

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

ALYSSON MILLS, IN HER CAPACITY
AS RECEIVER FOR ARTHUR LAMAR
ADAMS AND MADISON TIMBER
PROPERTIES, LLC,

Plaintiff,

v.

BUTLER SNOW LLP; BUTLER SNOW
ADVISORY SERVICES, LLC; MATT
THORNTON; BAKER, DONELSON,
BEARMAN, CALDWELL & BERKOWITZ,
PC; ALEXANDER SEAWRIGHT, LLC;
BRENT ALEXANDER; and JON
SEAWRIGHT,

Defendants.

Case No. 3:18-cv-00866

Arising out of Case No. 3:18-cv-252,
*Securities and Exchange Commission v.
Arthur Lamar Adams and Madison Timber
Properties, LLC*

Hon. Carlton W. Reeves, District Judge

**RECEIVER’S OPPOSITION TO BAKER DONELSON’S
MOTION FOR RECONSIDERATION**

Alysson Mills, in her capacity as the court-appointed receiver for Arthur Lamar Adams and Madison Timber Properties, LLC (the “Receiver”), through undersigned counsel, respectfully opposes the motion for reconsideration¹ filed by Defendant Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. (“Baker Donelson”).

¹ Doc. 77.

Introduction

On May 5, 2021 this Court entered an order² denying Baker Donelson’s motion to dismiss the Receiver’s complaint. The complaint asserts claims against Baker Donelson for aiding and abetting; civil conspiracy; recklessness, gross negligence, and at a minimum negligence; and for negligent retention and supervision. It also alleges Baker Donelson is vicariously liable for the acts of its agents Brent Alexander and Jon Seawright.

Baker Donelson does not ask the Court to reconsider its entire order, only its holding as to Baker Donelson’s vicarious liability. Baker Donelson requests “the Court enter a revised order, holding that the facts alleged in the Amended Complaint do not state a claim that Baker Donelson is vicariously liable for the actions of Alexander and Seawright.”³

According to Baker Donelson, the Court’s holding as to Baker Donelson’s vicarious liability relies on facts that the Receiver has not alleged.

Baker Donelson misreads the Court’s order and the Receiver’s complaint.

Baker Donelson misreads the Court’s order.

Baker Donelson contends the Court’s holding relies on three facts which Baker Donelson disputes: 1) Alexander and Seawright used “the firm’s escrow account”; 2) the Alexander Seawright Timber Fund was “part and parcel of a bundle of services Baker Donelson provided to its preferred transactional clients”; and 3) the Alexander Seawright Timber Fund “served Baker Donelson’s interests.”⁴

The Court’s order does refer to those three facts, but Baker Donelson mischaracterizes the Court’s holding to the extent that it contends that the holding relies on those three facts only.

² Doc. 70.

³ Doc. 78 at 2.

⁴ Doc. 78 at 2.

Relevant to Baker Donelson’s vicarious liability for the actions of Alexander and Seawright, the Court’s order refers to numerous other facts which Baker Donelson’s motion for reconsideration does not dispute:

- “Baker Donelson is a regional law firm that employed Alexander and Seawright in its Jackson, Mississippi office. Alexander was (and is) a ‘Senior Public Policy Advisor’ at the firm. Seawright was (and is) a transactional attorney and shareholder of the firm.FN2 Alexander and Seawright own Alexander Seawright LLC. The LLC was an investment company that the pair ran out of their Baker Donelson offices.

FN2 At the time the Ponzi scheme collapsed, Seawright was on the firm’s Board of Directors.”⁵

- “Alexander and Seawright used Baker Donelson connections and assets to identify wealthy persons looking for investment opportunities, like Baker Donelson clients.”⁶
- “The scheme looked more stable than it was because Baker Donelson was involved. Alexander and Seawright ran the scheme out of their Baker Donelson offices. They described it as a ‘friends and family’ fund for preferred Baker Donelson partners and clients. Seawright, a transactional attorney, drafted subscription agreements and other investment documents, and sent them to Adams from his Baker Donelson email account. The pair also targeted clients who had recently closed transactions with the firm.”⁷
- “[O]ther Baker Donelson attorneys referred new victims to Alexander and Seawright, generating clients, while the firm’s runners were used to pick up investors’ checks, serving the clients. Baker Donelson let Alexander and Seawright use the firm’s offices for presentations, meetings, and ‘closings.’ The Receiver claims that ‘numerous’ other Baker Donelson employees worked with Adams ‘for the purpose of finalizing investments in Madison Timber.”⁸
- “[T]hese services occurred during Baker Donelson’s working hours and in its offices ...”⁹

⁵ Doc. 70 at 2.

⁶ Doc. 70 at 3.

⁷ Doc. 70 at 3.

⁸ Doc. 70 at 4.

⁹ Doc. 70 at 8.

- “Far from being an unaffiliated frolic, the receiver’s allegations regarding consistent, repeated use of Baker Donelson staff and resources—most glaringly [but not exclusively], the firm’s escrow account—suggest that there was knowledge of and some benefit to the firm from knowingly facilitating Alexander and Seawright’s investment activities.”¹⁰

In short, setting aside the three facts which Baker Donelson specially disputes, there remain numerous other facts that are sufficient—standing alone but certainly taken together—to state a claim for Baker Donelson’s vicarious liability. This case is entirely distinguishable from the case Baker Donelson repeatedly cites, *Baker Donelson Bearman Caldwell & Berkowitz, P.C. v. Seay*, 42 So. 3d 474 (Miss. 2010). In that case the court held a Baker Donelson shareholder’s affair with a client’s wife was outside the scope of his employment. A romantic affair is “the quintessential example of an activity that is for purely personal benefit and outside the scope of employment.” *Seay*, 42 So. 3d at 488. This case does not involve a private romantic affair between two persons, one of them a Baker Donelson employee. It involves an investment scheme run by two Baker Donelson employees (one on the firm’s Board of Directors) out of Baker Donelson’s office, with the knowledge and assistance of Baker Donelson personnel, and for the benefit of numerous individuals including Baker Donelson clients and partners.

Baker Donelson misreads the Receiver’s complaint.

Baker Donelson contends the Receiver’s complaint does not even allege the three facts which Baker Donelson specially disputes. The Receiver addresses each in turn.

- 1) Alexander and Seawright used “the firm’s escrow account.”

The Receiver’s complaint alleges Alexander and Seawright used “the firm’s escrow account”:

¹⁰ Doc. 70 at 9.

- Seawright (in an email sent from his Baker Donelson email account) told a Baker Donelson client: “We would be responsible for papering everything, liaison with Lamar, monitoring process of sale of timber, acquisition of timber rights, proper recording of documents, etc., distribution of loan repayments and otherwise managing the investment.” Seawright added that “running funds through us or BD escrow is not a problem” and all “legal and other expenses” would “come out of our share.” (Paragraph 74)
- “Baker Donelson allowed Alexander and Seawright to target clients of Baker Donelson for whom Baker Donelson had recently closed transactions. In such instances, Baker Donelson allowed Alexander and Seawright to encourage client’s investments by representing that they would ‘run[] funds’ through ‘BD [Baker Donelson] escrow.’” (Paragraph 89)

Baker Donelson contends that the Receiver already “knows how Alexander and Seawright collected money and which accounts the funds passed through. She appears to have tracked those dollars in performing her loss calculations. With the benefit of that knowledge, the Receiver stops short of alleging that even a single dollar ever touched Baker Donelson’s escrow account.”¹¹ Actually, the Receiver does not know which accounts Alexander Seawright investors’ funds passed through before they made it to Madison Timber. The Receiver has obtained records from numerous parties, but not yet from Baker Donelson.

What the Receiver does know: Jon Seawright told a Baker Donelson client, in writing, that “running funds through us or BD escrow is not a problem.” His email leaves no doubt that he believed using the firm’s escrow account was “not a problem.” Only discovery will show whether the firm’s escrow account in fact transacted with the Alexander Seawright Timber Fund.

Either way, if a shareholder believes using the firm’s escrow account is “not a problem,” it follows that the shareholder believes he has the firm’s blessing. That is, the firm knows what the shareholder is doing and does not object. Baker Donelson cannot credibly contend it did not know what Seawright (a member of the firm’s Board of Directors!) was doing. Nor can it credibly

¹¹ Doc. 78 at 4.

contend that Seawright misled the firm. If Seawright had misled the firm, it would not have permitted him to remain a shareholder, which it did until he was indicted last month.

- 2) The Alexander Seawright Timber Fund was “part and parcel of a bundle of services Baker Donelson provided to its preferred transactional clients.”

At all relevant times, Alexander and Seawright were a lobbyist and shareholder of Baker Donelson, and they pitched the Alexander Seawright Timber Fund to Baker Donelson clients in Baker Donelson’s offices. Among other things, the Receiver’s complaint alleges:

- Alexander and Seawright “pitched the first investment to a client of Baker Donelson.” (Paragraph 74)
- Alexander and Seawright “pitched their fund to potential investors, including Baker Donelson clients, as an exclusive ‘friends and family’ fund.” Alexander told potential investors “many of the attorneys at Baker Donelson” were in it. (Paragraph 78)
- Alexander and Seawright “specifically targeted individuals [Baker Donelson clients] who had recently sold assets because they knew those individuals had money to invest. Such individuals included clients for whom Baker Donelson had recently closed transactions.” (Paragraph 81)
- Alexander and Seawright “did not operate their fund separately from the business of the law firm. Investors reasonably believed that their investment in Madison Timber, through Alexander and Seawright’s fund, was backed and promoted by, and had been vetted by, Baker Donelson.” (Paragraph 82)
- Alexander and Seawright “relied heavily on their affiliation with Baker Donelson to recruit investors. Alexander and Seawright described their fund to potential investors who were clients of Baker Donelson as a ‘friends and family’ fund for preferred Baker Donelson partners and clients.” (Paragraph 83)
- Alexander and Seawright “referred potential investors to Baker Donelson’s website, which showed that Jon Seawright is not merely a shareholder in Baker Donelson’s Jackson office but an elected member of the firm’s national governing Board of Directors. Baker Donelson is a law firm, not an investment advisory firm, but its website touts Jon Seawright’s advanced degree in taxation, ‘extensive experience’ in business development and capital formation, and ‘Securities’ and ‘Emerging Companies’ practices. Baker Donelson’s website presents Brent Alexander as a ‘Senior Public Policy Advisor’ and a

- ‘Broker-Dealer/Investment Adviser’ who is qualified by regulators to serve as a principal in, or advisor to, hedge funds and who has a ‘rapidly growing’ practice in ‘advising venture capital and related investors.’” (Paragraph 84)
- Baker Donelson “knew Alexander and Seawright relied on their affiliation with Baker Donelson to recruit investors, and Baker Donelson allowed it.” (Paragraph 85)
 - Baker Donelson “allowed Alexander and Seawright to pitch their fund as a ‘friends and family’ fund for preferred Baker Donelson partners and clients. Baker Donelson allowed Alexander and Seawright to use their affiliation with Baker Donelson in their fund’s pitchbook.” (Paragraph 86)
 - Baker Donelson “allowed Alexander and Seawright to use Baker Donelson’s Jackson office’s address for official business. Baker Donelson allowed [Lamar] Adams, Alexander, and Seawright to hold ‘closings’ at Baker Donelson’s Jackson office and to use Baker Donelson’s runners to pick up investors’ checks. Baker Donelson allowed Alexander and Seawright to use Baker Donelson’s conference rooms to make presentations to potential investors, accountants, and advisors.” (Paragraph 87)
 - Baker Donelson shareholders, “including in offices in other states, referred potential investors to Alexander and Seawright. When Alexander and Seawright asked their Baker Donelson colleagues to ‘[h]elp us get a meeting if you’re able,’ adding ‘[i]f you can get us in the door, it would mean a great deal,’ their Baker Donelson colleagues obliged.” (Paragraph 88)
 - Baker Donelson “allowed Alexander and Seawright to target clients of Baker Donelson for whom Baker Donelson had recently closed transactions. In such instances, Baker Donelson allowed Alexander and Seawright to encourage clients’ investments by representing that they would ‘run[] funds’ through ‘BD [Baker Donelson] escrow.’” (Paragraph 89)
 - Investors “were led to believe that they could rely on Alexander and Seawright to evaluate each investment using their professional expertise and judgment, which was backed by Baker Donelson’s reputation.” (Paragraph 92)
 - In late 2017 Alexander and Seawright “secured a ‘key investor’ to ‘seed’ Alexander Seawright Timber Fund II, LLC with \$6 million.” (Paragraph 116)
 - “The ‘key investor’ was a Baker Donelson client who would fund his investment with the proceeds from the sale of a major asset. Seawright represented him in the sale.” (Paragraph 117)

Baker Donelson contends that “[t]he most the Receiver alleges is that Alexander and Seawright ‘pitched’ the investment to ‘potential investors’ among the firm’s clients”—not that Alexander or Seawright “provided legal or public-policy advice to [ultimate] investors.”¹² Respectfully, because every firm client receives some “legal or public-policy advice” from the firm, any firm client who became an investor necessarily also received some “legal or public-policy advice” from the firm.

One such client-investor spoke at a recent hearing before this Court. He “thought he was being ‘invited to the club’ of a Baker Donelson-run investment opportunity.” His remarks explain how the firm and the investment overlapped:

Seawright and another Baker lawyer had helped him and a doctor sell a healthcare business. Seawright later presented him with an investment opportunity for proceeds of the deal.

“After we closed the transaction, Seawright was pitching us to be involved in an exclusive investment at Baker Donelson,” he said.

Rather than hire accountants and others to vet the deal, [he] said, ‘the fact that this was Baker Donelson and two partners, we made two phone calls. We just didn’t do any other [due diligence] work.’¹³

Discovery will show how many client-investors shared his experience, and how many investors who were not clients nevertheless viewed Baker Donelson’s affiliation “to the good.”

Baker Donelson complains that “the Receiver does not set forth the factual basis for the Receiver’s belief that ‘numerous’ employees of Baker Donelson worked with Adams.”¹⁴ But Paragraph 91 expressly alleges: “Baker Donelson has compiled records showing numerous of its employees had contact with Adams for the purpose of finalizing investments in Madison Timber.

¹² Doc. 78 at 4-5.

¹³ Strickler, Andrew, *Law360*, May 17, 2021, “Timber Scam Victim Says Baker Donelson Lured Him In,” available at <https://www.law360.com/articles/1382535/timber-scam-victim-says-baker-donelson-lured-him-in> (last visited June 10, 2021).

¹⁴ Doc. 78 at 5.

Baker Donelson did not produce these records in response to the Receiver's request of it for records in its possession relating to Madison Timber." Baker Donelson does not dispute that such records exist. Such records are, of course, a proper subject of discovery.

3) The Alexander Seawright Timber Fund "served Baker Donelson's interests."

To the Receiver's knowledge, Madison Timber did not pay Baker Donelson for its services or for the use of its resources. That fact, to which Baker Donelson frequently points, distinguishes Baker Donelson from its co-defendant Butler Snow.

But it does not follow that Baker Donelson gained nothing from the Alexander Seawright Timber Fund. The Receiver's complaint alleges facts from which it may be easily inferred that the Alexander Seawright Timber Fund "served Baker Donelson's interests." Baker Donelson "knew Alexander and Seawright relied on their affiliation with Baker Donelson to recruit investors, and [] allowed it" (Paragraph 85); "allowed Alexander and Seawright to pitch their fund as a 'friends and family' fund for preferred Baker Donelson partners and clients" (Paragraph 86); "allowed Alexander and Seawright to use Baker Donelson's Jackson office's address for official business" (Paragraph 87); "allowed [Lamar] Adams, Alexander, and Seawright to hold 'closings' at Baker Donelson's Jackson office and to use Baker Donelson's runners to pick up investors' checks" (Paragraph 87); "allowed Alexander and Seawright to use Baker Donelson's conference rooms to make presentations to potential investors, accountants, and advisors" (Paragraph 87); "referred potential investors to Alexander and Seawright" (Paragraph 88); and even "allowed Alexander and Seawright to target clients of Baker Donelson for whom Baker Donelson had recently closed transactions" (Paragraph 89). If the Alexander Seawright Timber Fund had disserved Baker Donelson's interests, Baker Donelson would not have encouraged it by permitting Alexander and Seawright to use Baker Donelson's personnel and resources. It is reasonable to infer that Baker

Donelson benefited from its affiliation with the Alexander Seawright Timber Fund because it enriched client relationships (as one client-investor described it, he felt “invited to the club”) and, by extension, was good for business.

CONCLUSION

The Court’s order made clear that its holding did not mean Baker Donelson *is* vicariously liable for Alexander and Seawright. “Suppose the evidence generated through discovery shows that Alexander and Seawright were truly out on their own, abusing their positions without their employer’s knowledge. In that case, Baker Donelson will have strong arguments at summary judgment.”¹⁵ Until then, Baker Donelson is not entitled to dismissal. The Court properly denied Baker Donelson’s motion to dismiss, and reconsideration is not warranted.

¹⁵ Doc. 70 at 14.

June 11, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of Court using the ECF system which sent notification of filing to all counsel of record.

June 11, 2021

/s/ Brent B. Barriere _____