

Cause No. 2009-59096

LAW OFFICE OF PAUL N. MOODY,
P.C.

Plaintiff

vs.

PHI TAX & ASSOCIATES
PROFESSIONAL CORPORATION,
DBA Phi Tax*USA

and

HENRY VO, AKA THANH TAM

Defendants

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IN THE CIVIL DISTRICT COURT

OF HARRIS COUNTY, TEXAS

80 JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION, APPLICATION FOR TEMPORARY
RESTRAINING ORDER, & REQUEST FOR DISCLOSURE**

A. Discovery Control Plan

1. Plaintiff intends to conduct discovery under Level 2 of Texas Rules of Civil Procedure.

B. Parties

2. Plaintiff is a Texas professional corporation.

3. Defendant, Henry Vo (hereafter "Defendant Vo") is an individual, and may be served with process at his usual place of abode, 12907 Highstar Dr., Houston, TX 77072, Harris County, Texas. Defendant, Phi Tax & Associates Professional Corporation, DBA Phi Tax*USA (hereafter "Defendant Phi Tax") is a Texas Corporation, which may be served with process through its registered agent: Phil Nguyen, at 8282 Bellaire Blvd., Suite 136, Houston, TX 77036.

C. Factual Background

4. Plaintiff is a law office in Houston, Harris County, Texas; Defendant Vo is a former client of Plaintiff's. On July 20, 2006, Defendant Vo and his wife hired Plaintiff to represent them and their minor children in their respective claims for damages suffered in an auto accident.

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5. Plaintiff proceeded to represent Defendant Vo and his wife and children, and a settlement agreement was reached with the insurance carrier for the negligent third party as well as with Plaintiff's carrier under Plaintiff's under-insured motorist coverage.

6. On or about July 27, 2007, Plaintiff filed a "friendly" suit and, on or about July 27, 2007, a guardian ad-litem was appointed by the court to represent the minor children of Defendant Vo and his wife.

7. On July 8, 2008, testimony was given to the court, and the settlement terms of the parties were ratified by the court. A copy of the Agreed Settlement is attached and marked as **Exhibit A**.

8. On or about December 9, 2008, Plaintiff disbursed the settlement funds in conformity with the court's order. A copy of the disbursement statements issued to Defendant Vo and his wife are attached and marked as **Exhibit B**.

9. Defendant Vo has accused Plaintiff of impropriety throughout much of the period of Plaintiff's representation of Defendant Vo. In response, Plaintiff has made every effort to respond to each of Defendant's allegations, no matter how ridiculous. Some of Defendant Vo's allegations have included claims that Plaintiff had converted settlement funds by forging the signatures of Defendant Vo and his wife, and that Plaintiff has not paid the medical providers, that Plaintiff.

10. Since the agreed settlement, Defendant Vo has refused to sign the releases as was agreed.

11. On or about September 7, 2009, Defendant Vo accused Plaintiff of failing to pay the medical providers in his case, as well as in the cases of his wife and minor children. Plaintiff responded by informing Defendant that he could view confirmation of the

payments in the form of the bank statements for Plaintiff's IOLTA account, once same became available.

12. On September 11, 2009, Defendants published a defamatory statement about Plaintiff by disseminating same by fax to certain unnamed individuals identified as the current and future clients of Plaintiff. A copy of the defamatory statement, with a certified translation, is attached and marked as **Exhibit C**.

13. Defendants' false and defamatory statements are causing irreparable harm to Plaintiff's business reputation and, unless Defendants are enjoined from continuing to publish such statements, Plaintiff will continue to be so damaged.

D. Libel and Defamation of Business Reputation

17. Defendant Vo and Defendant Phi Tax have published a statement of alleged fact. The alleged statement of fact is that "they [Law Office of Paul N. Moody] use schemes to steal all the money paid for your settlement."

18. Defendants' statement referred to Plaintiff by name.

19. Defendants' statement is clearly defamatory; Defendants' statement constitutes libel per se.

20. Defendants' statement is false. Plaintiff will prove that Defendant approved the settlement agreement that is the subject of his statement, and that Plaintiff has fully complied with the terms of the court-ratified agreement.

21. Defendants acted with malice. Defendants' statement was intended to inflict harm on Plaintiff's business reputation. Defendant Vo even alludes to the interpretation of the statement as being one intended to "insult, to slander, to hurt an individual." Defendant Vo further encourages the widespread dissemination of the statement.

E. Damages

22. Plaintiff has suffered general damages. Plaintiff has suffered injury to its business reputation. Plaintiff's livelihood depends upon its reputation in the community. To the extent Plaintiff's reputation for honesty and integrity is called into question, its ability to attract new clients, or to keep current clients, is compromised. Defendants statements defame Plaintiff by alleging that Plaintiff cheats its clients. Such a statement is adversely affects Plaintiff's business reputation, and intended to discourage patronage with Plaintiff. As Defendants' statement is a form of libel per se, as it injures Plaintiff's professional reputation by casting aspersions on its honesty.

23. Plaintiff seeks to recover exemplary damages. Defendants published the statement with knowledge that it is false or with reckless disregard of whether it was false. Defendants' claim that Plaintiff cheated Defendant Vo of part of his settlement proceeds was made despite the fact that the settlement agreement pertaining to Plaintiff's representation of Defendant Vo and Defendant Vo's family was recommended by the guardian ad litem for the minor children and ratified by the court. Furthermore, the statement was made despite the fact that Plaintiff offered to provide evidence of its compliance with the terms of the court-approved settlement terms. Defendants' actions constitute malice.

F. Application for Temporary Restraining Order

24. Plaintiff's application for a temporary restraining order is authorized by Texas Rule of Civil Procedure 680.

25. Plaintiff asks the court to order Defendant Vo and Defendant Phi Tax to cease making any further defamatory statements about Plaintiff's honesty or integrity.

26. It is probable that Plaintiff will recover from Defendants after trial on the merits because Plaintiff can show full compliance with the court-ratified settlement agreement.

27. If Plaintiff's application is not granted, harm is imminent because continued defamatory statements about Plaintiff's honesty will harm its business reputation and jeopardize its ability to earn a living. The defamatory statement is being published in the Vietnamese-speaking community, and this community constitutes the major part of Plaintiff's clientele.

28. The harm that will result if the temporary restraining order is not issued is irreparable because, even if Plaintiff later prevails, it will not be possible to inform all recipients of the defamatory statement that Plaintiff proved Defendants' statement false.

29. Plaintiff will likely not have an adequate remedy at law because Defendants are believed to be insolvent.

30. Plaintiff is willing to post a bond.

31. There is not enough time to serve notice on defendant and to hold a hearing on this application. By their own statement, Defendants are continuing to publish and disseminate the defamatory statement. As such, Defendants would continue to do irreparable harm to Plaintiff during the period of time Plaintiff would have to await a temporary orders hearing.

G. Request for Temporary Ex-Parte Protective Oder

32. Plaintiff does not yet know the extent of Defendants publication of the defamatory statement. Plaintiff does have good reason to believe that a significant part of the dissemination of the statement was effected with the fax machine, the transmissions from which are identified at the top with the name Phi Tax*USA, as well as the phone number

713-773-4949. The memory on this fax machine will be vital in determining certain possible recipients of the defamatory statement. Therefore, Plaintiff seeks a protective order, preventing Defendants from alienating the aforementioned fax machine or in any way taking action to alter the machine's transmission memory.

H. Request for Temporary Injunction

33. Plaintiff asks the court to set its applications for temporary injunction protective order for a hearing and, after the hearing, issue a temporary injunction and protective order against Defendants.

34. Plaintiff has joined all indispensable parties under Texas Rule of Civil Procedure 39.

I. Request for Permanent Injunction

35. Plaintiff asks the court to set its request for a permanent injunction for a full trial on the merits and, after the trial, issue a permanent injunction against Defendants.

J. Request for Disclosure

36. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendants disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

K. Attorney Fees

37. Plaintiff is entitled to recover reasonable and necessary attorney fees on its claim of libel and defamation.

L. Prayer

38. For these reasons, Plaintiff asks that Defendants be cited to appear and answer and, on final trial, that Plaintiff have judgment against Defendants for:

- a) Temporary restraining order.
- b) Temporary injunction.
- c) Temporary protective order.
- d) Permanent injunction.
- e) Actual damages.
- f) Exemplary damages.
- g) Prejudgment and postjudgment interest.
- h) Costs of suit.
- i) Attorney fees.
- j) All other relief, in law and in equity, to which Plaintiff may be entitled.

Respectfully submitted,

Molina Law Firm

5177 Richmond Ave., Suite 130

Houston, TX 77056

Tel: (713) 779-4900

Fax: (713) 779-4905

By: 

Rick Molina

State Bar No. 00784621

Attorney for Plaintiff

Law Office of Paul N. Moody, P.C.

9700 Richmond Ave., Suite 200

Houston, TX 77042

Tel: (713) 977-9900

Fax: (713) 977-9941

By: 

Paul N. Moody

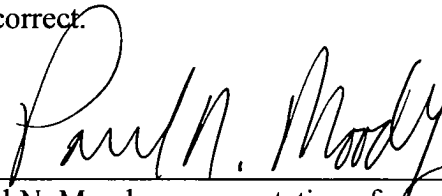
State Bar No. 14309600

Attorney for Plaintiff

VERIFICATION

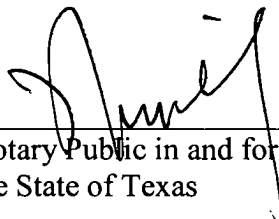
STATE OF TEXAS §
HARRIS COUNTY §

Before me, the undersigned notary, on this day personally appeared Paul N. Moody, a person whose identity is known to me. After I administered an oath to him, upon his oath he said he read the Plaintiff's Original Petition and that the facts stated in it are within his personal knowledge and are true and correct.

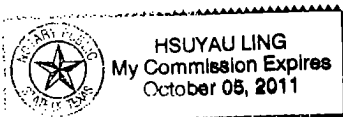


Paul N. Moody, representative of
Law Office of Paul N. Moody, P.C.

Sworn to and subscribed before me by Paul N. Moody on September 15, 2009.



Notary Public in and for
the State of Texas



My commission expires: 10/5/2011

STATE OF TEXAS }
HARRIS COUNTY }

AFFIDAVIT OF PAUL N. MOODY

Before me, the undersigned notary, on this day personally appeared Paul N. Moody, a person whose identity is known to me. After I administered an oath to him, upon his oath he said:

1. "My name is Paul N. Moody. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

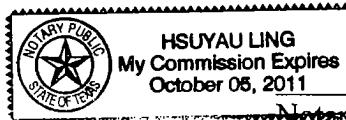
2. "In anticipation of filing a petition alleging defamation, as well as an application for temporary restraining order, I have attempted to contact both defendants in the lawsuit, Thi Tax & Associates Professional Corporation, dba Phi Tax*USA and Henry Vo, aka Thanh Tam to provide them notice of my intention to request a temporary restraining order.

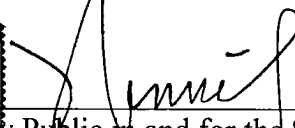
3. "Through an interpreter in my office, Truc Nguyen, I called Henry Vo the phone number I have for him, 713-857-1367, and left a message informing him of my intention to file the lawsuit and request for temporary order civil intake at 201 Caroline at 8:30 a.m. on September 16, 2009. Mr. Vo's wife, Nhung Ho, returned the phone call, and she was provided all of the foregoing information. Mr. Vo was in the background speaking to Ms. Ho during the conversation between Ms. Ho and me. Ms. Ho discontinued the conversation before I could ask if Mr. Vo was opposed to the request for temporary restraining order. Truc Nguyen interpreted for me.

4. "I left two voice messages for Phil Nguyen, who is the registered agent for Phi Tax & Associates Professional Corporation, at the phone number listed for the company, 713-772-6604. As I was unable to speak to Mr. Nguyen directly, I faxed him a copy of the pleadings, providing him notice of my intention to request a temporary restraining order on September 16, 2009."


Paul N. Moody

Sworn to and subscribed before me on September 15, 2009.




Notary Public in and for the State of Texas

My commission expires:

10/5/2011

STATE OF TEXAS }
HARRIS COUNTY }

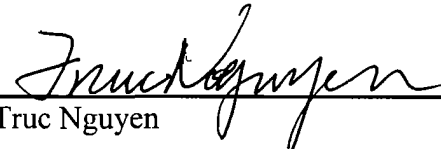
AFFIDAVIT OF TRUC NGUYEN

Before me, the undersigned notary, on this day personally appeared Truc Nguyen, a person whose identity is known to me. After I administered an oath to her, upon her oath she said:

1. "My name is Truc Nguyen. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. "I am employed at Law Office of Paul N. Moody, P.C. I am fluent in English and Vietnamese. I interpreted for Paul N. Moody on September 15, 2009, when he called Henry Vo to notify him of his intention to file an application for temporary restraining order.

3. "After leaving a message, Mr. Moody received a return call from Nhung Ho, Mr. Vo's wife. During the conversation with Ms. Ho, Mr. Vo could be heard in the background giving instructions to Ms. Ho. I recognized the voice as being that of Mr. Vo."

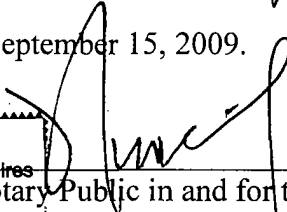


Truc Nguyen

Sworn to and subscribed before me on September 15, 2009.



HSUYAU LING
My Commission Expires
October 05, 2011



Notary Public in and for the State of Texas
My commission expires: 10/5/2011