

EXHIBIT D-1

FILED
JOHN F. WARREN
COUNTY CLERK
DALLAS COUNTY, TEXAS
2013 JUL -1 AM 10:18

CAUSE NO. CC-13-03854-C

TEXAS BRAND BANK,

Plaintiff,

v.

LUNA & LUNA, LLP,

Defendant.

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COUNTY COURT AT LAW

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DALLAS COUNTY, TEXAS

COURT NUMBER 3

**PLAINTIFF'S ORIGINAL PETITION
AND REQUEST FOR DISCLOSURE**

Plaintiff Texas Brand Bank ("Plaintiff" or "Bank") files this Original Petition and Request for Disclosure against Defendant Luna & Luna, LLP ("Luna") as follows:

I.

PARTIES

1. Plaintiff Bank ("Bank") is a Texas banking association organized and existing under the laws of the State of Texas, with its principal place of business in Texas.
2. Defendant Luna ("Luna") is a limited partnership formed under the laws of the State of Texas, with its principal place of business in Texas.

II.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter because the amount in controversy, exclusive of interest and costs, exceeds this Court's minimum jurisdictional limit.
4. Plaintiff seeks monetary relief over \$1,000,000.00.
5. Venue is proper in Dallas County, Texas pursuant to Chapter 15 of the Texas Civil Practice and Remedies Code because all of or a substantial parts of the events or omissions

giving rise to Plaintiff's claims occurred in Dallas County, Texas and/or because Defendant Luna has its principal office in Dallas County, Texas.

III.

FACTUAL BACKGROUND

A. Relationship Between Bank and Luna.

6. Bank is a bank located in Garland, Texas and serving, *inter alia*, the Garland business community.

7. On information and belief, Luna is a real estate closing agent which holds third-party funds to facilitate the closings of real-estate transactions.

8. Luna is a customer of Bank. Luna holds accounts in Bank and regularly instructs Bank to wire transfer funds from Luna's accounts at Bank to third party accounts. In the six months prior to the events subject of the lawsuit, Luna had instructed and Bank had processed over one thousand (1,000) wire transfers from Luna's accounts to third-party accounts.

9. Bank's and Luna's relationship was defined by certain contracts between them, including a Commercial Cash Management Agreement ("CCMA") and a Funds Transfer Agreement and Authorization ("FTAA"). These Agreements, by their terms, established the rules that covered Luna's use of and access to its accounts at Bank and Luna's use of Bank's Cash Management electronic banking system.

10. Regarding the authorizing and processing of money transfer requests, the CCMA states:

G. Authorizing and Processing Transfer Requests. If a request for a transfer to or from any Account, including payment orders (or processing through Fedwire or other large dollar payment systems for any request for cancellation or amendment of any such request ("Request") is received by Bank and purports to have been submitted or authorized by (Luna), it will be deemed effective as (Luna's) Request or entry and (Luna) will be obligated to pay the amount of the Request even though the Request was

not authorized by (Luna), provided we acted in compliance with the security procedures chosen by (Luna).

You agree that the authenticity of Requests and other instructions to be received through the System will be verified pursuant to the security procedures contained in the System services. You acknowledge that the Bank has offered you the option of using one of several types of security procedures, and that the one you have chosen to use is commercially reasonable. . . Bank recommends that you establish two levels of authority to request and transmit monetary transfers to the Bank.

In the Funds Transfer Agreement and Authorization (“FTAA”), Luna specifically delineated the security procedures that it wanted Bank to implement with respect to wire-transfers from Luna’s account. First, the transfers should be less than \$2 million dollars. Second, once the requestor showed a valid combination of “access ID and password,” Luna authorized Bank to act on the wire transfer requests without verifying the authenticity of the request by telephone upon receipt of the transfer request. Luna specifically agreed as follows:

Bank is authorized to act on the request received without verifying the authenticity of the request. Customer acknowledges the risk inherent in bypassing this procedure, and agrees to hold the bank harmless from any loss that may arise from unauthorized transfers.

B. The Unauthorized Transfers.

11. On June 21, 2012, Bank received a wire-transfer request on Luna’s behalf in the amount of \$89,651.00. The request included Luna’s access ID and password, and was less than \$2 million. Bank paid the request, and contemporaneously notified Luna of the payment by e-mail. Bank heard nothing from Luna after Luna received notice of the transfer.

12. On June 29, 2012, Bank received a wire-transfer request on Luna’s behalf in the amount of \$895,717.95. The request included Luna’s access ID and password, and was less than \$2 million. Bank paid the request and contemporaneously notified Luna by e-mail. Bank heard nothing from Luna after Luna received notice of the transfer.

13. On July 2, 2012, Bank received a wire-transfer request on Luna's behalf in the amount of \$765,931.94. The request included Luna's access ID and password, and was less than \$2 million. Bank paid the request and contemporaneously notified Luna of the transfer by facsimile. Bank heard nothing from Luna after Luna received notice of the transfer.

14. Later on Monday, July 2, 2013, Bank notified Luna that Luna's account was close to being overdrawn by telephone. As a result of that notice from Bank, Luna claims that it first discovered that it had not intended to authorize the July 2 wire-transfer. Luna informed Bank that it had not intended to authorize certain wire-transfers, and Bank took immediate action to trap funds and to investigate.

15. Despite Bank's efforts, over one million, six hundred seventy-one thousand (\$1,671,000.00) was not recovered.

16. Luna subsequently informed Bank that it had not intended to authorize the June 21 and June 29 wire transfers, and Bank took immediate action to trap funds and to investigate.

C. Restoration with Reservation.

17. Luna informed Bank that the funds that had been wire-transferred from Luna's account were funds that Luna held in trust in connection with closings of loans made by the United States Department of Housing and Urban Development ("HUD"). Luna stated that the proceeds that were stolen belonged to HUD. Luna demanded that Bank restore the funds to Luna's accounts, with all parties reserving their rights to seek recovery of the funds from the others. Luna argued that unless Bank restored the funds, Luna and HUD would be severely damaged with consequences to Bank far greater than the sum of the swindled funds. Bank and Luna negotiated the Cooperation Agreement that they entered July 10, 2012.

18. Pursuant to the Cooperation Agreement, Bank reserved its rights to claims against Luna to recover the funds it restored to Luna's account, and all damages arising therefrom. Bank sues to recover these damages.

D. Demand to Luna.

19. Bank has demanded that Luna pay Bank the damages it suffered as a result of the unauthorized transfers. Luna has failed and refused to pay Bank those damages.

IV.

CAUSES OF ACTION

Count One—Negligence

20. The foregoing allegations are incorporated by this reference.

21. As the holder of the funds of third parties, Luna had a duty of ordinary care to safeguard those funds. Luna breached this duty. Bank was harmed by Luna's breach of duty, and Bank has suffered injury proximately caused by Luna's breaches.

Count Two—Indemnity

22. The foregoing allegations are incorporated by this reference.

23. Pursuant to the Commercial Cash Management Agreement, the Funds Transfer Agreement and Authorization, and the Cooperation Agreement, Luna is obligated to pay to Bank the amounts of the fraudulent wire-transfer requests, and all other damages arising out of same. Bank has demanded such payment. Luna has refused to pay. Bank has performed all conditions precedent under the Agreements. Luna is obligated to indemnify, defend and hold Bank harmless from or against any and all loss, liability, cost, charges or other expenses, including reasonable attorneys' fees, that Bank incurred arising out of or related to the unauthorized transfers.

Count Three—Declaratory Judgment

24. The foregoing allegations are incorporated by this reference.
25. A justiciable controversy exists between the parties.
26. Bank seeks a declaratory judgment that it is entitled to payment from Luna of the funds Bank restored to Luna's accounts.
27. Bank further seeks a declaratory judgment that it is entitled to all costs, expenses, and attorneys' fees arising out of the fraudulent transfers.

Count Four—Attorneys' Fees

28. The foregoing paragraphs are incorporated herein by reference.
29. Due to the actions of Luna and because of the unauthorized transfers, Bank has been required to retain the services of the law firms of Haynes and Boone, L.L.P., H. Grady Chandler, Shackelford, Melton & McKinley, L.L.P., and Haynie, Rake & Repass, P.C., of Dallas, Texas ("Lawyers"). Bank has agreed to pay Lawyers a reasonable fee for their services necessarily rendered and to be rendered in this action. Pursuant to §§ 38.001 and 37.009 of the Texas Civil Practices & Remedies Code and/or pursuant to the CCMA, FTAA, and the Cooperation Agreement between the parties, Bank is entitled to an award of its reasonable attorneys' fees against Luna in an amount to be established at trial.

V.

JURY DEMAND

30. Bank hereby request a jury trial pursuant to TEX. R. CIV. P. 216(a).

VI.

REQUEST FOR DISCLOSURE

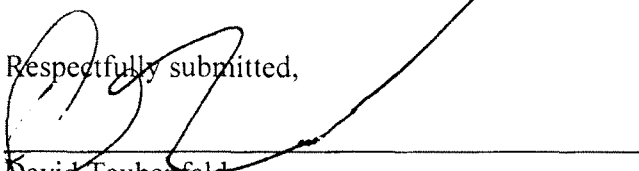
31. Pursuant to Texas Rule of Civil Procedure 194, Bank requests that Luna disclose the information or material described in Texas Rule of Civil Procedure 194.2 within fifty (50) days of service of this request.

PRAYER

WHEREFORE, Bank respectfully prays that upon final determination of this case, this Court award judgment against Luna for the following:

- a. The actual damages suffered by Bank in an amount to be determined at trial;
- b. Declaratory Judgment that Luna is obligated to pay Bank the amount of the Unauthorized Transfers and related damages;
- c. Pre-judgment and post-judgment interest as allowed by law;
- d. The reasonable and necessary attorneys' fees and expenses incurred by Bank as a result of the Unauthorized Transfers, including but not limited to those in the preparation and trial of this lawsuit and on appeal, if necessary;
- e. All costs of court; and
- f. All other and further relief to which Bank may show itself to be justly entitled.

Respectfully submitted,



David Taubenfeld
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FILED
JOHN F. WARREN
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DALLAS COUNTY, TEXAS

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July 1, 2013

Via Hand Delivery

John F. Warren
County Clerk
509 Main St., Suite 200,
Dallas, TX 75202

Re: *Texas Brand Bank v. Luna & Luna, LLP*

Q-13-23854-C

Dear Mr. Warren:

Enclosed for filing is Plaintiff's Original Petition and Request for Disclosure. Please return a file-stamped copy to the courier. Thank you for your assistance.

Sincerely,



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