

PRINCE, YEATES & GELDZAHLER

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IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

**PRINCE YEATES & GELDZAHLER,
P.C.**, a Utah professional corporation;

Plaintiff,

vs.

**CENTER POINT MANAGEMENT,
LLC**, a Wyoming limited liability
Company; **MARK BENSEN**, an
individual residing in the State of Utah;
and **ANDREW CARTWRIGHT**, an
individual residing in the State of Nevada;

Defendants.

COMPLAINT

(Tier “2”)

Case No. : _____

Judge: _____

Prince Yeates & Geldzahler (“**Plaintiff**”) complains against Defendants Center Point Management, LLC (“**Center Point**”), Mark Bensen (“**Bensen**”) and Andrew Cartwright (“**Cartwright**”) (collectively referred to as “**Defendants**”) as follows:

NATURE OF THE CASE

This is a claim for unpaid attorney fees and other legal expenses. Plaintiff successfully represented Center Point in a lawsuit (the “**Lawsuit**”) between Center Point, as plaintiff, and Tooele County and Mitime Utah Investment, LLC, as defendants. Plaintiff obtained a favorable judgment on Center Point’s behalf. Despite repeated acknowledgements of the outstanding fees and promises to pay, Defendants have failed to pay any of Plaintiffs’ invoices for attorney fees, costs and other expenses related to the Lawsuit. The amount owed is approximately \$200,000, which is reasonable—qualifying this as a Tier “2” case under Rule 26 of the Utah rules of Civil Procedure.

PARTIES, JURISDICTION & VENUE

1. Plaintiff is a Salt Lake City law firm, registered as a professional corporation in Utah.
2. Center Point is a Wyoming limited liability company registered to do business in Utah.
3. Bensen is an individual who, on information and belief, resides in the State of Utah. Bensen owns a home in Utah and operates businesses in Utah.
4. Cartwright is an individual residing in Nevada.
5. Defendants contracted with Plaintiff for the provision of legal services in Utah. Such services were rendered in Salt Lake and Tooele Counties.

6. This Court has jurisdiction over this matter and the parties pursuant to Utah Code Ann. §§ 78A-5-102 and 78B-3-205.

7. Venue in this Court is proper pursuant to Utah Code Ann. §§ 78B-3-304 and 307.

GENERAL ALLEGATIONS

8. In August, 2015, Bensen contacted attorneys at Plaintiff about representing himself and his company in a case against Tooele County.

9. Bensen represented that he was the owner of Center Point, and that Cartwright was its manager. Plaintiff's attorneys had numerous communications with both Bensen and Cartwright about the representation.

10. The objective of the representation was to enjoin and/or set aside the potential sale of racetrack property (the "**Property**") owned by Tooele County. Tooele County had put the Property up for sale, and it had accepted a bid, in the form of a memorandum of understanding ("**MOU**"), from another party (the "**Buyer**")—even though Center Point had made a competing bid that was higher.

11. Plaintiff agreed to represent Center Point in this endeavor and began providing legal services to Defendants in August 2015.

12. On September 3, 2015, Plaintiff sent a letter (the "**Engagement Letter**") to Center Point, which stated the terms and conditions of its representation. The content of

the Engagement Letter was consistent with what Bensen and Cartwright had already agreed to in communications with Plaintiff's attorneys.

13. The Engagement Letter states that Plaintiff would bill Center Point at one-half of its standard hourly rates. However, if certain enhancement events were to occur, Center Point agreed to pay two times Plaintiff's standard hourly rates. One of the enhancement events was if Tooele County were "permanently enjoined ... from consummating a sale based on the MOU in its current form." If, after the occurrence of an enhancement event, bidding for the Property was re-opened and Center Point was outbid, Center Point would be only be liable for Plaintiff's full standard hourly rates.

14. The Engagement Letter provides that Center Point and Bensen would be jointly and severally responsible for the payment of Plaintiff's fees, which is what Bensen agreed had already agreed to verbally.

15. Plaintiff had provided legal services to Bensen and his companies in the past, and Plaintiff's bills had always been paid. As a result, Plaintiff did not require an advance of funds.

16. The Engagement Letter was signed by one of Plaintiff's attorneys, and requested the signatures of Bensen and Cartwright on behalf of Center Point.

17. In subsequent conversations with Plaintiff's attorneys, Cartwright said that he received the Engagement Letter and signed it.

18. The Engagement Letter was also sent via email to Bensen, who acknowledged receiving it.

19. Neither Cartwright nor Bensen ever objected to the terms of the Engagement Letter nor did they ask that any of its terms be modified. Nevertheless, despite numerous requests from Plaintiff's attorneys over the course of the representation, a signed version of the Engagement Letter was never returned to Plaintiff.

20. On September 8, 2015, the Lawsuit was filed in the Third Judicial District Court, Tooele County. Soon thereafter, Center Point filed a motion for a temporary restraining order and preliminary injunction, the purpose of which was to restrain and/or set aside the sale of the Property to the Buyer pursuant to the MOU.

21. Over the next four months, Plaintiff actively litigated the Lawsuit. Plaintiff's attorneys communicated regularly with Bensen and Cartwright, who provided the attorneys with information, gave them instruction in certain regards, took their advice in certain regards, and gave them informed consent on decisions related to the Lawsuit.

22. The parties to the Lawsuit agreed to consolidate the preliminary injunction hearing with a trial on the merits of the case.

23. On December 17, 2015, after a two-day bench trial, the Court granted Center Point's motion for preliminary injunction and enjoined the sale of the Property to the Buyer.

24. On January 6, 2016, the Court entered Findings of Fact and Conclusions of Law in favor of Center Point, whereby it enjoined, and, to the extent it had been consummated, set aside Tooele County's sale of the Property to the Buyer.

25. On January 6, 2016, the Court entered Judgment in favor of Center Point and against Tooele County and the Buyer. The Judgment, in addition to enjoining the sale of the Property, awarded costs to Center Point.

26. Tooele County and Buyer paid costs in an amount of \$1,531.06, which was applied by Plaintiff against the balance of its outstanding invoices.

27. The Judgment was not appealed.

28. Tooele County and the Buyer have entered into an agreement whereby the Buyer is leasing the Property from Tooele County instead of purchasing it. To date, Tooele County continues to own the Property.

29. Plaintiff sent invoices for its legal services, costs and expenses to Center Point and Bensen.

30. The standard hourly rates of Plaintiff's attorneys, as reflected in Plaintiff's invoices, are reasonable.

31. Center Point and Bensen have received all Plaintiff's invoices.

32. Bensen and Cartwright have both verbally acknowledged the amounts outstanding in Plaintiff's invoices. Neither has ever objected the amounts invoiced or claimed that they are unreasonable.

33. Bensen promised, verbally, to pay the amounts then outstanding in November and December 2015, and again in January 2016.

34. Plaintiff sent a formal demand letter to Defendants on March 1, 2016.

35. Although Plaintiff and Defendants have communicated since then, Defendants have not made any payments to Plaintiff.

36. Plaintiff has officially terminated its relationship with Defendants.

37. The only member of Center Point is Bensen, who owns other privately held corporations.

38. On information and belief, Center Point has no ongoing operations, per se. Instead, it is used as a corporate shell by Bensen for business opportunities and tax purposes.

39. On information and belief, at the time of the Lawsuit, Center Point had no bylaws or operating agreement.

40. On information and belief, at the time of the Lawsuit, Center Point did not engage in regular corporate meetings.

41. On information and belief, Cartwright was inserted by Bensen as Manager of Center Point solely for purposes of bidding on the Property and acting as spokesperson for Center Point in the Lawsuit.

42. Prior to agreeing to represent Center Point, Bensen represented to Plaintiff's attorneys that Cartwright had significant real estate experience, entrepreneurship abilities, and financial capacity.

43. During the course of the Lawsuit, Bensen and Cartwright represented that Center Point was well-funded and kept millions of dollars in its bank accounts.

44. Plaintiff later discovered that this was inaccurate: Center Point had less than ten thousand dollars in its operating accounts.

45. Center Point itself was not adequately capitalized to fund the Lawsuit.

46. During the course of the Lawsuit, Bensen set up another company to ostensibly purchase the Property (in case that opportunity came to pass) and solicited investors in that company.

47. Plaintiff provided considerable legal services with regard to the new company, which were for the benefit of Bensen (and perhaps Cartwright), not Center Point itself.

48. When Plaintiff's attorneys pressed Bensen for payment of their bills, Bensen stated he was trying to convince the investors in the new company to pay Plaintiff's bill.

49. Center Point was the alter ego of Bensen and also Cartwright for purposes of their attempt to acquire the Property and turn a profit on it.

50. With the regard to Plaintiff's claim herein, the observance of the corporate form of Center Point would sanction a fraud, promote injustice, and lead to an inequitable result.

51. The total amount outstanding to Plaintiff, as reflected in its invoices less the costs already paid, is \$198,850.00

FIRST CLAIM FOR RELIEF

(Breach of Contract)

52. Plaintiff incorporates the allegations of the preceding paragraphs.

53. Plaintiff entered into a contract with Center Point and Bensen for the provision of legal services.

54. Although Bensen failed to countersign the Engagement Letter and Cartwright failed to deliver his signed version of it, the Engagement Letter accurately reflects the contract that had already been agreed to by the parties.

55. Plaintiff has fully performed under the terms of the contract, and it achieved the result desired by Defendants in the Lawsuit.

56. Center Point and Bensen have breached the contract by failing to pay Plaintiff for legal services, costs and other expenses identified in its invoices.

57. There is no justification for Center Point and Bensen's breach.

58. The amounts in Plaintiff's invoices are reasonable and reflect actual time spent, and costs and expenses incurred by Plaintiff.

59. Plaintiff has been damaged by this breach in an amount of \$198,850.00, which is the total outstanding amount reflected in its invoices. Although Plaintiff achieved one of the “enhancement events” mentioned in the Engagement Letter, it is not seeking to recover fees at double its hourly rates. It only seeks recovery at its standard hourly rates.

60. Because Center Point was the alter ego of Bensen and Cartwright, they are also individually liable for Center Point’s breach.

SECOND CLAIM FOR RELIEF

(Quantum Meruit)

61. Plaintiff incorporates the allegations of the preceding paragraphs.

62. Bensen asked Plaintiff to provide legal services to himself and his company, Center Point.

63. In providing legal services to Bensen and Center Point, Plaintiff conferred benefits upon them.

64. Bensen and Center Point requested these benefits, were aware of them at all times, and accepted them.

65. It would be unjust to allow Bensen and Center Point to retain these benefits without paying Plaintiff for their value.

66. The value of the benefits is \$ 198,850.00, which is the amount reflected in Plaintiff’s invoices and represents the standard hourly rates charged by Plaintiff’s attorneys

for the time they spent on the Lawsuit, in addition to the costs and expenses Plaintiff incurred.

67. Because Center Point was the alter ego of Bensen and Cartwright, they are also individually liable to pay Plaintiff in an amount equal to the value of the legal services rendered to it, in addition to the costs and expenses Plaintiff incurred.

WHEREFORE Plaintiff prays for relief as follows:

A. On its First Claim for Relief, for judgment against all Defendants in an amount of \$198,850.00.

B. On its Second Claim for Relief, for judgment against all Defendants in an amount to be determined at trial as the value of the legal services provided by Plaintiff, which is equal to the standard hourly rates charged by Plaintiff's attorneys for the time they spent on the Lawsuit, plus the costs and expenses Plaintiff incurred in its representation, which is at least \$ 198,850.00.

C. For prejudgment interest at the interest rate stated in Plaintiff's invoices.

D. For post judgment interest as allowed by law.

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E. For reasonable attorney fees incurred by Plaintiff in pursuit of this action in accordance with the terms of the Engagement Letter and as allowed by law.

F. For such other and further relief as determined by the Court.

DATED this 24th day of June, 2016.

PRINCE, YEATES & GELDZAHLER

By: /s/ Thomas R. Barton
Thomas R. Barton
James C. Bergstedt
Attorneys for Plaintiff