

# 2023-25422 / Court: 270

CAUSE NO. \_\_\_\_\_

ACCESS RESTORATION SERVICES US, INC.	§	IN THE DISTRICT COURT OF
	§	
	§	
vs.	§	HARRIS COUNTY, TEXAS
	§	
McCLENNY MOSELEY & ASSOCIATES, PLLC and JOHN ZACHARY MOSELEY	§	_____ JUDICIAL DISTRICT
	§	

## **PLAINTIFF'S ORIGINAL PETITION**

COMES NOW, Plaintiff, ACCESS RESTORATION SERVICES US, INC. ("Plaintiff"), and files this its Original Petition against Defendants, McCLENNY MOSELEY & ASSOCIATES, PLLC ("MMA") and JOHN ZACHARY MOSELEY ("Moseley"), and would respectfully show the Court as follows:

### **DISCOVERY CONTROL PLAN**

1. Discovery is intended to be conducted under Level 3 of Texas Rule of Civil Procedure 190.4.

### **PARTIES**

2. Plaintiff, ACCESS RESTORATION SERVICES US, INC., is a Delaware corporation, registered with the Texas Secretary of State to conduct business in Texas, with its principal place of business located in Montgomery County, Texas.

3. Defendant, McCLENNY MOSELEY & ASSOCIATES, PLLC, is a Texas limited liability company with its principal place of business located in Houston, Texas. Defendant may be served with process by serving its registered agent for service of process as follows:

CT Corporation System  
1999 Bryan Street, Suite 900  
Dallas, Texas 75201

or by serving any member anywhere he may be found.

4. Defendant, JOHN ZACHARY MOSELEY, is an individual who is a resident of Harris County, Texas. Defendant may be served with process by serving him at 1214 West Dallas, Houston, Texas 77019, or anywhere he may be found.

#### **JURISDICTION & VENUE**

5. Venue is proper in Harris County, Texas, because all or a substantial part of the events giving rise to Plaintiff's claim occurred in Harris County, Texas.

6. The Court has jurisdiction over the controversy because the damages sought are within the jurisdictional limits of this Court. Plaintiff seeks monetary relief over \$1,000,000.00, excluding interest, attorneys' fees and costs. TEX. R. CIV. P. 47(c)(4).

7. The Court has jurisdiction over Defendants because they are Texas residents.

#### **BACKGROUND**

8. Plaintiff entered into a financing and investment agreement ("Agreement") with MMA, a law firm specializing in "insurance dispute resolution", whereby Plaintiff agreed to loan MMA \$3,000,000.00 to provide financing for litigation MMA was pursuing on behalf of certain of its clients with claims against their respective insurers relating to damage caused by Hurricane Ida. In exchange for the \$3 million investment, MMA represented that Plaintiff would be paid a 429% return on its investment in 9 months, or a 572% return on its investment within 12 months.

9. Upon information and belief, MMA is not registered to sell securities in the State of Texas. Nevertheless, MMA and Moseley solicited and obtained the investment agreement from Plaintiff. Said investment agreement constitutes a security, and upon information and belief MMA did not register such security, in violation of the Texas Securities Act.

10. Furthermore, in an effort to induce Plaintiff into the Agreement, Moseley made specific and detailed material misrepresentations regarding the firm's performance with respect to the

subject hurricane damage claims. On December 9, 2021, Moseley represented to Plaintiff that a \$3 million investment would generate 1,000 or more hurricane clients per month for MMA. He further represented that the cost to acquire a client was \$3,000 per client. Moseley represented that the projected return in attorneys' fees to MMA was \$33,000 per client, with a return to Plaintiff of 15% of said attorneys' fees, which he equated to \$4,950 per client.

11. Moseley represented that MMA's settlements averaged \$260,000 for the week prior (i.e., the first week of December 2021), and from that amount MMA's average attorney fee recovery was \$85,000.00. His investment solicitation to Plaintiff and the Agreement stated, "[a]ssuming this trend continues, a \$3,000.00 investment per case would net a \$12,870 payout to Lender. That nets a 429% return to Lender in what MMA expects in 9 months – or an annual return of 572%."

12. Moseley's solicitation and the Agreement further represented to Plaintiff that MMA "used very conservative modeling projections in order to show that even if MMA wasn't able to recoup half of average settlement value, Lender's returns would still be over 50% on an annualized basis." Moseley also represented that MMA would provide Plaintiff with access to a portal that contained a table updated every morning with detailed information regarding: dollars spent, number of cases signed, a list of claimants, insurance carrier of signed cases, and a map showing geographic location of each signed client's property. Moseley memorialized the aforementioned terms in the Agreement he sent to Plaintiff.

13. Plaintiff decided to provide the financing/investment after Moseley provided the investment summary set forth above. In reliance on Moseley's representations, on or about December 17, 2021, Plaintiff wired MMA \$3,000,000.00 for the financing/investment. From that point forward, MMA and Moseley had control over Plaintiff's investment funds.

14. Notably, after Plaintiff provided its \$3 million investment to MMA, it was only briefly able to access the portal until it inexplicably became inaccessible. Plaintiff repeatedly requested that MMA resume allowing Plaintiff to access the portal so it could monitor its investment. Moseley promised to return Plaintiff's access, but never followed through on that promise and Plaintiff remains unable to access the portal. Furthermore, over a year has passed since Plaintiff provided the \$3 million to MMA, and MMA has failed to provide a single dollar of investment return to Plaintiff.

**FIRST CAUSE OF ACTION:  
BREACH OF CONTRACT**

15. Plaintiff and MMA entered into an enforceable agreement supported by consideration. Plaintiff performed, or in the alternative substantially performed, all of its obligations under the Agreement with MMA. Specifically, Plaintiff provided the \$3,000,000 investment/financing per the parties' Agreement.

16. MMA materially breached the Agreement by failing to pay Plaintiff per the terms of the Agreement, for which Plaintiff seeks recovery in this lawsuit of at least \$3,000,000, plus attorneys' fees, interests and costs.

**SECOND CAUSE OF ACTION:  
FRAUD / FRAUDULENT INDUCEMENT**

17. As set forth above, Moseley made material representations to Plaintiff in order to induce Plaintiff to enter into the investment agreement and provide the \$3 million investment to MMA.

18. These representations by Moseley were false and he knew these representations were false. Plaintiff reasonably relied on these representations when it entered into the investment agreement and wired the \$3 million to MMA. In relying on these representations, Plaintiff was

injured. Plaintiff seeks and is entitled to recover its actual damages, including the \$3 million paid by Plaintiff to MMA.

**THIRD CAUSE OF ACTION:  
VIOLATION OF TEXAS SECURITIES ACT**

19. The investment solicited by MMA and Moseley is a security under the Texas Securities Act. *See* TEXAS GOV'T CODE §§ 4001.001 *et seq.* Upon information and belief, it is an unregistered security and/or they are not registered to solicit and/or sell such securities.

20. Additionally, MMA, with the aid of Moseley, offered and/or sold a security by means of untrue statements of material fact and/or omissions of material fact necessary in order for the statements made, in light of the circumstances under which they are made, to not be misleading.

21. Pursuant to Section 4008.055 of the Texas Securities Act, Moseley is jointly and severally liable with MMA and to the same extent as MMA for violations of the Texas Securities Act.

22. Plaintiff seeks rescission relief under the Texas Securities Act, by which Plaintiff shall recover the consideration paid (\$3 million), plus interest thereon, attorneys' fees and costs. Plaintiff further requests exemplary or punitive damages under the Texas Securities Act.

**ATTORNEYS' FEES AND INTEREST**

23. Plaintiff is entitled to recover reasonable attorney's fees from Defendants for all legal services performed by Plaintiff's attorneys in pursuit of the claims against Defendants pursuant to Chapter 38 of the TEXAS CIVIL PRACTICES & REMEDIES CODE and/or Chapter 4008 of the TEXAS GOV'T CODE.

24. Plaintiff is entitled to recover prejudgment and post-judgment interest at the highest legal rate allowed by law.

**CONDITIONS SATISFIED**

25. Plaintiff has fully or substantially performed all acts necessary to perfect and establish all claims and causes of action asserted in this lawsuit.

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff, ACCESS RESTORATION SERVICES US, INC., respectfully requests that Defendants, McCLENNY MOSELEY & ASSOCIATES, PLLC and JOHN ZACHARY MOSELEY, be duly cited to appear and answer, and that Plaintiff have judgment against Defendants for:

- (a) Plaintiff's actual damages;
- (b) Rescission of the investment agreement and recovery of the \$3 million consideration under the Texas Securities Act;
- (c) Exemplary or punitive damages under the Texas Securities Act;
- (d) Prejudgment interest;
- (e) Post-judgment interest;
- (f) Reasonable attorneys' fees in the trial court and all appellate courts;
- (g) All costs of court in the trial court and all appellate courts;
- (h) Collection costs; and
- (i) All other relief to which Plaintiff may show itself justly entitled.

Respectfully submitted,

ANDREWS MYERS, P.C.

By: /s/ Lisa M. Norman

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ATTORNEYS FOR PLAINTIFF  
ACCESS RESTORATION SERVICES US,  
INC.

### Automated Certificate of eService

This automated certificate of service was created by the e filing system. The filer served this document via email generated by the e filing system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Lisa Norman on behalf of Lisa Norman  
Bar No. 24037190  
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Envelope ID: 74920622  
Filing Code Description: Petition  
Filing Description: Plaintiff's Original Petition  
Status as of 4/24/2023 8:09 AM CST

#### Case Contacts

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