

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FIRST BANK & TRUST

Plaintiff

versus

GULF COAST BANK & TRUST,
MILLCENT B. JONES,
JAMES C. MURPHY, III,
JAMES A. LAJAUNIE, JR.,
AND MUDBUG MEDIA, INC.

Defendants

* CIVIL ACTION NO: 12-2265
*
* SECTION "G", MAG. DIV. 3
*
* JUDGE: HON. NANNETTE J.
* BROWN
*
* MAG: HON. DANIEL E.
* KNOWLES, III
*

FIRST AMENDED PETITION

NOW INTO COURT comes Plaintiff, First Bank and Trust, through undersigned counsel, who, in accordance with Rule 15(a)(2) files this First Amended Petition, which incorporates by reference FBT's original petition (Rec. Doc. 1-3), with the following amendments:

Paragraphs 1-18 remain unchanged.

Paragraph 19 is amended to read as follows:

19. As part of Mudbug's aforementioned evaluation process, Mudbug was to perform a detailed and proprietary analysis of the functional elements of FBT's original system, where said analysis included consultation by Jason Devillier (of ABC123), on behalf of FBT, with Mudbug regarding FBT's original system.

Paragraphs 20-22 remain unchanged.

Paragraph 23 is amended to read as follows:

23. Between on or about Wednesday, June 13, 2012 and Friday, June 15, 2012, all of the Ex-Employees, with the exception of defendant Millicent Jones, resigned from FBT, and Mr. Peter Robinson recalls hearing that several of said Ex-Employees stated that their main reason for leaving FBT was their unwillingness to continue working for, or under, defendant Jones.

A new paragraph 23a is added as follows:

23a. On June 13, 2012, defendant Jones met with FBT employees Ms. Ann Bartholomew, Ms. Cathy Nunez, Mr. Daniel Pertuit and Mr. Frank Dazzo at FBT offices. During said meeting, Ms. Jones stated that she, and the other Ex-Employees were leaving FBT, and that Ms. Bartholomew, Ms. Nunez, Mr. Pertuit and Mr. Dazzo were invited to join the Ex-Employees at GCBT; and, on information and belief, Ms. Nunez, Mr. Pertuit and Mr. Dazzo are currently employed by GCBT.

Paragraphs 24-25 remain unchanged.

Paragraph 26 is amended to read as follows:

26. In conjunction with her resignation, defendant Jones spoke with Mr. Gary Blossman, President of FBT, and Mr. Joseph Canizaro, a member of the FBT Board of Directors, and both Mr. Blossman and Mr. Canizaro were left with the impression that Ms. Jones confected and orchestrated the mass resignation.

Paragraph 27-50 remain unchanged.

Paragraph 51 is amended to read as follows:

51. On information and belief, one or more of the Individual Defendants removed and/or disposed of documents and files from FBT's offices without FBT's permission. On information and belief, said documents and files contained FBT's confidential business materials and trade secrets.

Paragraphs 52-81 remain unchanged.

The following paragraphs are newly added:

COUNT 8: Misappropriation

82. FBT realleges and incorporates by reference the preceding allegations of the Complaint as if copied herein *in extenso*.

83. On information and belief, one or more of the Ex-Employees and/or GCBT has misappropriated FBT's confidential and trade secret information.

84. Among other remedies, FBT is entitled to an injunction prohibiting the Individual Defendants and/or GCBT from taking any further action that might constitute misappropriation of FBT's confidential and trade secret information.

85. GCBT and/or the Individual Defendants are liable to FBT for all damages caused by this misappropriation, including but not limited to disgorgement of all of GCBT's profits realized from said misappropriation, and payment for all other damages caused by any aid provided to GCBT by any of the Ex-Employees.

86. On information and belief, GCBT and/or the Individual Defendants have willfully and maliciously misappropriated FBT's trade secrets, and FBT is entitled to its attorney's fees.

87. GCBT and the Individual Defendants have been unjustly enriched.

88. All of the foregoing entitles FBT to all rights and remedies under La. R.S. 51:1431 *et seq.*

COUNT 9: Misappropriation of Trade Secrets by Mudbug Media, Inc.

89. FBT realleges and incorporates by reference the preceding allegations of the Complaint as if copied herein *in extenso*.

90. The key individuals that worked on Mudbug's development of FBT's updated tuition loan system also worked on Mudbug's development of GCBT's new tuition loan system.

91. Mudbug's employees have used confidential and trade secret information obtained via Mudbug's confidential relationship with FBT during Mudbug's development efforts for GCBT.

92. This unauthorized use of FBT's confidential and trade secret information gained via Mudbug's confidential relationship with FBT constitutes trade secret misappropriation under La. R.S. 51:1431 *et seq.*

93. Therefore, among other remedies, FBT is entitled to an injunction prohibiting Mudbug from performing any additional services for GCBT related to GCBT's online tuition loan system, and prohibiting Mudbug from any further unauthorized use of FBT's confidential and trade secret information.

94. Further, Mudbug is liable to FBT for all damages caused by this misappropriation, including, without limitation, all of Mudbug's profits related to its work for GCBT and any damages sustained by FBT in connection with GCBT's use of any software provided to GCBT by Mudbug.

95. On information and belief, Mudbug has willfully and maliciously misappropriated FBT's trade secrets, and FBT is entitled to its attorney's fees.

96. Mudbug has been unjustly enriched.

97. All of the foregoing entitle FBT to all rights and remedies under La. R.S. 51:1431 *et seq.*

COUNT 10: Breach of Contract

98. FBT realleges and incorporates by reference the preceding allegations of the Complaint as if copied herein *in extenso*.

99. Mudbug's use of FBT's confidential information in connection with its work for GCBT is a breach of the Mudbug NDA.

100. Therefore, among other remedies, FBT is entitled to an injunction prohibiting Mudbug from performing any additional services for GCBT related to GCBT's online tuition loan system, and prohibiting Mudbug from any further unauthorized use of FBT's confidential information.

101. Further, Mudbug is liable to FBT for all damages caused by this breach, including, without limitation, all of Mudbug's profits related to its work for GCBT and any damages sustained by FBT in connection with GCBT's use of any software provided to GCBT by Mudbug.

102. Mudbug is liable for all damages under La. Civil Code Art. 1997.

WHEREFORE, Plaintiff, First Bank and Trust, in addition to the prayer for relief in its original petition, further prays for judgment that:

K. GCBT and/or the Individual Defendants misappropriated FBT's confidential and trade secret information and are thus liable to FBT for all damages related thereto including, without limitation, for their collective unjust enrichment; and, further, that FBT is entitled to injunctive relief to prevent any further use of FBT's trade secrets;

- L. Mudbug misappropriated FBT's trade secrets via its unauthorized use of said trade secrets in connection with Mudbug's software development work on GCBT's behalf and is thus liable to FBT for all damages related thereto including, without limitation, for Mudbug's unjust enrichment; and, further, that FBT is entitled to injunctive relief to prevent any further use of FBT's trade secrets;
- M. Mudbug breached the Mudbug NDA (attached to the FBT's original petition as Exhibit A) and is thus liable to FBT for all damages related thereto; and, further, that FBT is entitled to injunctive relief to prevent any further use of FBT's confidential and trade secret information;
- N. Defendants are liable for interest, attorney's fees, and all costs of these proceedings; and
- O. For such other and further relief as is appropriate under the circumstances.

Respectfully submitted,

/s/ Emily Lippold Gordy

RAYMOND G. AREAUX (#16792) (T.A.)

ROY E. BLOSSMAN (#16813)

IAN C. BARRAS (#30854)

EMILY L. GORDY (#33858)

Carver, Darden, Koretzky, Tessier,

Finn, Blossman & Areaux L.L.C.

1100 Poydras Street, Suite 3100

New Orleans, Louisiana 70163

Telephone: (504) 585-3800

Facsimile: (504) 585-3801

Attorneys for Plaintiff, First Bank and Trust

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of March, 2013, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system of the Eastern District of Louisiana, which will send notice of electronic filing to counsel of record for all parties in this case.

/s/ Emily Lippold Gordy
Emily Lippold Gordy