

23-CV-1280

CAUSE NO. _____

LANCE PARKS,
Plaintiff,

v.

**BIG D MARINE &
POWERSPORTS, LP and
DON STRINGER,**
Defendants.

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IN THE DISTRICT COURT OF

GALVESTON COUNTY, TEXAS

Galveston County - 212th District Court

____ **JUDICIAL DISTRICT**

PLAINTIFF'S ORIGINAL PETITION WITH JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Lance Parks ("Plaintiff") and file this, *Plaintiff's Original Petition with Jury Demand*, complaining of Big D Marine & Powersports, LP and Don Stringer (collectively "Defendants") and, for cause of action, Plaintiff would respectfully show this Honorable Court the following:

I. DISCOVERY CONTROL PLAN

Plaintiff intends for discovery to be conducted under Level 3 of Rule 190 of the TEXAS RULES OF CIVIL PROCEDURE. This case involves complex issues and will require extensive discovery. Therefore, Plaintiff will ask the Court to order that discovery be conducted in accordance with a discovery control plan tailored to the particular circumstances of this suit. Plaintiff further affirmatively pleads that this suit is not governed by the expedited actions process in TEXAS RULE OF CIVIL PROCEDURE 169 because Plaintiff seeks monetary relief over \$250,000.00.

Status Conference set 11-16-23

II. CLAIM FOR RELIEF

By reason of the facts alleged herein, Plaintiff has been made to suffer and sustain at the hands of Defendants general and special damages in excess of the minimum jurisdictional limits of this Honorable Court. Although the amount of damages to be awarded to Plaintiff is a matter lying largely within the discretion of the jury, Texas law forces Plaintiff, at the outset of litigation, to state a specific amount of damages or else be denied discovery and progression of the case. Recognizing that the jury and this Court are the ultimate arbiters of the amount to be awarded and because Texas law forces Plaintiff to plead an amount at this early stage, Plaintiff seeks monetary relief of more than \$200,000 pursuant to Rule 47(c)(3) of the TEXAS RULES OF CIVIL PROCEDURE; Plaintiff fully reserves rights to supplement this petition and, if necessary, amend this amount.

III. PARTIES

Plaintiff Lance Parks (“Plaintiff”) is a Texas citizen and individual residing in Galveston County, Texas.

Defendant Big D Marine & Powersports, LP (“Big D”) is a domestic company incorporated and headquartered in the state of Texas, and therefore is deemed a Texas citizen. Big D can be served with process through its registered agent, William T. Green, 3330 Audley, Suite 100, Houston, Texas 77098.

Defendant Don Stringer (“Stringer”) is a Texas citizen who resides in Walker County and can be served with process by serving him at his residence at 221 Royal Oaks, Huntsville, Texas 77320.

IV. VENUE

Venue is proper in Galveston County, Texas, pursuant to TEXAS CIVIL PRACTICES AND REMEDIES CODE § 15.002(a)(1) because all or a substantial part of the events or omissions giving

rise to the claim occurred in Galveston County, Texas; further, venue is proper in Galveston County, Texas, pursuant to TEXAS CIVIL PRACTICES AND REMEDIES CODE § 15.002(a)(3) because Galveston County is the county of the principal office in Texas and Big D is not a natural person.

Big D is a boat and offroad vehicle dealership conducting business in the State of Texas. Big D has its principal place of business in Texas and is organized under the laws of Texas and is essentially at home in Texas. Big D is therefore deemed a Texas citizen.

V. JURISDICTION

The Court has jurisdiction over this cause of action because the amount in controversy is within the jurisdictional limits of the Court. Plaintiff recognizes that the amount of damages are within the discretion of the jury and this Honorable Court. However, because Rule 47 forces Plaintiff to plead a specific amount of damages, Plaintiff seeks monetary relief over \$200,000. Plaintiff reserves the right to amend his petition during and/or after the discovery process, or upon trial of this case.

This court has personal jurisdiction, both specific and general, over Big D, because it is a corporation incorporated under the laws of the State of Texas. Moreover, this Defendant committed acts and/or omissions within the State of Texas, including directing its activities within the State of Texas such that it can reasonably anticipate being haled into Texas courts. Additionally, Defendant is essentially at home in the State of Texas. Texas courts' assertion of jurisdiction over this Defendant does not offend the notions of fair play and substantial justice, and Defendant could reasonably anticipate being haled into Texas court. Defendant has systematic and continuous contacts within the State of Texas and, moreover, the specific acts and/or omissions at issue in this lawsuit occurred within the State of Texas. Big D is deemed a citizen of Texas.

This court has personal jurisdiction, both specific and general, over Stringer, because he is a citizen of the State of Texas. Stringer resides in Texas at 221 Royal Oaks, Huntsville, Texas 77320 and therefore the threshold requirement for jurisdiction over an individual is met. Additionally, Defendant is at home in the State of Texas due to his residency in the state. Texas courts' assertion of jurisdiction over this Defendant does not offend the notions of fair play and substantial justice, and Defendant could reasonably anticipate being haled into Texas court. Defendant has systematic and continuous contacts within the State of Texas and, moreover, the specific acts and/or omissions at issue in this lawsuit occurred within the State of Texas. Stringer is deemed a citizen of Texas.

VI. FACTS

On December 6, 2021, Plaintiff was sent an offer of employment via email by Mr. Stringer of Big D. Mr. Stringer co-founded Big D with the owner, Stephen Dawson, and Mr. Stringer served as the Chief Operating Officer of Big D while Plaintiff was employed there. In this email sent to Plaintiff in Galveston County, Texas, Stringer expressly stated the email was to “serve as a Letter of Intent for employment between Lance Parks and Big D Marine.” This email between Plaintiff and Big D outlined the specific payment details and a “pay plan” for Plaintiff’s employment. Relying on the representations made by Big D to Plaintiff in Galveston County, Texas, Plaintiff quit his job at the Galveston Yacht Basin and started work at Big D’s Galveston location (thereby precluding his employment by other employers).

After beginning his employment at Big D in Galveston County, Texas, a \$3,000 deduction was made from Plaintiff’s monthly commission payment. Plaintiff earned all these commissions in Galveston County, Texas at the Galveston County location for Big D. This was described by the account manager at Big D as “like a loan.” After learning this, Plaintiff contacted the accounting

department at Big D and explained that this was not mentioned in the letter of intent he received from Mr. Stringer or in the contract for employment, but the accounting department did not listen. Instead, Big D refused to honor the original agreement between itself and Plaintiff that was outlined in the email from Mr. Stringer on December 6, 2021.

At Big D, all salespeople and managers received a payroll draw, which is considered “fixed expenses” according to Big D. However, Plaintiff’s pay was not calculated this way and Plaintiff did not realize this for some time. Plaintiff’s actual payroll calculation, one in which Plaintiff never agreed to, was the monthly gross profit minus fixed expenses. Thus, every month, from January 2022 through February 2023, Big D took a large sum out of Plaintiff’s paycheck, and did so in Galveston County, Texas.

Defendants Big D and Stringer represented to Plaintiff in Galveston County, Texas specific payment details and a “pay plan” for his employment. However, Big D, through acts directed to and occurring in Galveston County, Texas, failed to honor the agreed upon payment plan provided in the letter of intent for employment sent via email by Big D. This discrepancy dramatically altered the reality of what Plaintiff was getting paid and ultimately, as a result of Big D’s and Don Stringer’s representations and/or refusal to honor the original agreement, Plaintiff suffered damages.

Big D failed to perform its contractual duties to pay the agreed amount under the contract for employment and letter of intent. All conditions precedent to recovery upon the Contract had been carried out and accomplished by Plaintiff. Big D’s conduct constitutes a breach of the contract between Big D and Plaintiff.

Big D's acts and/or omissions were negligent and/or grossly negligent in contracting with Plaintiff for employment. Big D fraudulently induced Plaintiff into entering into the contract without intent of honoring its true terms, or fairly compensating Plaintiff.

As a result of Big D's wrongful acts and omissions, Plaintiff was forced to retain the professional services of the attorney and law firm who is representing him with respect to these causes of action.

VII. CAUSES OF ACTION

Defendants are liable to Plaintiff for fraudulent inducement, fraud, breach of contract, negligent misrepresentation, and intentional misrepresentation.

A. Fraudulent Inducement

Plaintiff incorporates the preceding allegations and paragraphs into this section. Big D's conduct constitutes fraudulent inducement. Without limitation, Big D made a material misrepresentation to Plaintiff regarding what Plaintiff would be paid in his employment with them. Further, Big D knew at the time that the representation as to the Plaintiff's pay was false or, in the least, lacked knowledge of the true manner in which his pay would be calculated. Big D intended that Plaintiff rely or act on this misrepresentation so as to induce him to enter into a contract for employment.

Moreover, Plaintiff relied on this misrepresentation and his reliance on this misrepresentation caused injury to Plaintiff because it caused a major discrepancy in the amount that Plaintiff was being paid. If not for the false promise of the specific agreed upon payment details, Plaintiff would not have quit his job at the Galveston Yacht Basin and started work at Big D. Such action shows Plaintiff's reliance on the fraudulent misrepresentations of Big D. Further, Plaintiff's reliance on the false promise induced Plaintiff to agree to a contract for employment

that Plaintiff would not have agreed to if Big D had not made the false promise regarding Plaintiff's pay.

B. Fraud

Plaintiff incorporates the preceding allegations and paragraphs into this section. Defendant Big D is liable to Plaintiff for common law fraud. Big D made a material representation to Plaintiff regarding what Plaintiff would be paid in his employment with them. Big D represented a specific "Pay Plan" to Plaintiff in an email on December 6, 2021. This representation made by Big D was patently false because it was not the payment plan that it used in paying Plaintiff for his employment. Further, Big D knew at the time that it made the representation regarding Plaintiff's pay that the representation was false or, in the least, lacked knowledge of the true manner in which his pay would be calculated. Big D made the representation intending Plaintiff to act on it so that he would enter into a contract for employment. Further, Plaintiff relied on this representation by Big D and his reliance on this representation caused injury to Plaintiff because it caused a discrepancy in the amount that Plaintiff was being paid. The statements described above were made by Big D with the intention that they should be acted upon by Plaintiff, who in turn acted in reliance upon the statements, thereby causing Plaintiff to suffer injury and damages, and constituting common law fraud.

C. Breach of Contract

Plaintiff incorporates the preceding allegations and paragraphs into this section. Defendant Big D's conduct constitutes a breach of the contract made between Defendant and Plaintiff. Defendant's failure, as described above, to adhere to the agreed upon payment terms as it is obligated to do under the terms of the contract for employment in question, constitutes a breach of Defendant's contract with Plaintiff, which caused him damages.

D. Negligent Misrepresentation

Plaintiff incorporates the preceding allegations and paragraphs into this section. Defendant Big D is liable to Plaintiff for negligent misrepresentation. As shown by the representations described above, Big D made a representation as to Plaintiff's pay to Plaintiff in the course of a transaction that Big D had a pecuniary interest in. Namely, the transaction that resulted in the employment of Plaintiff at Big D's place of business.

Further, Big D supplied Plaintiff with false information that was intended to be guidance on Plaintiff's pay scale as an employee. Instead of using reasonable care to ensure that this information was correct, Big D communicated this information to Plaintiff without confirming its accuracy. Plaintiff then reasonably and justifiably relied on this information provided by Big D and quit his job at the Galveston Yacht Basin to begin his employment at Big D.

This misrepresentation by Big D is the proximate cause of Plaintiff's injury because but for the misrepresentation by Big D, Plaintiff would not have agreed to leave his job and come to work for Defendant. This misrepresentation of the amount to be paid to Plaintiff directly caused Plaintiff damage and constitutes negligent misrepresentation.

VIII. DAMAGES

Plaintiff would show that all of the aforementioned acts, taken together or singularly, constitute the producing causes of the damages sustained by Plaintiff. Damages include but are not limited to mental anguish damages, pre-judgment interest, post-judgment interest, and attorneys' fees. Plaintiff seeks over \$200,000.

For breach of contract, Plaintiff is entitled to regain the benefit of his bargain, which is the amount of his claim, together with attorneys' fees.

Plaintiff pleads for the following damages in conjunction, and/or in the alternative to each other, those other damages plead herein or available under Texas law. Plaintiff is entitled to and hereby seeks:

- a. General damages as described above in an amount within the jurisdictional limits of this Court.
- b. Special and consequential damages as a result of the Defendants' acts described herein.
- c. Nominal damages.
- d. Loss of the benefit of the bargain damages and/or expectation interest in the contracts.
- e. Reliance damages.
- f. Restitution interest damages.
- g. Unjust enrichment damages.
- h. Specific performance.
- i. Mental anguish and other non-economic damages.
- j. Exemplary and punitive damages as described above.
- k. Attorney's fees.
- l. Prejudgment interest as provided by law.
- m. Postjudgment interest as provided by law.
- n. Costs of suit and expert fees to the extent permitted under applicable statutory or common law.
- o. Tort Damages.
- p. Rescission and/or reformation of the contract.

- q. Such other relief to which Plaintiff may be justly entitled under Texas statutory or common law.
- r. By reason of the facts alleged herein, Plaintiff has suffered and sustained injuries and damages at the hands of Defendants in excess of the minimum jurisdictional limits of this court and in an amount to be determined by the jury in this case and as the evidence may show proper at the time of the trial; in the alternative and/or in addition to the foregoing.

IX. JURY DEMAND

Plaintiff requests that all causes of action alleged herein be tried before a jury consisting of citizens residing in Galveston County, Texas. Plaintiff has tendered the appropriate jury fee.

X. CONDITIONS PRECEDENT SATISFIED

Plaintiff alleges that all conditions precedent to the maintenance of this action have been met or satisfied, in accordance with Rule 54 of the TEXAS RULES OF CIVIL PROCEDURE.

On July 13, 2023, Plaintiff mailed a notice letter to Big D via regular and certified mail at 256 SH 19, Huntsville Texas, 77340, which is the address Big D provided to the Secretary of State as its mailing address.

Further, Plaintiff mailed a notice letter to Don Stringer via regular and certified mail at 221 Royal Oaks, Huntsville, Texas. Plaintiff also emailed this same notice letter to dstringer@bigdmarine.net.

XI. RIGHT TO AMEND

Furthermore, Plaintiff would state that because of the nature and complexity of this incident, Plaintiff reserves the right to, based upon additional information during the course of discovery, amend these pleadings to include additional parties as appropriate, omit parties as

appropriate, amend claims, allegations, causes of action, names, and grounds for recovery in accordance with the TEXAS RULES OF CIVIL PROCEDURE.

XII. SELF-AUTHENTICATION

Pursuant to Rule 193.7 of the TEXAS RULES OF CIVIL PROCEDURE, this is the "actual" written notice that all documents produced in this litigation shall be used by the Plaintiff at pretrial proceedings and trial. Hence, all documents produced in this litigation are deemed self-authenticating for use in any pretrial proceeding or at trial; and any objections thereto by the Defendants shall be in writing or placed on the record, giving Plaintiff a reasonable opportunity to establish the challenged document's authenticity.

XIII. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon trial hereof, said Plaintiff have and recover such sums as would reasonably and justly compensate his in accordance with the rules of law and procedure, as to actual damages, and all punitive and exemplary damages as may be found. In addition, Plaintiff requests the award of attorney's fees for the trial and any appeal of this case, for all costs of Court on his behalf expended, for prejudgment and post judgment interest as allowed by law, and for any other and further relief, either at law or in equity, to which he may show himself justly entitled.

(Signature block on next page)

Respectfully submitted,

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