



IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE

**BAYARD, P.A., a
Delaware Professional
Association,**

Plaintiff,

v.

HARVEY WEINSTEIN

Defendant.

C.A. No. 19C-12-

**JURY TRIAL OF 12
DEMANDED**

**PLAINTIFF DEMANDS THAT
DEFENDANT ANSWER THE
ALLEGATIONS OF THE
COMPLAINT BY AFFIDAVIT
PURSUANT TO 10 DEL. C. §3901**

COMPLAINT

Plaintiff Bayard, P.A. (“Bayard”) hereby alleges, by its undersigned counsel,
as follows:

NATURE OF THE ACTION

1. On or about March 21, 2018, Defendant Weinstein retained Bayard in connection with a books and records action to be filed in the Delaware Court of Chancery against his former employer, The Weinstein Company LLC (“TWC”). From that date until April 10, 2019 when U.S. Bankruptcy Court Judge Walrath granted Bayard’s request to withdraw as Defendant Weinstein’s counsel in the TWC chapter 11 case, and in addition to the books and records action, Bayard represented

Defendant Weinstein including his dispute with his brother Robert Weinstein with regard to the sale of a jointly-owned commercial real estate property in New York City located at 375 Greenwich Street.

2. Bayard also represented Weinstein in connection with the chapter 11 cases of TWC, pending in the United States Bankruptcy Court for the District of Delaware. As discussed more fully before, in connection with the TWC chapter 11 cases, Bayard was instrumental in securing certain exculpatory emails that resided on TWC's email servers which were necessary for Defendant Weinstein to defend himself in connection with, among various other civil and criminal matters, as well insurance coverage disputes. Bayard was also instrumental in securing from TWC financial information related to Weinstein's interests in and claims against the Debtors. Furthermore, Bayard's efforts led to the preservation of Weinstein's personal files and effects and his business records in connection with the purchase of the debtors' assets by Lantern Entertainment LLC ("Lantern") including his rights with respect to certain movies that he and his brother Robert Weinstein financed together and that were financed by Defendant Weinstein alone. Bayard also defended Defendant Weinstein in the Bankruptcy Court in connection with an adversary proceeding in TWC's chapter 11 case captioned *AI International v. TWC Borrower 2016, LLC, et al.*, Index No. 656864/2017 (N.Y. Sup. Ct.) (the "State

Court Action”). Finally, in the TWC chapter 11 case, Bayard prepared and filed on behalf of Defendant Weinstein several proofs of claim against the Debtors.

3. Notwithstanding Defendant Weinstein’s agreement to pay Bayard based upon Bayard’s usual and customary hourly rates and Bayard’s performance of services to him, Weinstein has repeatedly failed to meet his obligations to Bayard. Accordingly, by this action, Plaintiff requests the Court award damages against Defendant Weinstein in the amount of \$423,316.04, plus pre- and post-judgment interest and costs.

THE PARTIES

4. Plaintiff Bayard is a Professional Association formed under the laws of the State of Delaware, with its principal place of business at 600 N. King Street, Suite 400, Wilmington, Delaware 19801,

5. Defendant Harvey Weinstein (“Weinstein”) who is a resident and/or citizen of either New York or New Jersey based upon his voter registration and/or driver’s license and therefore may be served with process pursuant to 10 *Del. C.* § 3104.

JURISDICTION AND VENUE

6. This Court has personal and subject matter jurisdiction over this matter. Venue is appropriate in this county.

FACTS GIVING RISE TO THIS DISPUTE

A. The Books and Records Action

7. On or about March 21, 2018, Defendant Weinstein retained Bayard in connection with a books and records action to be filed in the Delaware Court of Chancery against his former employer, TWC. All work on that litigation stopped in March 2018 when Bayard was alerted that TWC was anticipating filing for bankruptcy.

B. The Bankruptcy Case

8. On March 19, 2018, TWC and various of their affiliates (collectively, the “Debtors”), filed petitions for relief under chapter 11 of the Bankruptcy Code, Case No. 18-10601 (MFW), pending in the United States Bankruptcy Court for the District of Delaware. Defendant Weinstein retained Bayard to represent him in the Debtors’ bankruptcy case.

C. Defendant Weinstein’s Dispute with Respect to Sale of 375 Greenwich Street

9. Early on, Bayard represented Defendant Weinstein in a dispute with his brother, Robert Weinstein, concerning the sale of a commercial real estate property in New York City located at 375 Greenwich Street. As a courtesy to Defendant Weinstein, Bayard agreed to write off \$19,330.00 in attorneys’ fees based upon his agreement to pay Bayard’s usual and customary hourly rates for other services he requested of Bayard.

D. The Production of Exculpatory Emails in Connection with Criminal Indictment

10. During the chapter 11 cases, Bayard represented Defendant Weinstein in connection with several matters. Foremost were Bayard's efforts to secure certain emails that resided on TWC's email servers that were necessary for Defendant Weinstein to defend himself in connection with, among various other civil and criminal matters, the criminal case captioned *People v. Harvey Weinstein*, Indictment #2335/2018 pending in Supreme Court of New York County (the "Criminal Case"). Because those exculpatory emails resided on TWC's email servers, and constituted "property of the TWC chapter estate," Defendant Weinstein needed a Court order to secure those emails. As such, Bayard filed several motions with the Bankruptcy Court.

11. On June 5, 2018, the Bankruptcy Court entered an Order (the "2004 Order") that contained a protocol that allowed Bayard to obtain certain exculpatory emails from TWC. *See attached* "TWC. 976 Discovery Protocol Order Rule 2004" (Exhibit A). In the motion requesting the 2004 Order, Bayard (along with Mr. Weinstein's criminal and civil defense counsel who submitted declarations in support of Bayard's request) argued that the production of the emails was necessary in order to permit Defendant Weinstein to preserve his due process rights and to defend himself against the numerous accusations levied against him both civilly and criminally. The protocol in the 2004 Order required Bayard to provide Debtors'

counsel certain email search terms for which Debtors' counsel would search and, subject to review and assertion of privilege, produce emails to Bayard and Defendant Weinstein's criminal counsel. Following the entry of the 2004 Order, the Debtors produced thousands of pages of emails from anonymous and publicly-disclosed accusers of Mr. Weinstein. As discussed below, the Court's 2004 Order was modified several times in order to provide sufficient protections to anonymous accusers and witnesses while still permitting Defendant Weinstein to exercise his due process rights to defend himself against the Criminal Case and various civil matters brought against him.

E. Bayard Secures Mr. Weinstein's Use of Exculpatory Emails in the Criminal Indictment

12. While the 2004 Order provided a protocol for the production of emails, it required counsel for the Committee and counsel for Defendant Weinstein to keep the production confidential, on an Attorneys' Eyes-Only basis. It also did not provide for Defendant Weinstein's use of those emails in court proceedings, including his defense of the Criminal Case in Manhattan. Accordingly, at Bayard's request, on August 2, 2018 the Court held an emergency conference. At that conference, the Court authorized Defendant Weinstein to use a limited set of emails in the Criminal Case pending against him although no Court order was issued in connection with that emergency conference with the Court.

F. Bayard Secures an Order Related to Defendant Weinstein's Personal Property

13. While Defendant Weinstein's first priority was to secure the emails referenced above, throughout the TWC chapter 11 cases, Defendant Weinstein tried to secure financial information related to his interests in and claims against the Debtors and the purchase of the debtors' assets by Lantern. On Defendant Weinstein's behalf, Bayard objected to the sale of substantially all of TWC's assets to Lantern and secured language in the sale order that ensured that Lantern would preserve Defendant Weinstein's personal files and effects and his business records. Following the sale to Lantern, Bayard informally demanded that the Debtors provide Defendant Weinstein with information related to the Excluded Activities and Rights identified in Schedule I to Defendant Weinstein's employment agreement, including his rights with respect to certain movies that he and his brother Robert Weinstein financed together (including, among others, Halloween, Scary Movie, Spy Kids and Scream and sequels, as well as projects that were included on Schedule I that were financed by Defendant Weinstein alone). The Debtors, however, repeatedly claimed that Defendant Weinstein's personal effects had already been returned to him and that all further requests for financial information should instead be sought from Lantern as a result of the closing of the sale to Lantern. Accordingly, following the sale by TWC to Lantern, Bayard engaged in extensive informal and formal discovery with Lantern in an attempt to secure this information on a consensual basis. When

those efforts failed, on October 23, 2018, at Bayard's request, the Court issued another order directing the Debtors to produce to Bayard "documents reasonably related to Mr. Weinstein's financial interests in the Excluded Projects listed in Schedule I to Mr. Weinstein's 2015 employment agreement, subject to a cap of \$100,000 in the Debtors' fees and expenses." *See attached* "WC – Order Granting Motion to Compel Discovery [D.I. 1625]" (Exhibit B).

G. Bayard Secures an Order Related to Exculpatory Emails involving Potential Witnesses

14. On November 29, 2018, at Bayard's request, the Court issued an order that modified the 2004 Order to provide that the Debtors would also produce to Defendant Weinstein emails from "any potential witness identified by counsel for [Mr. Weinstein] in any criminal or civil actions" against Mr. Weinstein. *See attached* "WC – Order Modifying Protocol for Production [D.I. 1791]" (Exhibit C).

H. Bayard Secures Defendant Weinstein's Use of Exculpatory Emails in the Criminal Indictment

15. Also on November 29, 2018, at Bayard's request, the Court issued an order that modified the 2004 Order to allow Mr. Weinstein to attach certain exculpatory emails in a reply pleading in the Criminal Case that included emails from an Alleged Accusers or Potential Witnesses with the designation "confidential witness [#]." The emails that Bayard secured as a result of the Court's November 29, 2018 order directly resulted in the dismissal by the Supreme Court of the State

of New York of one count of the criminal allegations against Defendant Weinstein. *See attached* “WC – Order Permitting Limited Use of Documents [D.I. 1790]” (Exhibit D).

I. Bayard Secures Defendant Weinstein’s Use of Exculpatory Emails in the Civil Matters

16. In addition, Defendant Weinstein wanted to use the emails produced by the Debtors in connection with other civil litigation, in order to respond to and refute various allegations that have been asserted against him, as well as in connection with ongoing insurance coverage actions. The 2004 Order, however, did not provide for Defendant Weinstein’s use of the emails produced in various pending civil matters against him, including:

***Alexandra Canosa v. Dirk Ziff, et al.*, 18 Civ. 4115 (United States District Court Southern District of New York);**

***Louissette Geiss v. The Weinstein Company Holdings LLC, et al.*, Case No. 1:17-cv-09554 (S.D.N.Y.);**

***AI International Holdings (BVI), Limited v. TWC Borrowers 2016, LLC, et al.*, Case No.: 656864-2017E, filed on November 10, 2017 in the Supreme Court of the State of New York, County of New York;**

***Kadian Noble v. Harvey Weinstein, et al.*, Case No.: 1:17-cv-09260, filed on November 27, 2017 in the U.S. District Court for the Southern District of New York; and**

***Sandeep Rehal v. Harvey Weinstein, et al.*, Index No.: 151-738/2018 (N.Y. Sup. Ct.).**

17. Accordingly, on November 20, 2018, Bayard filed on behalf of Defendant Weinstein an Emergency Request for a Telephonic Status Conference in the Bankruptcy Court. In that motion, Bayard requested that Defendant Weinstein be able to use emails with non-anonymous, publicly-disclosed accusers with email addresses, physical addresses and phone numbers redacted. Bayard also asked that Bayard be able to disclose various emails from Alexandra Canosa, who filed a public, civil suit against Defendant Weinstein. *See Alexandra Canosa v. Dirk Ziff, et al.*, 18 Civ. 4115 (United States District Court Southern District of New York). Those emails were necessary in order for Mr. Weinstein to respond to various alleged misrepresentations of fact in the *Canosa* complaint.

18. On January 8, 2019, the Court issued an order that modified the 2004 Order again to lift the “Attorneys’ Eyes Only” restrictions on the emails produced pursuant to the 2004 Order protocol and to allow Defendant Weinstein to use those emails “in connection with any pending criminal, civil and insurance coverage actions as well as related matters to which [Mr. Weinstein] is a party....” *See attached* “WC – Order Permitting Use of Documents [D.I. 1957]” (Exhibit E).

J. AI International Litigation

19. Bayard also defended Defendant Weinstein in the Bankruptcy Court in connection with the AI International State Court Action. The State Court Action was commenced against Defendant Weinstein, as guarantor of an approximate \$46

million loan to the Debtor TWC Borrower 2016 LLC in September 2016. In connection with Bayard's efforts to defend against, or otherwise resolve the guaranty claim against Defendant Weinstein, Bayard provided detailed financial information of Defendant Weinstein's to AI's counsel in order to reach an agreement on the stay of the State Court Action pending Defendant Weinstein's trial in the Criminal Case.

K. Defendant Weinstein's Proofs of Claim Against the Debtors

20. Bayard prepared and filed on behalf of Defendant Weinstein several proofs of claim against the Debtors.

L. Bayard's Unpaid Invoices

21. Defendant Weinstein agreed to pay Bayard based upon Bayard's usual and customary hourly rates and Bayard commenced invoicing Defendant Weinstein for fees and expenses on or about May 21, 2018.

22. Defendant Weinstein arranged for, and an insurer on behalf of Defendant Weinstein, paid substantially all fees and expenses Defendant Weinstein incurred with Bayard through approximately August 3, 2018, with Defendant Weinstein bearing responsibility for any fees and expenses not paid for by his insurer. None of Bayard's fees and expenses incurred after August 3, 2018 have been paid by Defendant Weinstein or otherwise.

23. Thus, Bayard invoiced Defendant Weinstein for the above services, *inter alia*, as follows:

Accounting Date	Invoice Number	Amount	Insurer Payment	Balance
May-21-2018	1021884	\$99,775.83	\$99,775.83	
Jun-12-2018	1021886	\$139,308.09	\$120,110.59	\$19,197.50
Jul-16-2018	1022326	\$36,123.40	\$28,938.50	\$7,184.90
Aug-13-2018	1022577	\$25,315.90	\$22,113.55	\$3,202.35
Sep-10-2018	1023567	\$93,182.85	\$8,945.50	\$84,237.35
Oct-11-2018	1023976	\$42,548.42		\$42,548.42
Jan-03-2019	1023972	\$31,737.81		\$31,737.81
Jan-03-2019	1023973	\$84,359.43		\$84,359.43
Jan-03-2019	1023974	\$56,443.66		\$56,443.66
Mar-06-2019	1024601	\$94,404.62		\$94,404.62
	Totals:	\$703,200.01	\$279,883.97	\$423,316.04

(Exhibits G to P without itemization).

24. Defendant Weinstein failed to pay the above invoices and did thereby breach his agreement with Bayard.

M. Bayard Withdraws as Counsel to Mr. Weinstein

25. On April 10, 2019, U.S. Bankruptcy Court Judge Walrath granted Bayard's request to withdraw as Defendant Weinstein's counsel in the TWC chapter 11 case. *See attached* TWC – Order Granting Bayard Withdrawal (DI 2285) (Exhibit F).

FIRST CAUSE OF ACTION
(Breach of Contract)

26. Plaintiff incorporates paragraphs 1 through 25 of this Complaint as if each such paragraph was set forth in its entirety herein.

27. Defendant Weinstein agreed to pay Bayard based upon Bayard's usual and customary hourly rates.

28. Plaintiff Bayard fully performed or offered to perform its obligations to Defendant Weinstein.

29. Plaintiff Bayard has performed all conditions precedent to its right to recover for Defendant Weinstein's breach of his agreement to pay Bayard.

30. Defendant Weinstein has repeatedly failed to meet his obligations and has breached his agreement to pay Bayard based upon Bayard's usual and customary hourly rates.

31. Defendant Weinstein's failure to pay Bayard based upon Bayard's usual and customary hourly rates constitutes a breach of the parties' agreement.

WHEREFORE, Plaintiff Bayard, P.A. requests that judgment be entered against Defendant Harvey Weinstein in the principal amount of Four Hundred Twenty-Three Thousand Three Hundred Sixteen Dollars and Four Cents (\$423,316.04) plus pre- and post-judgment interest and costs.

/s/ JEFFREY M. WEINER, ESQUIRE #403

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DATED: December 11, 2019