

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

KIM HOLLRAH

Plaintiff,

v.

RONALD FRITHIOF

Defendant.

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CASE NO: 4:17-cv-771

JURY DEMANDED

PLAINTIFF KIM HOLLRAH'S ORIGINAL COMPLAINT

Plaintiff Kim Hollrah, for his complaint against Defendant Ronald Frithiof, alleges as follows:

THE PARTIES

1. Plaintiff Kim Hollrah is an individual who resides in Fairfield Iowa.
2. Defendant Ronald Frithiof is an individual who resides in Austin Texas, and can be served at 11746 Rim Rock Trail, Austin, Texas 78737.

JURISDICTION & VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. 1331 and 1338(a), as the matters at issue include Defendant's misconduct under the U.S. Copyright Act.
4. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, as there exists diversity of citizenship among the parties and the amount in controversy exceeds \$75,000.
5. The Court has personal jurisdiction over the Defendant because he purposely availed himself of the privilege of acting in or causing important consequence in the State of Texas and resides in the State of Texas. Further, the exercise of personal jurisdiction over the Defendant by this Court is reasonable and consistent with the Federal Due Process Clause because Defendant conducted business in this District and committing acts, in whole or in part, giving rise to the claims herein in this State and District.

6. Venue is proper pursuant to 28 U.S.C. §1391 (b) and (c), and §1400(a) because a substantial part of the events or omissions giving rise to the claims occurred in this District.

FACTS AND BACKGROUND

7. In 1997, Mark Eatman went dinosaur bone hunting in Harding County, South Dakota. While there, he found what he believed were the remains of a dinosaur. Mr. Eatman spent the next few days removing as many of the fossils as he could find. All total, Mr. Eatman removed a partial jawbone, some rib bones, teeth, and a few other odds and ends. Although Mr. Eatman knew that he had found dinosaur bones, he had no idea they would lead to one of the most significant discoveries of all time.

8. When he returned home, Mr. Eatman began marketing the bones to dinosaur bone collectors. Mr. Eatman knew a number of collectors from his past hunting and selling experience. He described the fossils to some collectors, and showed them to others. None of his usual customers were particularly interested. From his original find, he was only able to sell two teeth. He was not able to sell the partial jawbone.

9. Mr. Eatman also contacted Kim Hollrah. Mr. Hollrah had been hunting and selling dinosaur bones most of his adult life. Although not affiliated with a university or museum, Mr. Hollrah is one of the foremost fossil hunters in the United States. He is literally a renowned figure amongst dinosaur bone hunters and collectors.

10. Mr. Eatman and Mr. Hollrah knew each other from past dealings, including dinosaur bones hunting trips. Mr. Hollrah had taught Mr. Eatman some of the techniques used to excavate and plaster-cast fossils.

11. In 1998, Mr. Hollrah visited Mr. Eatman's home in Spearfish, South Dakota, to examine the fossils. Mr. Hollrah immediately recognized two significant facts about the fossils. First, the jawbone belonged to a juvenile Tyrannosaurus Rex ("T-Rex"). It was the first sub-adult T-Rex skeleton ever found. A sub-adult T-Rex was significant because paleontologist knew very little about juvenile and adolescent T-Rexes. As a result, Paleontologist disagreed over many fundamental aspects of the early

lives of T-Rexes, such as how their skulls developed, what kind of teeth they had, how many teeth they had, how long their arms were, and whether they were hunters or scavengers. Second, the edges on one side of the jawbone showed signs of being a relatively recent break. The relatively recent break indicated to Mr. Hollrah that at least part of the jawbone (and other bones) may still be buried in the same area.

12. Appreciating the significance of the find, Mr. Hollrah negotiated the sale of the both the jawbone and the location/lease rights to where the bones were found (“Tinker Site”). The total agreed price was \$50,000. Part of that price was for the jawbone and part was for the location/lease rights to the Tinker Site.

13. With the deal negotiated, Mr. Hollrah called Mr. Michael Harrell, a friend living in Houston, to discuss the jawbone and to see if Mr. Harrell was interested in entering a partnership related to the find. Mr. Harrell was, but did not have \$50,000 to contribute. However, Mr. Harrell knew an Austin real estate developer named Ronald Frithiof who he believe would have the money. Although Mr. Frithiof did not have experience in any aspect of fossil identification, excavation, preservation, preparation, or any other skill needed for the project, he had \$50,000. Mr. Frithiof was interested. The three of them agreed that Mr. Hollrah would inspect and authenticate the Tinker Site, and if authenticated, Mr. Frithiof would contribute \$50,000 to a partnership (hereafter “Tinker Partnership”) between Mr. Hollrah, Mr. Harrell, and Mr. Frithiof. The purpose of the Tinker Partnership was at least to excavate, collect, and sell fossils found at the Tinker Site.

14. Soon after the initial discussion, Mr. Harrell traveled to South Dakota to meet with Mr. Hollrah and to see the jawbone first hand. While there, Mr. Eatman took Mr. Hollrah and Mr. Harrell to the Tinker Site. Mr. Hollrah inspected the Tinker Site and confirmed it was very likely where the jawbone had been excavated based on visual indications of a recent dig plus a number of small bone fragments scattered about that were from a carnivore. Mr. Hollrah also noted the geology was favorable for finding bones.

15. With Mr. Hollrah’s authentication of the Tinker Site, Mr. Frithiof contributed \$50,000 to the Tinker Partnership and the partnership purchased the jawbone and the location/lease rights of the Tinker

Site. Mr. Hollrah, Mr. Frithiof, and Mr. Harrell agreed that they would be equal partners in Tinker Partnership.

16. Once the fossils were purchased and lease rights secured, Mr. Hollrah began excavating the Tinker Site. Over the next several years, Mr. Hollrah dedicated hundreds of hours excavating and categorizing fossils from the Tinker Site. It became clear the site was more significant than originally thought. Ultimately, more than one juvenile T-Rex was found, along with teeth from a different predatory species believed to have been responsible for killing the juvenile T-Rexes. They also found the hoof of a duck-bill dinosaur believed to have been the last meal of one of the juvenile T-Rexes.

17. Late 1998/early 1999 Messrs. Hollrah, Harrell, and Frithiof agreed to move the fossils to Mr. Harrell's house in Houston, Texas for cleaning and preparation. Mr. Hollrah also moved to Houston to continue working on the fossils.

18. The next ten years were tortured. Mr. Harrell passed away. Mr. Hollrah, Mrs. Harrell, and Mr. Frithiof were sued by Harding County over where the bones were found. And, Mr. Frithiof, Mr. Hollrah, and Mrs. Harrell were sued in Pennsylvania by a bankruptcy trustee representing a company that had been preparing some of the bones for mounting.

19. Soon after Mr. Harrell passed away, Mr. Frithiof, Mr. Hollrah, and Mrs. Harrell discussed the Tinker Partnership and their continued business relationship. Mr. Frithiof affirmed the partnership and suggested converting the partnership into a corporation. Mr. Frithiof agreed to take the lead in formalizing a new business form. Mr. Frithiof engaged Jimmy Nassour to act as the Tinker Partnership's attorney. Mr. Hollrah was familiar with Mr. Nassour because Mr. Nassour had acted as the partnership's lawyer on prior occasions. Mr. Nassour filed the paperwork necessary to form a handful of business entities purportedly for carrying out the partnership business. The newly formed entities included at least Tinker The Teen Rex, L.L.C., Tinker Rex, Inc., and Kid Rex, Inc. Mr. Nassour also acted as corporate secretary in at least one formal meeting of at least one of the newly formed entities. Mr. Hollrah believed Mr. Nassour was the Tinker Partnership's attorney.

20. Mr. Frithiof and Mr. Hollrah also started a separate business relationship to retrieve, prepare, and sell the mummified remains of a duck-bill dinosaur tail. The tail was on land leased for bone collecting by Steve Nicklas. Mr. Frithiof and Mr. Hollrah agreed to form a partnership (Duck-Bill Partnership) to retrieve, prepare, and sell the remains of the duck-bill dinosaur tail. The Duck-Bill Partnership entered a joint venture agreement with Paleo Prospectors, Jump Off Ranch, and George Yarborough to retrieve, prepare, and sell the remains of the duck-bill dinosaur tail. The joint venture acquired the mummified remains. Mr. Hollrah devoted significant time preparing the tail for display, including designing and making a stand for the tail.

21. In early 2000, Mr. Hollrah, Mr. Frithiof, and Mrs. Harrell entered a contract with D.L. Grimm and Associates to market the remains of one of the juvenile T-Rexes. D.L. Grimm was also engaged to market the mummified remains of the duck-billed dinosaur. Later, in 2003, Mr. Hollrah and Mr. Frithiof entered a Preparation, Mounting, and Marketing Agreement with the Colorado Dinosaur Co. and Prehistoric Journey to prepare, mount, and sell fossils from the Tinker site. Although the juvenile T-Rex and mummified remains were not sold pursuant to either agreement, a respected museum had been prepared to pay over 8 million dollars for the fossils. Ultimately, the museum did not pursue the matter once Harding County sued the partners over ownership of the Tinker Site fossils.

22. In March 2014, Mr. Hollrah confirmed a casting of one of the juvenile T-Rexes from the Tinker Site was on display in Iowa City. Mr. Hollrah was surprised because he had not been informed or compensated for the sale of any castings. Mr. Hollrah raised the issue with Mr. Frithiof. Mr. Frithiof informed him he had given away the casting rights for free.

23. Later that year Mr. Hollrah received a letter from one of the partnership's South Dakota attorneys indicating that at least some of the partnership's fossils had been sold. Mr. Hollrah had not known the fossils were close to being sold. Mr. Hollrah also did not know who had purchased them or how much they had paid. After questioning the sale, Mr. Hollrah was contacted by the Tinker Partnership's attorney, Mr. Nassour. Mr. Nassour confirmed that the fossils had been sold, but refused to provide details of the sale. The only thing Mr. Nassour was willing to share with Mr. Hollrah was a heavily redacted sales

contract between Mr. Frithiof and an unnamed purchaser for at least some of the partnership assets. The sales contract is in Mr. Frithiof's name, and purports to sell a substantial portion of the Tinker Partnership's assets, including at least one of the juvenile T-Rexes from the Tinker Site. The sales contract also appears to sell the mummified remains of the duck-billed dinosaur tail and tail stand. The amount received for the sale was substantially below fair market value and below an amount that Mr. Hollrah would have agreed to accept for the fossils.

24. Mr. Nassour also presented Mr. Hollrah with a release agreement purporting to release all of his rights in the fossils for a fixed sum of money. The fixed sum of money was greater than \$75,000, but less than Plaintiff's share of the actual sale and substantially less than Plaintiff's share of the fair market value of the fossils.

COUNT 1: BREACH OF FIDUCIARY/PARTNERSHIP DUTIES

25. Plaintiff incorporates herein the allegations set forth in Paragraphs 1 through 24 above.

26. Defendant breached his fiduciary duties and partnership duties of loyalty, care, good faith, and to provide or disclose information owed directly to Plaintiff as partner in the Tinker Partnership and the Duck-Bill Partnership.

27. Defendant transferred substantially all of the assets out of the Tinker Partnership and the Duck-Bill Partnership.

28. Defendant failed to provide Plaintiff with notice, or other information sufficient to evaluate the transfer.

29. The money paid for the assets was substantially below the value of those assets.

30. Defendant negotiated and received payment in his individual capacity.

31. Defendant acted in bad faith and for the purpose of benefiting himself and harming the Plaintiff by selling and otherwise disposing of a substantial portion of the assets of both partnerships, withholding from Plaintiff information about the transfer, and refusing to pay Plaintiff his partnership share.

COUNT 2: EQUITABLE ACCOUNTING/DECLARATORY JUDGMENT

32. Plaintiff incorporates herein the allegations set forth in Paragraphs 1 through 31 above.

33. Plaintiff is entitled to an order requiring Defendant to render an accurate accounting of the Tinker Partnership and the Duck-Bill Partnership and to disgorge any profits. Plaintiff further requests that the Court appoint a special master to supervise and certify the accuracy of the accounting.

34. As shown herein, justiciable issues exist regarding the rights and status of the Plaintiff in relation to his Tinker Partnership interest and his Duck-Bill Partnership interest. Plaintiff seeks a declaratory judgment determining:

- a: the status of each partner's capital account in both partnerships;
- b: the rights of each partner upon wind up of the partnerships; and
- c: the final accounting of the partnerships.

COUNT 3: BREACH OF CONTRACT

35. Plaintiff incorporates herein the allegations set forth in Paragraphs 1 through 34 above.

36. Plaintiff, Defendant, and Mr. Harrell agreed to work together to excavate the Tinker Site and share all revenue and other value from and related to the fossils recovered from the Tinker Site.

37. Plaintiff and Defendant agreed to work together to excavate, prepare, and capitalize on the duck-bill dinosaur tail. Plaintiff and Defendant agreed to share all revenue and other value from and related to the duck-bill dinosaur tail.

38. Plaintiff contributed his labor, expertise, and money to excavate, preserve, and prepare fossils from the Tinker Site and to excavate, preserve, and prepare the remains of the duck-bill dinosaur tail.

39. Defendant sold fossils from the Tinker Site and the mummified remains of the duck-billed dinosaur tail and refused to share the proceeds therefrom with the Plaintiff.

40. Plaintiff was harmed by Defendant's action.

41. Plaintiff made a demand to settle the dispute. Defendant did not accept Plaintiff's demand.

COUNT 4: QUANTUM MERUIT/UNJUST ENRICHMENT

42. Plaintiff incorporates herein the allegations set forth in Paragraphs 1 through 41 above.
43. Plaintiff contributed labor, expertise, and money to find, extract, and preserve fossils from the Tinker Site, including at least one juvenile T-Rex.
44. Plaintiff contributed labor, expertise, and money to excavate, preserve, and prepare the remains of the duck-billed dinosaur tail.
45. Plaintiff's contribution of labor, expertise, and money benefited the Defendant.
46. Defendant accepted Plaintiff's contributions knowing the Plaintiff expected to be compensated.
47. Defendant took for his own benefit a substantial portion of the value of Plaintiff's services, expertise, and financial contributions.
48. Plaintiff was harmed by not being fairly compensated for his labor, expertise, and financial contributions.

COUNT 5: FRAUD

49. Plaintiff incorporates herein the allegations set forth in Paragraphs 1 through 48 above.
50. Through Defendant's statements and actions and the actions of Mr. Nassour, Defendant denies the existence of at least the Tinker Partnership.
51. Defendant intentionally mislead Plaintiff into believing he was part of the Tinker Partnership. Specifically, Defendant repeatedly entered contractual agreements and engaged in business activities representing himself to be Plaintiff's partner. Such agreements include at least the Exclusive Right to Solicit Offers between Plaintiff and Defendant ("Licensors") and D.L. Grimm and Associates as "Licensee" and the Preparation, Mounting and Marketing Agreement between Plaintiff and Defendant ("The Tinker Group"), Colorado Dinosaur Co., Inc. and Prehistoric Journeys.
52. Defendant intentionally mislead Plaintiff into believing he was part of the Duck-Bill Partnership. Specifically, Defendant agreed to enter the partnership, and repeatedly confirmed the nature of their

business relationship expressly and through his actions, including entering into the joint venture agreement to excavate, prepare, and sell the remains of the duck-billed dinosaur tail.

53. Plaintiff relied on Defendant's representations and contributed his labor, expertise, and money in furtherance of the Tinker Partnership and the Duck-Bill Partnership.

54. Defendant disposed of all assets of the Tinker Partnership and the Duck-Bill Partnership for his own benefit, and without consulting or fairly compensating the Plaintiff.

55. Plaintiff was harmed by Defendant's representations.

COUNT 6: COPYRIGHT INFRINGEMENT

56. Plaintiff incorporates herein the allegations set forth in Paragraphs 1 through 55 above.

57. The Copyrighted Works entitled Dino Tail (Case No.: 1-4558668597), Dino Tail Stand (Case No.: 1-4558669073), and Dino Tail and Tail Stand (Case No.: 1-4558668571) are original works and copyrightable subject matter under the laws of the United States. A copy of each application is attached hereto as Exhibits A, B, and C.

58. Plaintiff filed applications to register its copyright in the Dino Tail, Dino Tail Stand, and Dino Tail and Tail Stand with the United States Copyright Office on March 6, 2017. Plaintiff paid all filing fees at the time of filing.

59. At all times Plaintiff has been and still is the owner of all right, title, and interest in and to the Copyrighted Works.

60. Plaintiff never authorized, consented to, or gave permission to Defendant to sell or display the Copyrighted Works.

61. On information and belief, Defendant infringed the Copyrighted Works by publically displaying (or inducing another to publicly display) and selling the Copyrighted Works.

62. By reason of Defendant's infringement of Plaintiff's copyrights, Plaintiff has sustained, and will continue to sustain, substantial injury, loss, and damages to its rights in the Copyrighted Works.

JURY DEMAND

Plaintiff demands a trial by jury on all issues.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays the Court:

- a) award damages for the above referenced Causes of Action, including Section 504 of the Copyright Act;
- b) award attorney's fees, including at least those provided for in Chapter 38 of the Texas Civil Practice and Remedies Code;
- c) award costs;
- d) order an equitable accounting of the Tinker Partnership and Duck-Bill Partnership;
- e) award exemplary and punitive damages;
- f) find this case is exceptional, entitling Plaintiff to enhanced damages and an award of attorney's fees.
- g) award prejudgment and post judgment interest; and
- h) grant all other relief to which Mr. Hollrah is entitled.

Date: 3/10/17

Respectfully submitted,

AMATONG MCCOY LLC

/s/ Michael S. McCoy
Michael S. McCoy
State Bar No. 24013129
S.D. Tex. ID No. 24498
1235 N. Loop West, Suite 308
Houston, TX 77008
Telephone: 713/263-3010
MMcCoy@AmatongMcCoy.com