See Exhibit 6. Aloise knew that this was not an arm's length transaction. See Exhibit 8 attached here to and incorporated herein by reference.

10.

Neither James Scott Tucker nor Nelson-Tucker, Ltd. paid Capital Management Consultants, Inc. any sums of money for the transfer of the immovable property (lots 11A and 11B) or the mineral interests to Nelson-Tucker, Inc.

11.

Aloise, as Capital Management Consultants, Inc.'s attorney, had a duty to not engage in conduct involving dishonesty, fraud, deceit or misrepresentation, had a duty to communicate with his client, had a duty to protect his client's property, and had a fiduciary duty and a duty of loyalty to Capital Management Consultants, Inc. Aloise breached his duties when he prepared the Cash Deed transferring Lots 11-A and B Track "CDEFAC" in the Willowcrest subdivision from Capital Management Consultants, Inc. to Nelson-Tucker, Ltd. for no consideration, prepared the Mineral Transfer to Nelson-Tucker, Ltd. for no consideration, and when he prepared the Cash Deed to repurchase Lot 11-A Track "CDEFAC" in the Willowcrest subdivision from Thane Gerald Aucoin and his wife Sunya Jo Flesch Aucoin for over twice the amount of the original purchase price paid by Thane Gerald Aucoin and his wife Sunya Jo Flesch Aucoin. As counsel for Capital Management Consultants, Inc. it was also his duty to inform and protect Capital Management Consultants, Inc. against loss and not close his eyes and depend on the illegal representation of James Scott Tucker an interested person and beneficiary of the fraudulent transfers.

12.

Aloise breached his duties to Capital Management Consultants, Inc. by, among other things, failing to inform Capital Management Consultants, Inc. about: the repurchase of Lot 11-A Track "CDEFAC" in the Willowcrest subdivision from Thane Gerald Aucoin and his wife Sunya Jo Flesch Aucoin for over twice the amount of the original purchase price paid by Thane Gerald Aucoin and his wife Sunya Jo Flesch Aucoin; the transfer of the mineral rights to Nelson-Tucker, Ltd. and the transfer of Lot 11-A Track "CDEFAC" in the Willowcrest subdivision to Nelson-Tucker, Ltd.

13.

In the matter of the Succession of James Scott Tucker, Probate No.: 19794, Aloise in his Reply Memorandum In Support of Motions to Quash And For Protective Order stated that: *"It is important to note to the court that...I have never been employed an(sic) attorney for Capital Management Consultants, Inc.... I will point out that there have been over 140 transactions*

recorded in the office of St. Mary Parish Clerk of the Court, and all but one or two of these were signed by James Scott Tucker. To suggest that I should have contacted someone about the transfer of mineral rights is ludicrous” As Aloise prepared legal documents, mortgages, notes, Cash Deed, Acts of Donation, and billed Capital Management Consultants, Inc. for his legal services it is obvious that Aloise was in fact Capital Managements Consultants, Inc.’s attorney. As counsel for Capital Management Consultants, Inc. and as an attorney who practices real estate law, he should know the difference between an arm’s length transaction and a self-serving transaction. To simply say that James Scott Tucker signed all but one or two of the 140 recorded transactions misses the point. Aloise as Capital Managements Consultants, Inc.’s counsel knew that James Scott Tucker was the Secretary/Treasurer of Capital Management Consultants, Inc. Aloise knew that James Scott Tucker was an officer of Capital Management Consultants, Inc. and that James Scott Tucker had a fiduciary duty and owed a duty of loyalty to Capital Management Consultants, Inc. in making all decisions in his capacity as a corporate fiduciary. Aloise knew that James Scott Tucker was required to act without personal economic conflict. Aloise assisted James Scott Tucker in his self-dealing and the taking of corporate opportunities by transferring mineral rights and immovable property to Nelson-Tucker, Ltd. knowing that Nelson-Tucker, Ltd. was controlled by James Scott Tucker. See the Exhibits attached hereto and incorporated herein by reference and Exhibit 9 attached here to and incorporated herein by reference.

14.

In the alternative if, as Aloise claims, he merely notarized acts, he, as a notary public is still liable for any loss, or damage, to any one injured by his negligence or neglect of duty.

15.

James Scott Tucker had a friendship and professional relationship with Aloise and hired him to perform legal services for Capital Management Consultants, Inc. Aloise and James Scott Tucker in concert with each other and Karen Duhon developed a scheme to defraud Capital Management Consultants, Inc. and to fraudulently transfer immovable property and mineral interests belonging to Capital Management Consultants, Inc.

16.

Aloise and James Scott Tucker and Karen Duhon acted in solido and formed a conspiracy to commit the intentional tort of conversion, theft, misappropriations and embezzlement, fraud, conspiracy to commit and the commission of an intentional tort, RICO, unjust enrichment and breach of fiduciary duty and breach of their duty of loyalty. In furtherance of their scheme, Aloise and James Scott Tucker in concert with each other and with Karen Duhon committed fraud by preparing the Cash Deed transferring Lot 11-A and B Track "CDEFAC" in the Willowcrest subdivision from Capital Management Consultants, Inc. to Nelson-Tucker, Ltd. for no consideration, preparing the Mineral Transfer to Nelson-Tucker, Ltd. for no consideration, preparing the Cash Deed to repurchase Lot 11-A Track "CDEFAC" in the Willowcrest subdivision from Thane Gerald Aucoin and his wife Sunya Jo Flesch Aucoin for over twice the amount of the original purchase price paid by Thane Gerald Aucoin and his wife Sunya Jo Flesch Aucoin, failing to inform Capital Management Consultants, Inc. about: the repurchase of Lot 11-A Track "CDEFAC" in the Willowcrest subdivision from Thane Gerald Aucoin and his wife Sunya Jo Flesch Aucoin for over twice the amount of the original purchase price paid by Thane Gerald Aucoin and his wife Sunya Jo Flesch Aucoin; the transfer of the mineral rights to Nelson-Tucker, Ltd. and the transfer of Lot 11-A Track "CDEFAC" in the Willowcrest subdivision to Nelson-Tucker, Ltd.

17.

As the Exhibits attached hereto and incorporated herein demonstrate, Aloise and James Scott Tucker, in concert with Karen Duhon, fulfilled the object of their conspiracy by preparing the Cash Deed transferring Lot 11-A Track "CDEFAC" in the Willowcrest subdivision from Capital Management Consultants, Inc. to Nelson-Tucker, Ltd. for no consideration, preparing the Mineral Transfer to Nelson-Tucker, Ltd. for no consideration, preparing the Cash Deed to repurchase Lot 11-A Track "CDEFAC" in the Willowcrest subdivision from Thane Gerald Aucoin and his wife Sunya Jo Flesch Aucoin for over twice the amount of the original purchase price paid by Thane Gerald Aucoin and his wife Sunya Jo Flesch Aucoin, failing to inform Capital Management Consultants, Inc. about: the repurchase of Lot 11-A Track "CDEFAC" in

the Willowcrest subdivision from Thane Gerald Aucoin and his wife Sunya Jo Flesch Aucoin for over twice the amount of the original purchase price paid by Thane Gerald Aucoin and his wife Sunya Jo Flesch Aucoin; the transfer of the mineral rights to Nelson-Tucker, Ltd. and the transfer of Lot 11-A Track "CDEFAC" in the Willowcrest subdivision to Nelson-Tucker, Ltd.

18.

The fraud, fraudulent transfers and theft were discovered after James Scott Tucker's sudden and unexpected death on January 22, 2014. One of the Capital Management Consultants, Inc.'s shareholders became suspicious that something was amiss based on moneys Karen Duhon stated she was receiving and asked Mark Munson, Capital Management Consultants, Inc.'s new accountant to look into the matter. Mark Munson reviewed the financial records of Capital Management Consultants Inc. and uncovered the fraud. Upon the discovery of the fraud, Karen Duhon is escorted out by company personnel. When Karen left, she took with her several boxes of files and papers. These items have not been identified as of the date of this Petition.

19.

The wrongful acts of Aloise and James Scott Tucker could not be reasonably discovered because of the active concealment of the wrongdoing by James Scott Tucker, KAREN Duhon and Donnasue Peveto another coconspirator and Aloise's failure to alert Capital Management Consultants, Inc. of the fraudulent transfers. Further, even though James Scott Tucker was a Certified Public Accountant and well aware of various accounting software products, he, together with Karen Duhon kept Capital Managements Consultants, Inc.'s book and records manually making it extremely difficult if not impossible, without a full forensic audit, to trace the transactions. Given the state of the financial records of Capital Management Consultants, Inc. Capital Management Consultants, Inc. could not discover the fraudulent transfers. Capital Management Consultants, Inc. relied upon its attorney, Aloise, to protect its property and his duty to inform it of suspicious and fraudulent transactions by James Scott Tucker.

20.

After James Scott Tucker's death, the shareholders of Capital Management Consultants, Inc., on or about March 17, 2014, sent emails to Aloise requesting an explanation of the fraudulent transactions. Aloise responded by stating "*I do not have a clue. I only prepared what*

Scott asked of me. I suggest that you contact Thane. I do not have any knowledge as to why the sales prices were what they are shown as in the deeds. Perhaps the sales price to Thane was to discourage him from building, as in making an offer he could not refuse.” Aloise’s response does not pass the “smell test.” As an attorney licensed to practice law in the state of Louisiana Aloise has a duty to be competent in the practice of law and to know the law. As counsel for Capital Management Consultants, Inc. he owes his duty and duty of loyalty to the corporation and he must within the bounds of the law, pursue the best interest of the corporation in accordance with the lawful instructions of the corporation’s management. Aloise knew that James Scott Tucker’s insider transactions regarding the transfer of Capital Management Consultant, Inc.’s immovable property and mineral rights were not transactions in the ordinary course of business and he knew that any instructions from James Scott Tucker regarding these transfers were not lawful. Aloise’s response that *“I do not have a clue. I only prepared what Scott asked of me”* is a breach of his duty to Capital Management Consultants, Inc. Aloise as counsel for Capital Management Consultants, Inc. had a duty to understand the transactions and to inform Capital Management Consultants, Inc. of the fraudulent transfers. See Exhibit10 attached here to and incorporated herein by reference.

21.

Aloise aided and abetted James Scott Tucker and Karen Duhon and conspired with them to commit the intentional tort of conversion, theft, misappropriations and embezzlement, fraud, conspiracy to commit and the commission of an intentional tort, RICO, unjust enrichment and breach of fiduciary duty and breach of their duty of loyalty. In furtherance of their scheme, Aloise and James Scott Tucker in concert with each other and with Karen Duhon committed fraud by preparing the Cash Deed transferring Lot 11-A and B Track “CDEFAC” in the Willowcrest subdivision from Capital Management Consultants, Inc. to Nelson-Tucker, Ltd. for no consideration, preparing the Mineral Transfer to Nelson-Tucker, Ltd. for no consideration, preparing the Cash Deed to repurchase Lot 11-A Track “CDEFAC” in the Willowcrest subdivision from Thane Gerald Aucoin and his wife Sunya Jo Flesch Aucoin for over twice the amount of the original purchase price paid by Thane Gerald Aucoin and his wife Sunya Jo Flesch Aucoin, failing to inform Capital Management Consultants, Inc. about: the repurchase of Lot 11-

A Track “CDEFAC” in the Willowcrest subdivision from Thane Gerald Aucoin and his wife Sunya Jo Flesch Aucoin for over twice the amount of the original purchase price paid by Thane Gerald Aucoin and his wife Sunya Jo Flesch Aucoin; the transfer of the mineral rights to Nelson-Tucker, Ltd. and the transfer of Lot 11-A Track “CDEFAC” in the Willowcrest subdivision to Nelson-Tucker, Ltd.

22.

Aloise breached his duty to Capital Management Consultants, Inc. and violated the Louisiana State Bar Association’s Rules of Professional Conduct in general and specifically Rule, 1.1, 1.3, 1.6, 1.7, 1.8, 1.9, 1.13, 2.1, 4.1, and 4.4 by, among other things, by preparing the Cash Deed transferring Lot 11-A and B Track “CDEFAC” in the Willowcrest subdivision from Capital Management Consultants, Inc. to Nelson-Tucker, Ltd. for no consideration, preparing the Mineral Transfer to Nelson-Tucker, Ltd. for no consideration, preparing the Cash Deed to repurchase Lot 11-A Track “CDEFAC” in the Willowcrest subdivision from Thane Gerald Aucoin and his wife Sunya Jo Flesch Aucoin for over twice the amount of the original purchase price paid by Thane Gerald Aucoin and his wife Sunya Jo Flesch Aucoin, failing to inform Capital Management Consultants, Inc. about: the repurchase of Lot 11-A Track “CDEFAC” in the Willowcrest subdivision from Thane Gerald Aucoin and his wife Sunya Jo Flesch Aucoin for over twice the amount of the original purchase price paid by Thane Gerald Aucoin and his wife Sunya Jo Flesch Aucoin; the transfer of the mineral rights to Nelson-Tucker, Ltd. and the transfer of Lot 11-A Track “CDEFAC” in the Willowcrest subdivision to Nelson-Tucker, Ltd.

23.

Petitioners reserve the right to amend and supplement this petition as additional information is discovered.

Petitioners itemized the damages which they claim they are entitled to recover:

An accounting of all transfers of immovable property and mineral rights and money taken and reimbursement of same.

Loss of Investment Opportunity.

Statutory Penalties.

Attorney Fees.

Federal and State Income Tax, Penalties and Interest that may be assessed against
Petitioners.

Cost of Audit/Forensic Accounting.

Accountants' Fees.

Expert Witness Fees Lost Profits.

Mental Anguish.

Emotional Distress.

Litigation Expenses.

Interest.

Punitive Damages.

Title abstract fees.

Damages that are proven at trial.

WHEREFORE, Petitioners pray that after due proceedings be had that there be a judgment entered by the Court in favor of Petitioner, Capital Management Consultants, Inc. and against Michael Aloise, Jr. for all damages alleged herein, in an amount reasonable under the circumstances, for interest from date of judicial demand, attorney fees, costs and for any and all other relief available under the premises.

Respectfully Submitted:

PUJOL, PRYOR&IRWIN, LLC

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Sheriff: Please serve Defendant:

Michael Aloise
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Morgan City, LA 70380