

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

MICHAEL D. LAND

PLAINTIFF

VS.

CIVIL ACTION NO. CI2021-008-JA

McRAE LAW FIRM, PLLC;  
JUSTICE CHUCK McRAE, ESQ;  
AND DREW MARTIN, ESQ.

DEFENDANTS

**ANSWER AND DEFENSES**

COME NOW the defendants, by counsel, and respond to the subject Complaint, as follows:

**FIRST DEFENSE**

The Complaint fails to state a cause of action against these defendants upon which relief may be granted.

**SECOND DEFENSE**

The venue of this action is improper.

AND NOW, without waiving the above-asserted defenses, these defendants respond to the specific allegations of the Complaint, paragraph by paragraph, as follows:

1. The allegations of paragraph 1 merely attempt to summarize the claims asserted by plaintiff and, accordingly, no response thereto is required. To the extent a response is required, it is admitted that these defendants did not file an alienation of affection Complaint on behalf of Michael Land. The remaining allegations of paragraph 1 are denied.

2. These defendants do not have sufficient information to admit the allegations of paragraph 2.

3. Denied.

4. It is admitted Land entered into a contract with McRae Law Firm, PLLC on or about July 14, 2017. The remaining allegations of paragraph 4 are denied.

5. It is admitted that the Honorable Circuit Court Judge John Emfinger granted summary judgment to Paul Bertucci in an action filed on behalf of Land and that Judge Emfinger found that the statute of limitations as to Bertucci ran on October 31, 2017. As to footnote 1, it is admitted that attorney Macy Hanson, on behalf of plaintiff, filed a Complaint as to Bertucci on January 15, 2020. The remaining allegations of paragraph 5 are denied.

6. Denied.

7. These defendants do not have sufficient information to admit the allegations of paragraph 7 and, accordingly, deny the same.

8. It is admitted that Tee Land filed a Petition for Divorce against Mike Land and that such was dismissed on or about October 19, 2019. These defendants do not have sufficient information to admit the remaining allegations of paragraph 8 and, accordingly, deny the same.

9. It is admitted that on or about January 15, 2020, that Mike Land, with his present counsel, filed a Complaint against Paul Bertucci in the Circuit Court of Madison County, Mississippi and said Complaint speaks for itself. To the extent that further response is required as to paragraph 9, denied.

10. It is admitted that the case of *Land v. Bertucci*, Cause No. 20-0014-JE (Madison County Circuit Court) was dismissed on summary judgment and that Judge Emfinger found that the cause of action as to Bertucci ran on October 31, 2017. It is further admitted that the Order was entered on or about November 12, 2020. The remaining allegations of paragraph 10 are denied.

11. Denied.

12. These defendants do not have sufficient information to admit the allegations of paragraph 12.

13. Admitted.

14. Admitted.

15. It is admitted that Drew Martin is a Mississippi attorney. The remaining allegations of paragraph 15 are denied.

16. Admitted.

17. Admitted.

18. It is admitted that the case of *Land v. Bertucci* was filed by Land's present counsel in Madison County and that the divorce action was filed in the Chancery Court of Madison County. The remaining allegations of paragraph 18 are denied.

19. Denied.

20. It is admitted that the subject retention agreement was attached to the Complaint as Exhibit 1. The remaining allegations of paragraph 20 are denied.

21. Denied.

22. It is admitted that the referenced Complaint was filed against Paul Bertucci on or about July 15, 2020, and that the prior Complaint was attached as Exhibit 2 to the subject Complaint. The remaining allegations of paragraph 22 are denied.

23. It is admitted the Honorable Circuit Court Judge dismissed *Land v. Bertucci*, Cause No. 20-0014-JE, Madison County, Mississippi, on summary judgment finding that the causes of action which had been pled were barred by the statute of limitation which he ruled ran on October 31, 2017. It is further admitted that the action was dismissed on November 12, 2020. The remaining allegations of paragraph 23 are denied.

24. It is admitted that the subject Order Granting Summary Judgment was attached as Exhibit 3. The remaining allegations of paragraph 24 are denied.

25. Denied.

26. The allegations of the last sentence of paragraph 26 are denied. As to the remaining allegations of paragraph 26, these defendants do not have sufficient information to admit, and accordingly, deny the same.

27. Denied.

28. These defendants incorporate the responses to the previous paragraphs of the Complaint.

29. These defendants do not have sufficient information to admit the allegations of paragraph 29 and, accordingly, deny the same.

30. Denied.

31. Denied.

32. Denied.

33. It is admitted these defendants did not file a lawsuit against Paul Bertucci. The remaining allegations of paragraph 33 are denied.

34. Denied.

35. Denied.

The allegations of the last unnumbered paragraph of the Complaint are denied and it is specifically denied that the plaintiff is entitled to any recovery from these defendants.

AND NOW, having answered the allegations of the Complaint, paragraph by paragraph, these defendants assert the following affirmative matter:

**FIRST AFFIRMATIVE DEFENSE**

These defendants rely upon any defenses which would have been available to Paul Bertucci in the underlying litigation.

**SECOND AFFIRMATIVE DEFENSE**

Unless it is proven that Tee Land had affections for Mike Land which were alienated by the acts of Paul Bertucci, there can be no liability in this action.

**THIRD AFFIRMATIVE DEFENSE**

These defendants plead the apportionment, and other relevant provisions, of Mississippi Code Annotated Section 85-5-7.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff failed to mitigate his damages.

**FIFTH AFFIRMATIVE DEFENSE**

The subject claims are barred by the applicable statute of limitations.

**SIXTH AFFIRMATIVE DEFENSE**

No act or omission of these defendants was the proximate cause of the dismissal of the underlying action in *Land v. Bertucci*.

**SEVENTH AFFIRMATIVE DEFENSE**

These defendants plead the professional judgment rule.

**EIGHTH AFFIRMATIVE DEFENSE**

These defendants plead the doctrine of contributory negligence.

**NINTH AFFIRMATIVE DEFENSE**

Any allegation of the Complaint not specifically admitted shall be deemed denied.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to a recover any sums he would have been required to have paid in attorney's fees in regard to the underlying action against Mr. Bertucci.

**ELEVENTH AFFIRMATIVE DEFENSE**

The acts or omissions of the plaintiff, or his agent, was the sole proximate cause of any damages he sustained.

**TWELFTH AFFIRMATIVE DEFENSE**

To the extent the Complaint seeks punitive damages which allegedly would have been rendered against Paul Bertucci in the underlying matter, such damages are not recoverable from these defendants as a matter of law.

**THIRTEENTH AFFIRMATIVE DEFENSE**

In regard to plaintiff's demand for punitive damages, the imposition of any punitive damages would be violative of the Constitution of the United States of America, including the Fourteenth Amendment thereof, and violative of the provisions of the Mississippi Constitution, including Section 28 thereof. Further, an award of punitive damages would amount to deprivation of property without due process, in violation of the Fifth and Fourteenth Amendments to the United States Constitution, and Section 14 of the Mississippi Constitution. The criteria used to determine whether, and in what amount, punitive damages may be awarded, is impermissibly vague, imprecise, inconsistent, and is, therefore, in violation of the Mississippi and United States Constitutions. Further, punitive damages may not be awarded against this defendant because it did not act with actual malice or gross negligence which evidenced a willful, wanton and reckless disregard for the safety of others, nor did this defendant commit actual fraud. These defendants cannot be held vicariously liable for punitive damages. An award of punitive damages against these defendants would be violative by Miss. Code Ann. § 11-1-65 (Miss. 1993) and, further, would be violative of these defendants constitutional rights.

**FOURTEENTH AFFIRMATIVE DEFENSE**

An award of punitive damages in this case would amount to an excessive fine in violation of Article 3, Section 28 of the Mississippi Constitution.

Respectfully submitted,

McRAE LAW FIRM, PLLC;  
JUSTICE CHUCK McRAE, ESQ;  
AND DREW MARTIN, ESQ.

BY: /s/ J. Wyatt Hazard  
OF COUNSEL

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 23, 2021, I electronically filed the foregoing pleading or other document with the Clerk of the Court using the MEC system which sent notification of such filing to all counsel of record.

/s/ J. Wyatt Hazard