

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

Katrina English
101 N. Elmer Dr.
Middletown, Ohio 45042,

Case No. A 1 9 0 0 7 5 7

Judge

and

COMPLAINT

Karyl Kleve
321 East 3rd Street
Covington, Kentucky 41011,

Plaintiffs,

COPY FILED
CLERK OF COURTS
HAMILTON COUNTY

vs.

FEB 12 2019

Timothy Smith, Esq.
810 Sycamore St., #5
Cincinnati, Ohio 45202,

AFTAB PUREVAL
COMMON PLEAS COURTS

and

Nicholas Summe, Esq.
19 W. 11th St.
Covington, Kentucky 41011,

and

Summe & Summe, PSC
19 W. 11th St.
Covington, Kentucky 41011,

and

Kash Stilz, Esq,
19 W. 11th St.
Covington, Kentucky 41011,

and

Roush & Stilz, PSC
19 W. 11th St.
Covington, Kentucky 41011,

and

Joseph Rouse, Esq.
1 E. Fourth St., Suite 1400
Cincinnati, Ohio 45202,

and

Keating Muething & Klekamp, PLL
c/o KMK Service Corp. (registered agent)
1 E. Fourth St., Suite 1400
Cincinnati, OH 45202,

and

Herbert Haas, Esq.
114 East 8th Street
Cincinnati, Ohio 45202

and

John Does 1-10,
Names and addresses unknown,

Defendants.

Plaintiffs, by and through counsel, for their Complaint state as follows:

Parties

1. Katrina English and Karyl Kleve are the daughters of Karl Kleve (deceased), the sisters of Kristine Lawson, and they live in Middletown, Ohio, and Covington, Kentucky, respectively.
2. Timothy Smith, Esq., is an attorney who provided legal services to Kristine Lawson when she was acting for and on behalf of her sisters, English and Kleve.
3. Nicholas Summe, Esq., is an attorney who provided legal services to Kleve while acting in the course and scope of his employment as a partner of Summe & Summe, PSC.

4. Kash Stilz, Esq., is an attorney who provided legal services to English while acting in the course and scope of his employment as a partner of Roush & Stilz, PSC.

5. Joseph Rouse, Esq., is an attorney who provided legal services to Lawson when she was acting for and on behalf of her sisters, English and Kleve. In doing so, Mr. Rouse was acting in the course and scope of his employment as a partner of Keating, Muething & Klekamp, PLL (hereinafter "KMK").

6. Herb Haas, Esq., is an attorney who provided legal services to Lawson when she was acting for and on behalf of her sisters, English and Kleve.

Facts

7. On or about March 20, 1958, Karl Kleve purchased Ferrari 375 Plus #0384.

8. At the time of purchase, the Ferrari was in damaged condition and partially disassembled.

9. For almost 30 years, the Ferrari sat in an open lot owned by Kleve, exposed to the elements, deteriorating from neglect.

10. Sometime around late 1988 or early 1989, the chassis and various parts of Ferrari were stolen (hereinafter the "Stolen Portion") and exported to Belgium.

11. There were various pieces of the Ferrari that were not stolen and remained in Kleve's possession (hereinafter referred to as the "Spare Parts").

12. After a period of detention by Belgian authorities, the Stolen Portion was released to the importer who then, in turn, sold it to Jacques Swaters ("Swaters").

13. At some point, while he owned it, Swaters restored the Ferrari.

14. In 1993, Kleve applied to the Hamilton County Court of Common Pleas for and was granted an Ohio Certificate of Title for the Ferrari although the Ferrari was not in his possession or control.

15. For several years there was a dispute swirling about regarding whether Kleve or Swaters was the legal owner of the Ferrari.

16. Swaters claimed and Kleve denied that in 1999 there was a settlement whereby Swaters and his partner, Phillip Lancksweert, paid Kleve, through Kleve's agent Mark Daniels, \$625,000 in exchange for the Spare Parts and a release of all claims of ownership of the Ferrari.

17. Kleve claimed Daniels had acted without Kleve's authority.

18. Kleve died intestate on 24 Dec. 2003 leaving his three daughters, Lawson, English and Karyl Kleve as his heirs.

19. At the time of his death the Spare Parts remained in Kleve's possession.

20. Lawson was appointed Administrator of Kleve's Estate by the Probate Court of Hamilton County in Case No. 2004000216.

21. In her capacity as Administrator, Lawson was represented by Rouse and KMK.

22. The Ohio Certificate of Title and the various pieces of the Ferrari were passed through the probate process to the heirs, Lawson, English, and Kleve.

23. Lawson agreed to act on behalf of her sisters, English and Kleve, with regard to recovering the Ferrari and share any recovery with them.

24. For all times relevant to this Complaint, English and Kleve were in privity with Lawson, English and Kleve who were undeniably vested beneficiaries with an interest in the Spare Parts and the Ferrari and Lawson owed English and Kleve a fiduciary duty in all matters related to the Ferrari.

25. In February 2010, Swaters filed Case No. A1001370 (hereinafter *Swaters v. Lawson*) in Hamilton County Common Pleas Court against Lawson seeking declaratory judgment as to the validity and effect of the 1999 Settlement and recovery of the Spare Parts.

26. Joseph L. Ford, III, is a south Florida hustler and conman.

27. For years prior to 2010, Ford was engaged in the illegal and unlicensed practice of law for and on behalf of Christopher Gardner, and he repeatedly, fraudulently held himself out as a licensed attorney.

28. When the *Swaters v. Lawson* litigation was commenced, Ford and Gardner had no right, title, interest, or claim in or to the Ferrari at issue.

29. When the *Swaters v. Lawson* litigation was commenced and for all times relevant to this action, Ford was not actively licensed to practice law in any jurisdiction.

30. While Lawson was seeking legal assistance in responding to the Complaint in *Swaters v. Lawson*, she made contact with Ford because he held himself out as an attorney, competent to handle international litigation involving classic and/or collectible cars.

31. Ford had a law degree, but he had no meaningful civil litigation experience.

32. On 25 Feb. 2010, Lawson entered into two contracts with Ford: the Sale Agreement (attached as **Exhibit 1**) and the Option Agreement (attached as **Exhibit 2**).

33. Ford lacked the financial resources to fulfill the \$100k commitment contained in the Option Agreement and he secretly used Gardner's money to do so.

34. The Sale Agreement and the Option Agreement were unenforceable, illegal, unlawful, void and/or voidable because they were contracts for champerty and maintenance, they violated the public policy of the State of Ohio that prohibits speculation in litigation, they were

contracts for the unlicensed practice of law by Ford, and/or they failed to comply with the requirements of R.C. §1349.55.

35. By entering into the Sale Agreement and Option Agreement, Ford purported to acquire an interest in the subject matter of the *Swaters v. Lawson* litigation in an attempt to make a speculative profit, and Lawson relinquished her rights as a litigant to control the conduct of the *Swaters v. Lawson* litigation.

36. In January of 2011, Gardner entered a written contract to provide financial support for Ford's litigation efforts in exchange for Gardner receiving an interest in the proceeds of sale of the Ferrari. A copy of the Gardner/Ford Contract is attached hereto as **Exhibit 3**.

37. Ford was an officious intermeddler in *Swaters v. Lawson* that stirred up strife and contention with vexatious litigation and corrupt practices that prevented the remedial process of the law.

38. Ford's conduct in *Swaters v. Lawson* was an offense against the public peace because it kept alive strife and contention and perverted the remedial process of the law into an engine of oppression.

39. Ford's involvement in *Swaters v. Lawson* prevented Lawson from compromising or settling her controversy and encouraged, promoted, and extended litigation.

40. During the pendency of the *Swaters v. Lawson* litigation, Ford engaged in the unlicensed practice of law including, but not limited to, advising Lawson regarding her legal rights, preparing legal documents and pleadings, evaluating evidence, interviewing witnesses, managing and directing the litigation, attempting to conduct settlement negotiations, and otherwise engaging in the practice of law as defined by the Supreme Court of Ohio.

41. In May of 2011, Haas entered his appearance in *Swaters v. Lawson* as counsel for Lawson individually, but later undertook to represent Lawson, Ford, and Gardner collectively.

42. While Haas was representing Lawson, Lawson was in privity with and owed a fiduciary duty to English and Kleve, both of whom were vested beneficiaries with interests in the Ferrari or the sale proceeds flowing therefrom.

43. While he was representing Lawson individually, Haas negligently failed to advise Lawson that the Sale Agreement and Option Agreement were unenforceable, unlawful, void and/or voidable because they were contracts for champerty and maintenance, they violated the public policy of the State of Ohio that prohibits speculation in litigation, they were contracts for the unlicensed practice of law by Ford, and/or they failed to comply with the requirements of R.C. §1349.55.

44. In September of 2012, the relationship between Ford and Gardner began to deteriorate because of Ford's deceptive, dishonest, incompetent, manipulation and mishandling of the litigation and his efforts to increase his share of the Ferrari litigation proceeds at Gardner's expense.

45. To thwart Ford's efforts and preserve his interest in the Ferrari, Gardner undertook direct negotiations with Swaters, using Bonhams 1793, Ltd., as an intermediary.

46. Gardner met with Swaters in London, England, in January of 2013 and negotiated a settlement memorialized with a document referred to as the Heads of Agreement (hereinafter referred to as the "HOA").

47. The HOA provided that the Parties would combine and auction the Stolen Portion, the Spare Parts, and relinquish all competing claims of ownership to the Ferrari.

48. The HOA further provided the proceeds of the sale would be divided equally between Swaters on the one hand, and Lawson and those claiming through her (Ford and Gardner) on the other hand.

49. In March of 2013, Gardner, Ford, Lawson, Swaters, and Bonhams signed the HOA, a copy of which is attached as **Exhibit 4**.

50. After the HOA was signed, Ford continued to try and increase his share of the settlement proceeds and reduce Gardner's share.

51. As the dispute developing between Ford and Gardner intensified, it began to adversely affect Lawson's position and interest in *Swaters v. Lawson*.

52. Ford contacted third parties whom Ford knew to be adverse to Gardner by virtue of Ford's previous representation of Gardner.

53. Ford shared and publicly disseminated Gardner's confidential information that Ford obtained in the course of his attorney-client relationship with Gardner in an effort to undermine Gardner's legal interests.

54. Notwithstanding the HOA, Ford and Lawson refused to ship the Spare Parts to Bonhams.

55. Gardner intervened in *Swaters v. Lawson* and joined Swaters in moving the Court to compel Ford and Lawson to ship the Spare Parts to Bonhams as agreed.

56. Gardner also filed Case No. A1306451 (hereinafter *Gardner v. Ford*) against Ford and Lawson to enjoin Ford's continued dissemination of Gardner's confidential information, to stop Ford's interference with the sale of Ferrari, and for declaratory judgment regarding the division of the proceeds of sale of the Ferrari.

57. Smith represented Lawson in *Swaters v. Lawson* and *Gardner v. Ford*.

58. While Smith represented Lawson, Lawson was in privity with and owed a fiduciary duty to English and Kleve, both of whom were vested beneficiaries with interests in the Ferrari or the sale proceeds flowing therefrom.

59. Tim Smith was not competent and lacked the professional experience to represent Lawson in accordance with the standard of care for an attorney.

60. Tim Smith blindly followed instructions given him by Ford, a party whose interests were directly at odds with Lawson.

61. Tim Smith negligently failed to advise Lawson that the Sale Agreement and Option Agreement were unenforceable, illegal, unlawful, void and/or voidable because they were contracts for champerty and maintenance, they violated the public policy of the State of Ohio that prohibits speculation in litigation, they were contracts for the unlicensed practice of law by Ford, and/or they failed to comply with the requirements of R.C. §1349.55.

62. Tim Smith negligently failed to competently represent Lawson in the *Swaters v. Lawson* and *Gardner v. Ford* litigation by failing to advise her of important claims and defenses, failing to act competently, aligning her with and entering into a joint defense agreement with Ford in the litigation despite obvious and irreconcilable conflicts, and otherwise negligently failing to act in accordance with the standard of care for an attorney.

63. Specifically, Smith negligently failed to raise claims and defenses to Ford's and Gardner's claims including challenging the Sale Agreement and Option Agreement as unenforceable, illegal, unlawful, void and/or voidable because they were contracts for champerty and maintenance, they violated the public policy of the State of Ohio that prohibits speculation in litigation, they were contracts for the unlicensed practice of law by Ford, and/or they failed to comply with the requirements of R.C. §1349.55.

64. If Smith had raised the proper claims and defenses in *Gardner v. Ford*, both Ford and Gardner would have lost all interest in the Ferrari and sale proceeds.

65. Smith's negligent representation of Lawson cost her, English, and Kleve several million dollars.

66. During the various proceedings in *Swaters v. Lawson* and *Gardner v. Ford*, Smith failed to perform his duty as Lawson's counsel in accordance with standard of care for an attorney including, but not limited to, failing to plead necessary and appropriate claims and defenses, failing to transmit settlement offers, failing to attend all Court hearings and depositions, failing to pay attention during Court proceedings and depositions, playing video games (Candy Crush Saga) on his iPad during Court proceedings and depositions, failing to understand pertinent legal claims and defenses, allowing an adverse party to direct his representation of his client, and other negligent conduct.

67. Smith's conduct, as cited in the preceding paragraph, was malicious and constituted a reckless disregard for the rights of those whose interests he was representing despite a substantial certainty that his deviation from the standard of care would cause great harm.

68. Summe acted as counsel for Kleve and Stilz acted as counsel for English with regard to the legal issues involving the Ferrari.

69. In May of 2014, relying upon the representations and legal advice of their respective counsel, Kleve and English signed a contract that provided for the unequal division of sale proceeds. The Contract is attached as **Exhibit 5**.

70. Paragraph 5 of the Contract states:

"Karyl and Katrina agree that they and their attorneys have reviewed all filings in Case Nos. A-1001370 and A-1306451 and related appeals, and that they accept and agree to be bound by the contracts entered into and decisions made by Kristine thus far."

71. Despite the representation to the contrary cited above, Stilz negligently failed to review all filings in *Swaters v. Lawson* or *Gardner v. Ford*.

72. Stilz negligently failed to advise English that the Sale Agreement and Option Agreement were unenforceable, illegal, unlawful, void and/or voidable because they were contracts for champerty and maintenance, they violated the public policy of the State of Ohio that prohibits speculation in litigation, they were contracts for the unlicensed practice of law by Ford, and/or they failed to comply with the requirements of R.C. §1349.55.

73. Stilz negligently failed to advise English that she could and should have intervened in the pending litigation to protect her interests.

74. Despite the representation to the contrary cited above, Summe negligently failed to review all filings in *Swaters v. Lawson* or *Gardner v. Ford*.

75. Summe negligently failed to advise Kleve that the Sale Agreement and Option Agreement were unenforceable, illegal, unlawful, void and/or voidable because they were contracts for champerty and maintenance, they violated the public policy of the State of Ohio that prohibits speculation in litigation, they were contracts for the unlicensed practice of law by Ford, and/or they failed to comply with the requirements of R.C. §1349.55.

76. Summe negligently failed to advise Kleve that she could and should have intervened in the pending litigation to protect her interests.

77. On 27 June 2014, Bonhams auctioned the Ferrari at the Goodwood Festival of Speed in Chichester, England, and Copley Motorcars, as agent for Les Wexner/L Brands, Ltd., purchased it for £10,753,450¹. The “hammer price” was £9.6 Million².

78. If Smith had represented Lawson competently, Lawson, English, and Kleve would have received approximately \$8,160,000 or more of the sale proceeds.

79. If Ford and Lawson had not objected to the sale of the Ferrari and the auction achieved the best price, the Ferrari would have sold for \$25,000,000.

80. However, before, during, and after the auction, Ford and Lawson, relying upon Smith’s advice and professional counsel, objected to the sale of the Ferrari by Bonhams.

81. After the auction, the buyer of the Ferrari filed suit in London, England, to rescind the sale because of the claims of ownership asserted by Lawson and Ford.

82. From Feb. 2010 to April 2016, there was extensive litigation in multiple forums regarding the competing claims of ownership of the Ferrari and division of the proceeds of sale.

83. Ford could not afford counsel in London, so he appeared pro se, with the assistance of Smith.

84. After an Arbitration in Miami, Florida, between Gardner and Ford, the Arbitration Panel found that Ford had engaged in the unlicensed practice of law. The award from the Arbitration Panel was confirmed as a Judgment in *Gardner v. Ford*. The final award is attached as **Exhibit 6**.

85. Smith represented Ford during the Arbitration despite his irreconcilable conflict of interest.

¹ Based on a then-current conversion rate, this is equal to \$18.3 Million. This includes the Buyer’s Premium of 10%.

² Based on a then-current conversion rate, this is equal to \$16.32 Million.

86. On 17 April 2016, Ford and Lawson settled their claims regarding the Ferrari in exchange for a payment of £2,349,646³.

87. The settlement amount paid to Ford and Lawson reflected substantial reductions from what Lawson could have received under the HOA for cost orders and adverse merit decisions issued by the High Court of Justice in London and the adverse decision of the Arbitration Panel.

88. On 17 April 2016, Gardner settled his claims regarding the Ferrari in exchange for the vast majority of Lawson's share under the Heads of Agreement.

89. The Lawson/Ford settlement proceeds were divided among the various parties as follows: Lawson received \$300,000; English received \$150,000; Kleve received \$150,000; and Ford received \$2,412,049. See attached Amended and Restated Settlement Agreement, attached as **Exhibit 7** and Settlement Agreement and Mutual Release, attached as **Exhibit 8**.

90. Approximately \$1,100,000 of the Lawson/Ford settlement proceeds was used to pay Ford's attorney fees incurred connection with his litigation with Gardner, which conferred no benefit on Lawson, English, or Kleve.

91. Stilz and Summe advised English and Kleve, respectively, with regard to the distribution of the proceeds of settlement and execution of **Exhibit 8**.

92. Neither Stilz nor Summe ever knew how much money was paid to Ford.

93. While Lawson was in privity with and acting on behalf of her sisters, to whom she owed fiduciary duty and who also were beneficiaries with a vested interest in the Ferrari proceeds, Rouse advised Lawson that her Agreement with Ford to accept 10% of the sales proceeds, as opposed to the 30% set forth in Sale Agreement and Option Agreement, was binding and enforceable in favor of Ford.

³ Based on a then-current conversion rate, this is equal to \$3,330,858.17.

94. Rouse negligently failed to advise Lawson that the Sale Agreement and Option Agreement were unenforceable, illegal, unlawful, void and/or voidable because they were contracts for champerty and maintenance, they violated the public policy of the State of Ohio that prohibits speculation in litigation, they were contracts for the unlicensed practice of law by Ford, and/or they failed to comply with the requirements of R.C. §1349.55.

95. As a direct and proximate result of the Defendants' professional negligence as described herein, English and Kleve each received less than 1% of the proceeds of the sale of the Ferrari.

96. Smith's conduct as described herein constitutes a reckless disregard for the rights of those whose interest he was responsible for protecting despite a substantial certainty that they would suffer tremendous harm

97. Plaintiffs first became aware that Smith, Summe, Stilz, Rouse, and Haas deviated from the standard of care for attorneys on or about 13 Feb. 2018, when they were served with Plaintiffs' First Amended Complaint in A1605727, styled *Clark, et al. v. Ford et al.*

Count 1 – Legal Malpractice (Timothy Smith, Esq.)

98. Plaintiffs incorporate the preceding allegations by reference.

99. Smith negligently deviated from the standard of care for an attorney in representing Lawson while she was in privity with English and Kleve, English and Kleve were vested beneficiaries with interests in the Ferrari, and Lawson owed English and Kleve a fiduciary duty.

100. As a direct and proximate result of Smith's negligence, English and Kleve have sustained economic damages in an amount to be proven at trial, but believed to be in excess of \$25k.

Count 2 – Legal Malpractice (Nicholas Summe, Esq.)

101. Plaintiff, Kleve, incorporates the preceding allegations by reference.

102. Summe deviated from the standard of care in his representation of Kleve by failing to advise her of legal claims and defenses that she could have raised in connection with the division and distribution of the proceeds of sale of the Ferrari and/or settlement of the Ferrari litigation.

103. As a direct and proximate result of Summe's negligence, Kleve has sustained economic damages in an amount to be proven at trial, but believed to be in excess of \$25k.

Count 3 - Legal Malpractice (Summe & Summe, PSC)

104. Plaintiffs incorporate the preceding allegations by reference.

105. Summe was acting in the course and scope of his employment as a partner of and attorney for Summe & Summe, PSC, while he was providing legal services to Plaintiff, Kleve.

106. Summe & Summe, PSC, and all partners thereof are vicariously liable to Plaintiff, Kleve, for Summe's negligence by operation of law.

Count 4 - Legal Malpractice (Kash Stilz, Esq.)

107. Plaintiffs incorporate the preceding allegations by reference.

108. Stilz deviated from the standard of care in his representation of English by failing to advise her of legal claims and defenses that she could have raised in connection with the division and distribution of the proceeds of sale of the Ferrari and/or settlement of the Ferrari litigation.

109. As a direct and proximate result of Stilz's negligence, English has sustained economic damages in an amount to be proven at trial, but believed to be in excess of \$25k.

Count 5 - Legal Malpractice (Roush & Stilz, PSC)

78. Plaintiffs incorporate the preceding allegations by reference.

110. Stilz was acting in the course and scope of his employment as a partner of and attorney for Roush & Stilz, PSC, while he was providing legal services to Plaintiff, English.

111. Roush & Stilz, PSC, and all partners thereof are vicariously liable to Plaintiff, English for Stilz's negligence by operation of law.

Count 6 – Legal Malpractice (Joseph Rouse, Esq.)

82. Plaintiffs incorporate the preceding allegations by reference.

112. Rouse negligently deviated from the standard of care for an attorney in representing Lawson while she was in privity with English and Kleve, English and Kleve were vested beneficiaries with interests in the Ferrari, and Lawson owed English and Kleve a fiduciary duty.

113. As a direct and proximate result of Rouse's negligence, English and Kleve have sustained economic damages in an amount to be proven at trial, but believed to be in excess of \$25k.

Count 7 – Legal Malpractice (Keating, Muething & Klekamp, LLP)

114. Plaintiffs incorporate the preceding allegations by reference.

115. Rouse was acting in the course and scope of his employment as a partner of and attorney for KMK while he was providing legal services to Lawson while she was in privity with English and Kleve, English and Kleve were vested beneficiaries with interests in the Ferrari, and Lawson owed English and Kleve a fiduciary duty.

116. KMK and all partners thereof are vicariously liable to English and Kleve for Rouse's negligence by operation of law.

Count 8 – Legal Malpractice (Herbert Haas, Esq.)

117. Plaintiffs incorporate the preceding allegations by reference.

118. Haas negligently deviated from the standard of care for an attorney in representing Lawson while she was in privity with English and Kleve, English and Kleve were vested beneficiaries with interests in the Ferrari, and Lawson owed English and Kleve a fiduciary duty.

119. As a direct and proximate result of Haas' negligence, English and Kleve have sustained economic damages in an amount to be proven at trial but believed to be in excess of \$25k.

WHEREFORE, Plaintiffs demand: Judgment against Defendants for special and compensatory and damages in excess of \$25,000 to be proven at trial; punitive damages against Defendant Smith, disgorgement from all Defendants of all payments for services rendered, costs of this action; attorneys' fees; and, such other relief as this Court deems necessary and just.

Respectfully submitted,

CREHAN & TRUMANN, LLC

/s/ Robert J. Thumann

Robert J. Thumann (0074975)

404 E. 12th Street, 2nd Floor

Cincinnati, Ohio 45202

(513) 381-5050 office

(513) 381-1700 facsimile

thumann@ctlawcincinnati.com

Trial Attorney for Karyl Kleve

and Katrina English

Praecipe to the Clerk

To the CLERK:

Please serve the Defendants by Certified U.S. Mail at the addresses listed in the caption.

/s/ Robert J. Thumann

Robert J. Thumann (0074975)