

NO. 74068-422

TURNER BROS. TRUCKING, L.L.C.,
Plaintiff,

v.

KRISTAL M. BAKER, INDIVIDUALLY
AND D/B/A K&D LOGISTICS CO.,
CLIFFORD DWAYNE JACKS,
INDIVIDUALLY AND D/B/A
K&D LOGISITICS CO., K&D LOGISITICS
CO., S/W QUALITY HAY, LLC, AND
C.D. JACKS, INC.,
Defendants.

IN THE DISTRICT COURT OF

KAUFMAN COUNTY, TEXAS

422ND JUDICIAL DISTRICT

§
§
§
§
§
§

2009 FEB 24 AM 10:07
DISTRICT CLERK
Kaufman County, Texas

**INTERLOCUTORY ORDER GRANTING PLAINTIFF, TURNER BROS. TRUCKING,
LLC'S,
MOTION FOR SUMMARY JUDGMENT**

On the 12th day of February, 2009, came on to be heard Plaintiff Turner Bros. Trucking, LLC's Motion for Summary Judgment (the "Motion"), Defendant CD Jacks, Inc.'s and Clifford Dwayne Jacks', Individually and d/b/a K&D Logistics Company, Response to Plaintiff's Motion for Summary Judgment (the "Response"), Plaintiff's Reply to Defendants' Response to Plaintiff's Motion for Summary Judgment (the "Reply"), Plaintiff's Objections to Defendants' Summary Judgment Evidence (the "Objections"), Plaintiff's Supplemental Reply to Defendants' Response to Plaintiff's Motion for Summary Judgment (the "Supplemental Reply"), Defendant CD Jacks, Inc.'s and Clifford Dwayne Jacks', Individually and d/b/a K&D Logistics Company, Supplemental Response to Plaintiff's Motion for Summary Judgment (the "Supplemental Response"), and Plaintiff's Second Supplemental Reply to Defendants' Response to Plaintiff's

Motion for Summary Judgment (the "Second Supplemental Reply"), and came the Plaintiff by and through its attorney of record and announced ready and came Defendants C.D. Jacks, Inc. ("CDJI") and Clifford Dwayne Jacks, Individually and d/b/a K&D Logistics Company ("Jacks") by and through their attorneys of record and announced ready. Defendants, Kristal Baker ("Baker") and S/W Quality Hay, LLC ("SWQH"), although duly notified of the hearing, failed to appear in person or by counsel. The Court, after entertaining argument of counsel and after reviewing the above-referenced documents and other case papers filed in this case, is of the opinion and here finds that Plaintiff's Motion should be **GRANTED** in its entirety and the Objections should be **SUSTAINED** in their entirety.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff's Objections to Defendants' Summary Judgment Evidence be, and the same are hereby, **SUSTAINED** in their entirety.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for Summary Judgment be, and the same is hereby, **GRANTED** in its entirety.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff shall have and recover judgment against the Defendants on the following claims for the following amounts based upon on the matters addressed at the hearing and the contents of Plaintiff's Motion.

1. **Breach of the Broker's Contract.** Plaintiff is hereby awarded judgment against Defendants Kristal Baker, Individually and d/b/a K&D Logistics Company and as a partner of K&D Logistics Company ("Baker"), and K&D Logistics Company, a general partnership composed of Baker and Defendant Clifford Dwayne Jacks ("K&D"), and Clifford Dwayne Jacks, Individually and d/b/a K&D Logistics Company and as a partner of K&D Logistics Company

("Jacks"), jointly and severally, in the principal amount of \$414,245.56, with prejudgment interest thereon from May 2, 2007 until the date of final judgment in this case at the *per diem* rate of \$68.09 per day, with reasonable attorney's fees of \$241,075.00 for trial in this cause and, if any of these Defendants appeal to the Court of Appeals and are unsuccessful, a reasonable and necessary attorney's fee for the briefing and arguing of any response at the Court of Appeals shall be awarded to the Plaintiff in the Court of Appeals in the amount of \$30,000.00; it being further ordered that in the event that any of these Defendants appeal this matter to the Texas Supreme Court or otherwise seek review by the Texas Supreme Court, and the Plaintiff is successful with its arguments before the Texas Supreme Court, a reasonable and necessary attorney's fee for the Plaintiff for the preparation of an appropriate brief and any argument shall be awarded to Plaintiff in the amount of \$30,000.00, plus post-judgment interest on the amounts awarded above at the judgment rate of interest from the date of final judgment until paid in full and satisfied.

2. **Breach of Implied Contract, Quantum Meruit, Unjust Enrichment, and Statutory Claims for Unpaid Freight Charges.** It is further ordered that Plaintiff shall have and recover judgment against Defendants Baker, Jacks, K&D, and SWQH, jointly and severally, in the principal amount of \$414,245.56, with prejudgment interest thereon from May 2, 2007 until the date of final judgment in this case at the *per diem* rate of \$68.09 per day, with reasonable attorney's fees of \$241,075.00 for trial in this cause and, if any of these Defendants appeal to the Court of Appeals and are unsuccessful, a reasonable and necessary attorney's fee for the briefing and arguing of any response at the Court of Appeals shall be awarded to the Plaintiff in the Court of Appeals in the amount of \$30,000.00; it being further ordered that in the event that any of these Defendants appeal this matter to the Texas Supreme Court or otherwise

seek review by the Texas Supreme Court and the Plaintiff is successful with its arguments before the Texas Supreme Court, a reasonable and necessary attorney's fee for the Plaintiff for the preparation of an appropriate brief and any argument shall be awarded to Plaintiff in the amount of \$30,000.00, plus post-judgment interest on the amounts awarded above at the judgment rate from the date of final judgment until paid in full and satisfied. The award contained above in this paragraph 2 with regard to Defendants Jacks, Baker, and K&D is an alternative to the award contained in paragraph 1 above.

3. **Violation of the Texas Theft Liability Act.** Plaintiff shall be awarded a judgment against the Defendants, Baker, Jacks, K&D, and SWQH, jointly and severally, for the theft of transportation services and violation of the *Texas Theft Liability Act* in the principal amount of \$414,245.56, with prejudgment interest thereon from May 2, 2007 until the date of final judgment in this case at the *per diem* rate of \$68.09 per day, with reasonable attorney's fees of \$241,075.00 for trial in this cause and, if any of these Defendants appeal to the Court of Appeals and are unsuccessful, a reasonable and necessary attorney's fee for the briefing and arguing of any response at the Court of Appeals shall be awarded to the Plaintiff in the Court of Appeals in the amount of \$30,000.00; it being further ordered that in the event that any of these Defendants appeal this matter to the Texas Supreme Court or otherwise seek review by the Texas Supreme Court, and the Plaintiff is successful with its arguments before the Texas Supreme Court, a reasonable and necessary attorney's fee for the Plaintiff for the preparation of an appropriate brief and any argument shall be awarded to Plaintiff in the amount of \$30,000.00, plus post-judgment interest on the amounts awarded at the judgment rate from the date of final judgment until paid in full and satisfied. The provisions of paragraph 3 of this Order are alternative relief to the provisions contained in paragraph 1 or paragraph 2 above.

4. Additionally, and not alternatively, Plaintiff shall have and recover a judgment against the Defendants, and each of them, for the additional damages available under the *Theft Liability Act* contained in the *Texas Civil Practices and Remedies Code § 134.005(i)* in the amount of \$1,000.00 against each of said Defendants, payable severally.

5. **Fraud, Fraudulent Representation, and Misrepresentation.** On Plaintiff's claims against all of the Defendants, Plaintiff shall have and recover a judgment against Defendants Baker, Jacks, K&D, and SWQH for fraud and misrepresentation in the amount of \$414,245.56, with prejudgment interest thereon from May 2, 2007 until the date of final judgment in this case at the *per diem* rate of \$68.09 per day until date of final judgment, with reasonable attorney's fees of \$241,075.00 for trial in this cause and, if any of these Defendants appeal to the Court of Appeals and are unsuccessful, a reasonable and necessary attorney's fee for the briefing and arguing of any response at the Court of Appeals shall be awarded to the Plaintiff in the Court of Appeals in the amount of \$30,000.00; it being further ordered that in the event that any of these Defendants appeal this matter to the Texas Supreme Court or otherwise seek review by the Texas Supreme Court, and the Plaintiff is successful with its arguments before the Texas Supreme Court, a reasonable and necessary attorney's fee for the Plaintiff for the preparation of an appropriate brief and any argument shall be awarded to Plaintiff in the amount of \$30,000.00, and, in addition thereto, punitive damages shall be awarded against each of the above-named Defendants in the amount of two times the actual damages awarded to Plaintiff against each of the Defendants as described above on its claims for fraud and misrepresentation in the total additional amount of \$848,483.12, plus interest on the amounts awarded above from the date of final judgment until paid and satisfied at the post-judgment rate of interest then applicable. The awards contained in this paragraph 5 are an alternative to the

awards contained in paragraphs 1, 2, and 3, above and are not in addition to those amounts awarded.

6. **Declaratory Relief.** Plaintiff shall be entitled to recover declaratory relief against the Defendants and each of them. The Court finds that each of the Defendants violated Plaintiff's rights by obtaining freight and transportation services by deception, that Defendants Jacks, Baker, and K&D were the actual shippers and consignors and that Defendant SWQH was the actual receiver and consignee of all freight loads involved in this case, Defendants did not pay for those services though each were legally obligated to do so, causing Plaintiff to suffer damages in the principal amount of \$414,245.56, with prejudgment interest thereon from May 2, 2007 until the date of final judgment in this case at the *per diem* rate of \$68.09 per day until day of final judgment, with reasonable attorney's fees of \$241,075.00 for trial in this cause and, that if any of these Defendants appeal to the Court of Appeals, a reasonable and necessary attorney's fee for the briefing and arguing of any response at the Court of Appeals shall be awarded to the Plaintiff in the Court of Appeals in the amount of \$30,000.00; it being further ordered that in the event that any of these Defendants appeal this matter to the Texas Supreme Court or otherwise seek review by the Texas Supreme Court, and the Plaintiff is successful with its arguments before the Texas Supreme Court, a reasonable and necessary attorney's fee for the Plaintiff for the preparation of an appropriate brief and any argument shall be awarded to Plaintiff in the amount of \$30,000.00, plus post-judgment interest on the amounts awarded at the judgment rate from the date of final judgment until paid in full and satisfied. The awards for actual damages, but not declaratory relief, contained in this paragraph are an alternative to the awards contained in paragraphs 1, 2, 3 and 5 above and are not in addition thereto. The awards of attorneys fees

contained in this paragraph are an alternative to the awards of attorneys fees in paragraphs 1,2,3,and 5 above and no duplicate awards of attorneys fees shall be recovered by Plaintiff.

7. **Breach of Fiduciary Duties**. On the Plaintiff's claims for breach of fiduciary duties against Defendants, Baker, Jacks, and K&D, the Court finds that each of said Defendants breached their fiduciary duties to Plaintiff as an independent transportation broker, violating the provisions of 49 U.S.C. §§ 13901, 13904, and 13906, and the regulations issued thereunder by the United States Department of Transportation contained in 49 CFR Parts 371 through 379, including, but not limited to, the provisions of 49 CFR §§ 371.1, 371.2, 371.3, 371.7, 371.9, 371.10, 371.13, 373.101, 373.103, and 377.203 causing damages to Plaintiff in the principal amount of \$414,245.56, with prejudgment interest thereon from May 2, 2007 until the date of final judgment in this case at the *per diem* rate of \$68.09 per day until day of final judgment, with reasonable attorney's fees of \$241,075.00 for trial in this cause and, if any of these Defendants appeal to the Court of Appeals and are unsuccessful, a reasonable and necessary attorney's fee for the briefing and arguing of any response at the Court of Appeals shall be awarded to the Plaintiff if it is successful in the Court of Appeals in the amount of \$30,000.00; it being further ordered that in the event that any of these Defendants appeal this matter to the Texas Supreme Court or otherwise seek review by the Texas Supreme Court, and the Plaintiff is successful with its arguments before the Texas Supreme Court, a reasonable and necessary attorney's fee for the Plaintiff for the preparation of an appropriate brief and any argument shall be awarded to Plaintiff in the amount of \$30,000.00, plus post-judgment interest on the amounts awarded above at the judgment rate from the date of final judgment until paid in full and satisfied. The awards for damages contained in this paragraph are an alternative to the damages

awarded Plaintiff against Defendants Baker, Jacks, and K&D contained in paragraphs 1,2,3,5 and 6 above and are not in addition thereto.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff be awarded all costs of Court it has incurred or may continue to incur in this case and Defendants, and each of them, are jointly and severally liable for all costs of Court incurred by Plaintiff in this proceeding.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all other relief requested in Plaintiff's Motion for Summary Judgment and not specifically granted herein is hereby granted in its entirety.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants shall take nothing on their counterclaims against Plaintiff.

IT IS FURTHER ORDERED that all monetary sanctions imposed against the Defendants by the prior orders of this Court shall survive as additional relief to which the Plaintiff shall be entitled, in addition to the damage awards, declaratory, and other relief contained herein.

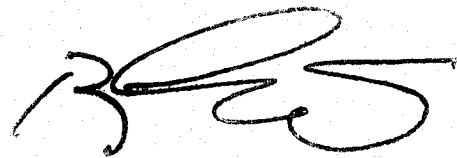
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, in accordance with the provisions of the *Texas Rules of Civil Procedure, Rule 166a(e)*, that the only matters remaining for trial in this case are the cross-claims asserted by Defendants Jacks and CDJI against Defendants Baker and SWQH, and vice versa.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff, to the extent not provided in the preceding paragraphs, shall be entitled to recover from the Defendants, and each of them, jointly and severally, all costs of Court incurred or to be incurred in the future

in this case, and interest at the then prevailing post-judgment rate on all amounts awarded above from the date of final judgment in this case until paid in full.

IT IS FURTHER ORDERED that since Plaintiff's claims against the Defendants have been fully adjudicated and summary judgment has been rendered on those matters, and that the only matters remaining for trial or other disposition in this case are the cross-claims asserted by Defendants Jacks and CD Jacks, Inc. against Defendants Baker and SWQH, and vice versa, Plaintiff shall be entitled to pursue post-judgment discovery in this case against Defendants Baker and SWQH only, but that Plaintiff shall not be entitled to pursue post-judgment discovery in this case against Defendants Jacks and CD Jacks, Inc. at this time.

SIGNED this 23rd day of February, 2009

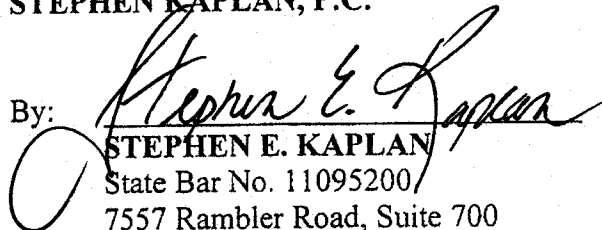


JUDGE PRESIDING

APPROVED AS TO FORM AND CONTENT:

STEPHEN KAPLAN, P.C.

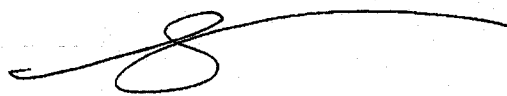
By:


STEPHEN E. KAPLAN
State Bar No. 11095200
7557 Rambler Road, Suite 700
Dallas, Texas 75231
Telephone: 214.346.6048
Facsimile: 214.346.6049

**ATTORNEYS FOR PLAINTIFF,
TURNER BROS. TRUCKING, L.L.C.**

PARKS HUFFMAN MCVAY SHEPARD & WELLS

By:


B. SCOTT HUFFMAN
State Bar No. 10188300
MARC A. STACH
State Bar No. 24000375
503 East Border Street]
Arlington, Texas 76010
Telephone: 817-861-1000
Facsimile: 817-469-1000

**ATTORNEYS FOR DEFENANT CD JACKS, INC.
AND DEFENDANT CLIFFORD DWAYNE JACKS,
INDIVIDUALLY AND D/B/A K&D LOGISTICS CO.**