

2017-00756 / Court: 164

CAUSE NO. _____

KEVIN POYNTER,

Plaintiff,

V.

**LIM CROMA SAFARIS LLC a/k/a LIMCROMA
SAFARIS, LIMCROMA SAFARIS (PTY), LTD.,
TROPHY PRO LLC, TROPHY PRO COM, and
JOHANNES M. ELS a/k/a HANNES ELS**

Defendants.

§ **IN THE DISTRICT COURT**

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HARRIS COUNTY, TEXAS

JUDICIAL DISTRICT

THE PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

The plaintiff, Kevin Poynter, sues the defendants, Lim Croma Safaris LLC a/k/a Limcroma Safaris, LIMCROMA SAFARIS (PTY), LTD., Trophy Pro LLC, Trophy Pro Com, and Johannes M. Els a/k/a Hannes Els for damages arising out of the loss of game trophies owned by Mr. Poynter while in the defendants' care and possession.

I. Discovery Level

Discovery is intended to be conducted under Level 2 of TEX. R. CIV. P. 190.3

II. Parties, Jurisdiction & Venue

Mr. Poynter is a resident of Harris County, Texas.

Lim Croma Safaris LLC is a Texas limited liability company and may be served via its member:

Johannes Els
at
2201 N. Collins St. Ste. 130
Arlington, TX 76011

Or where he may be found in the State of Texas.

Or its registered agent:

WT Skip Leake PC
at
2201 N. Collins St. Ste. 130
Arlington, TX 76011

Limcroma Safaris (PTY), Ltd. is a South African private company. Upon information and belief, it does not maintain a place of regular business in this state and there is no designated agent upon whom service may be made, and therefore may be served via its person in charge under TEX. CIV. PRAC. & REM. CODE § 17.043:

Johannes Els
at
2201 N. Collins St. Ste. 130
Arlington, TX 76011

Or where he may be found in the State of Texas.

Trophy Pro LLC is a Texas limited liability company and may be served via its member:

Johannes Els
at
2201 N. Collins St. Ste. 130
Arlington, TX 76011

Or where he may be found in the State of Texas.

Or its registered agent:

WT Skip Leake PC
at
2201 N. Collins St. Ste. 130
Arlington, TX 76011

Trophy Pro Com is a South African close corporation. Upon information and belief, it does not maintain a place of regular business in this state and there is no designated agent upon whom service may be made, and therefore may be served via its person in charge under TEX. CIV. PRAC. & REM. CODE § 17.043:

Johannes Els
at
2201 N. Collins St. Ste. 130
Arlington, TX 76011

Or where he may be found in the State of Texas.

Upon information and belief, Johannes Els a/k/a Hannes Els is an individual who resides part-time in Texas and may be served at his declared residence address:

2201 N. Collins St. Ste. 130
Arlington, TX 76011

Or where he may be found in the State of Texas.

Jurisdiction is proper in this court because the amount in controversy exceeds this court's minimum jurisdictional limits. Venue is proper in Harris County, Texas because Harris County, Texas is where a substantial part of the events giving rise to the lawsuit occurred.

Personal jurisdiction is proper because:

- The safari contract at issue in this suit lists Lim Croma Safaris LLC and/or Limcroma Safaris (PTY), Ltd. as having an office in Plano, Texas;
- The safari contract at issue in this suit was negotiated by defendants at Mr. Poynter's house in Houston, Texas;
- Mr. Poynter performed the safari contract by paying Lim Croma Safaris LLC and/or Limcroma Safaris (PTY), Ltd. from funds drawn on his Texas bank account;
- Lim Croma Safaris LLC and/or Limcroma Safaris (PTY), Ltd. deposited Mr. Poynter's payment in its Texas bank account;
- Lim Croma Safaris LLC, Limcroma Safaris (PTY), Ltd., Trophy Pro LLC, Trophy Pro Com, and Els were to perform the contract by delivering Mr. Poynter's trophies to him in Houston, Texas as well as trophies for his sons.
- Lim Croma Safaris LLC, Limcroma Safaris (PTY), Ltd., Trophy Pro LLC, Trophy Pro Com, and Els solicit business throughout Texas several times a year;
- Lim Croma Safaris LLC, Limcroma Safaris (PTY), Ltd., Trophy Pro LLC, Trophy Pro Com, and Els boast of having numerous clients in Texas;

- Lim Croma Safaris LLC, Limcroma Safaris (PTY), Ltd., Trophy Pro LLC, Trophy Pro Com, and Els have employees in Texas;
- Lim Croma Safaris LLC, Limcroma Safaris (PTY), Ltd., Trophy Pro LLC, Trophy Pro Com, and Els have telephone numbers with Texas area codes;
- Lim Croma Safaris LLC and Trophy Pro LLC are both Texas limited liability companies registered to do business in Texas; and
- Els is the managing member of Lim Croma and Trophy Pro.

III. Facts

On March 3, 2015, Mr. Poynter entered into a contract with Lim Croma Safaris LLC and/or Limcroma Safaris (PTY), Ltd. for a safari hunt package totaling \$237,000. The contract was drafted by Lim Croma Safaris LLC and/or Limcroma Safaris (PTY), Ltd., and by Els, negotiated by L&L at Mr. Poynter's house in Houston, Texas, and executed by Mr. Poynter in Houston, Texas where he is located. Mr. Poynter paid for the contract with a check and wire transfers originating in Houston, Texas, where Mr. Poynter is located. The check was deposited by Lim Croma Safaris LLC and/or Limcroma Safaris (PTY), Ltd. in a Texas bank. The wire transfers were made to a L&L bank account in the U.S. The safari took place in August and September 2015, with Mr. Poynter and his sons acquiring nearly thirty trophies, including two rhinoceros horns of great value.

In addition to the contract for the safari hunt itself, Mr. Poynter incurred and paid additional charges for transportation of his trophies to a shipping company of Lim Croma Safaris LLC, Limcroma Safaris (PTY), Ltd. and/or Els's choice. They chose Trophy Pro LLC and/or Trophy Pro Com, more companies owned and managed by Els. Lim Croma Safaris LLC and/or Limcroma Safaris (PTY), Ltd. and Els represented in writing that turnaround time for shipping is four to six months, and around 12 months if taxidermy is included.

As a part of the safari and the hunt, Mr. Poynter incurred and paid charges for secure transportation of his trophies to a shipping company. Defendants Lim Croma, Els, and Trophy Pro (another company owned and managed by Els) chose SBS Logistics (“SBS”). Lim Croma and Els represented in writing that turnaround time for shipping is four to six months, and around 12 months if taxidermy is included. Lim Croma and Els also represented in writing that trophy handling was a very important part of the safari and hunt and that Lim Croma and Els would, with the help of Trophy Pro, assist with all aspects of this service and make it as smooth as possible. Els and Lim Croma represented to Mr. Poynter that due to the valuable nature of the rhinoceros horns, the rhinoceros horns would be kept in a locked safe under the watchful eye of Lim Croma at all times prior to being shipped to ensure their safe keeping.

In March 2016, while Mr. Poynter’s trophies were in the care and possession of the defendants and their respective agents, and while the defendants had the legal duty to care for Mr. Poynter’s trophies, Mr. Poynter’s rhinoceros horns were sent to SBS well before SBS was prepared to ship the rhinoceros horns to Mr. Poynter. Despite the commitment to maintain the rhinoceros horns in a locked safe under Lim Croma’s care until shipping to Mr. Poynter, the rhinoceros horns were left in an unlocked room at SBS’s facility and taken. The defendants and their respective agents failed to provide adequate security to Mr. Poynter’s property by turning them over to another company without informing Mr. Poynter or even determining whether or not SBS had the capability, expertise, safe guards, or the proper facility to safe guard the rhinoceros horns. Lim Croma further failed to inquire or verify that SBS was properly insured for the benefit of Mr. Poynter to protect Mr. Poynter’s trophies against damage, theft, destruction, or casualty while being held at the SBS facility in advance of being shipped. This company lacked security required for the very valuable rhinoceros horns and, foreseeably, the

horns were taken from their facility. The defendants also failed to acquire and maintain insurance on the property Mr. Poynter (and the defendants' other customers) entrusted to them.

Over a year after the safari, the defendants have not delivered Mr. Poynter's rhinoceros horns. Aside from the lost rhinoceros horns, Mr. Poynter's trophies have been apparently mired in the defendants' bureaucratic ineptitude and their unresponsiveness. Mr. Poynter has spent over \$250,000 on his safari and still has no satisfaction for the defendants' breaches of their duties.

All conditions precedent have been performed or have occurred.

IV.Cause of Action - Breach of Contract

The parties entered into a contract by which Mr. Poynter would pay financial consideration in exchange for the defendants' safari related services, including care, transportation, and delivery of his trophies. Despite Mr. Poynter performing the contract by paying the financial consideration, the defendants refused to perform their promises to safely transport and deliver Mr. Poynter's property.

The defendants' breaches of contract have caused Mr. Poynter to lose the benefit of the bargain, thereby causing him damages.

V.Cause of Action - Negligence

The defendants assumed a duty to provide their safari related services to Mr. Poynter with the care of a professional of ordinary prudence under the same or similar circumstances, or alternatively, with the reasonable care of a person of ordinary prudence under the same or similar circumstances. The defendants breached that duty by—among other things—failing to select a competent shipper, failing to provide adequate security for their storage facility, failing to insure Mr. Poynter's property in their care, failing to adequately and competently perform their customs

and export-import tasks, and failing to keep Mr. Poynter adequately appraised of their efforts to perform their duties.

The defendants' breaches caused Mr. Poynter damages including the loss of his property.

VI.Cause of Action - Gross Negligence

The defendants' breaches were committed with an extreme degree of risk and/or a conscious indifference to the rights of others.

VII.Cause of Action - Common Law Breach of Warranty

The defendants sold safari related services to Mr. Poynter. The defendants made representations—in writing and orally—to Mr. Poynter including their ability to care for, ship, and deliver his trophies within a represented time frame. The defendants' representations became part of the basis of the bargain. The defendants breached their warranty by losing Mr. Poynter's trophies and by failing to deliver *any* of Mr. Poynter's trophies more than one year later. The defendants' breaches have caused Mr. Poynter damages.

VIII.Cause of Action - Deceptive Trade Practices

Mr. Poynter is a consumer. The defendants committed the following acts prohibited under the DTPA:

- Representing that goods or services have characteristics and benefits that they do not have
- Representing that goods or services are of a particular standard, quality, or grade when they were not;
- Representing that an agreement confers or involves rights, remedies, or obligations that it does not;
- Breach of an express warranty of service;
- Breach of an implied warranty of service; and
- Taking advantage of Mr. Poynter's lack of knowledge or experience to a grossly unfair degree with regards to licensing and shipping trophies from South Africa.

The defendants' violations were a producing cause of Mr. Poynter's damages. The defendants' violations were knowing and intentional.

IX. Attorney's Fees

Mr. Poynter is entitled to recover his attorneys fees under TEX. BUS. & COM. CODE § 17.50, TEX. CIV. PRAC. & REM. CODE § 38.001, and as otherwise provided by law.

For these reasons, the plaintiff, Kevin Poynter, asks that the defendants be cited to appear and answer, and that on final trial, Mr. Poynter be awarded:

- (a) All actual damages;
- (b) Treble damages to the maximum extent permitted under the DTPA;
- (c) Consequential and special damages;
- (d) Exemplary damages to the maximum extent permitted by law;
- (e) Possession of his property;
- (f) Reasonable attorney's fees in an amount to be proven at the time of trial, together with the award of such additional attorney's fees as may be proven at the time of trial in the event of a motion for new trial, an appeal to the Court of Appeals and in the event of a subsequent petition for review to the Supreme Court of the State of Texas;
- (g) Post-judgment interest on the total amount of the judgment at the highest rate allowed at law or in equity, from the date of judgment until paid, save and except that portion of the judgment awarded in respect of attorney's fees in the event of a motion for new trial, an appeal and/or a petition for review;
- (h) Costs of suit; and
- (i) Such other and further relief at law and equity to which Mr. Poynter may be entitled.

Respectfully submitted,

McGLINCHEY STAFFORD PLLC

By: /s/ Joel W. Mohrman

JOEL W. MOHRMAN

State Bar No. 14253500

jmohrman@mcglinchey.com

ANDERSON L. CAO
State Bar No. 24031910
acao@mcglinchey.com
1001 McKinney, Suite 1500
Houston, TX 77002
Telephone: (713) 520-1900
Facsimile: (713) 520-1025

**ATTORNEYS FOR THE PLAINTIFF
KEVIN POYNTER**

Unofficial Copy Office of Chris Daniel District Clerk