

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DUSTIN S. KOLODZIEJ

v.

JAMES CHENEY MASON AND
J. CHENEY MASON, P.A.

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CIVIL ACTION NO. _____

JURY DEMANDED

PLAINTIFF’S ORIGINAL COMPLAINT

Plaintiff Dustin S. Kolodziej files his Original Complaint against Defendants James Cheney Mason and J. Cheney Mason, P.A.

I. Parties

1. Dustin S. Kolodziej is citizen of Texas who resides in Houston, Texas.
2. James Cheney Mason is a citizen of Florida who resides in Orlando, Florida. He can be served with process at his office at 390 N. Orange Avenue, Suite 2100, Orlando, Florida 32801, or wherever he may be found.
3. J. Cheney Mason, P.A. is a Florida corporation with its principal place of business in Orlando, Florida. It may be served through its registered agent James C. Mason at his office at 390 N. Orange Avenue, Suite 2100, Orlando, Florida 32801, or wherever he may be found.

II. Jurisdiction

4. This Court has diversity jurisdiction over this case under 28 U.S.C. § 1332. The plaintiff is only a citizen of Texas, and both of the defendants are only citizens of Florida. The amount in controversy—exclusive of interest and fees—exceeds \$75,000.
5. This Court has both general and specific personal jurisdiction over both defendants.

III. Background

6. This is a lawsuit for breach of a contract that Mason¹ entered into when he issued a challenge on national television that Kolodziej accepted. In his challenge, Mason promised to pay \$1 million to anyone who completed a trip from a jet at the Atlanta airport to the La Quinta Inn there within 28 minutes. Kolodziej completed the challenge within the allowed time, but Mason has refused to pay. Mason now claims that his challenge, which he made—and reiterated—on national television, was not serious.

A. Mason issues a challenge

7. Mason is a criminal-defense lawyer in Orlando, Florida. He is most famous in Houston for defending Lisa Nowak, the NASA astronaut accused of assaulting her alleged romantic rival.

8. This case arises out of Mason's representation of Nelson Serrano in his capital-murder trial. Nelson Serrano, a wealthy businessman, was accused of killing his business partner George Gonsalves and two others in 1997.

9. The murders happened in central Florida, but Serrano claimed that he was in Atlanta that day. Video cameras at the Atlanta La Quinta shoed Serrano at the hotel a few hours after the murders. Serrano's defense was that it would have been impossible for him to have committed the murders in Florida and been at the Atlanta La Quinta by the time the video showed him there.

10. Serrano was convicted of the murders and sentenced to death in 2006. As of today, he is still on death row.

11. Serrano's murder trial received a great deal of publicity and was featured on Court TV. The publicity continued even after the trial. In December 2006, the Dateline television

¹ "Mason" refers to Defendants James Cheney Mason and J. Cheney Mason, P.A. collectively. J. Cheney Mason, P.A. is vicariously liable for the conduct of James Cheney Mason under both vice-principal liability and respondeat superior.

program on NBC featured Serrano's case.² Mason went on the program to argue that it was impossible for Serrano to have committed the murders.

12. Mason argued on Dateline that there was no way that Serrano could have committed the murders in Florida and been at the Atlanta La Quinta by the time the video showed him there. Mason said that, "[i]n less than half an hour, Serrano would have had to get off a wide body jet, exit Atlanta airport—one of the busiest in the world—and arrive back at his hotel five miles away. All in time to be photographed looking up at that surveillance camera." *See* <http://www.msnbc.msn.com/id/16306307/page/4/>.

13. Mason then issued the challenge at the center of this lawsuit: "I challenge anybody to show me, I'll pay them a million dollars if they can do it." *Id.* The NBC reported questioned Mason to make sure he understood the terms of the challenge: "If they can do it in the time allotted?" *Id.* Mason clarified: "28 minutes. Can't happen. didn't happen." *Id.*

B. Kolodziej accepts the challenge

14. Kolodziej—who was a law student at South Texas College of Law at the time—followed the Serrano case. He saw Mason issue the challenge and decided to accept it. He wanted to see if he could prove that the prosecution's theory was correct and that Serrano could have murdered these three people.

15. In December 2007—just after the tenth anniversary of the murders—Kolodziej travelled to Georgia to accept the challenge. He retraced Serrano's alleged route, flying from Atlanta to Orlando, driving to the scene of the murders, then flying back to Atlanta. Kolodziej made the last leg of the journey—from the airplane to the La Quinta—within the required 28 minutes.

² A transcript of the Dateline program is available at <http://www.msnbc.msn.com/id/16306307/> (last accessed June 15, 2009).

C. Mason refuses to pay Kolodziej

16. Kolodziej made a video tracking his trip. He sent the video, along with a demand letter, to Mason when he returned from the trip. Mason wrote Kolodziej back in January 2008. He told Kolodziej that it was just a joke and that “[c]ertainly neither you (reasonably) or anybody else could think that there was a clear intention to pay anybody a million dollars or any other amount.” Mason refused to pay Kolodziej the promised \$1 million.

17. Kolodziej wrote Mason back and informed him again that he owed the money. In February 2008, Mason wrote Kolodziej back and again refused to pay. Mason then said that he would “consider any further communications from [Kolodziej] to be in the nature of attempted extortion and/or mail fraud, and will act accordingly.” In response to Mason’s threat of criminal prosecution if he continued pursuing the matter informally, Kolodziej was forced to retain a lawyer and file this suit.

IV. Breach of Contract

18. Kolodziej incorporates by reference his allegations in paragraphs 1 through 17.

19. Mason made an offer of a unilateral contract when he issued the challenge. Kolodziej accepted that contract when he performed the challenge. Therefore, Mason and Kolodziej entered into a contract. Mason breached the contract when he refused to pay Kolodziej.

20. Kolodziej has been damaged by Mason’s refusal to pay him the \$1 million promised in the challenge.

21. In addition to actual damages, Kolodziej is entitled to his reasonable and necessary attorneys’ fees under Texas Civil Practice and Remedies Code § 38.001.

V. Jury Demand

22. Kolodziej demands a jury trial.

VI. Prayer

Kolodziej prays that citation issue against Defendants James Cheney Mason and J. Cheney Mason, P.A. and that this Court enter a judgment against them for the following:

- a. Kolodziej's actual damages;
- b. Kolodziej's reasonable and necessary attorneys' fees;
- c. Costs of court;
- d. Pre-judgment interest;
- e. Post-judgment interest; and
- f. All other relief, in law or in equity, to which Kolodziej is entitled.

Respectfully submitted,

/s/ David George

David George

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