

**IN THE UNITED STATES DISTRICT COURT
FOR THE 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 et al.,

Defendants.

Case No. 3:18-cv-00866-CWR-FKB

Hon. Carlton W. Reeves

ORAL ARGUMENT REQUESTED

**REPLY IN SUPPORT OF BAKER DONELSON’S MOTION FOR RECONSIDERATION
OR TO ALTER OR AMEND PURSUANT TO RULE 59(e)**

The Receiver’s opposition suggests there are only “three facts” in the Amended Complaint that “Baker Donelson disputes.” Opp’n, ECF No. 82, at 2. Not so. Baker Donelson disputes many of the Receiver’s allegations and is confident the evidence will show they are untrue. A motion to dismiss simply is not the forum to test those facts. The problem for the Receiver, however, is that her arguments rely on facts she does not and cannot in good faith allege. Alexander and Seawright did not use the firm’s escrow account. The Alexander Seawright Timber Fund was not “part and parcel” of the services Baker Donelson offers its clients. And that timber fund did not serve Baker Donelson’s interests. The Amended Complaint does not allege otherwise.

I. The Amended Complaint Does Not Allege Alexander and Seawright Used Baker Donelson’s Escrow Account.

The Receiver tacitly concedes the Amended Complaint does not allege that Alexander and Seawright used the Baker Donelson escrow account. The most she can muster is a single email from Seawright, in which he writes that using the account ““is not a problem.”” Opp’n 5

(quoting AC ¶ 74). The Receiver does not allege that Seawright’s statement was correct—she does not allege that Seawright actually had permission to use the account, that he attempted to use the account, or that any funds ever passed through the account. One person saying on one occasion that something “is not a problem” is a far cry from alleging that thing ever happened.

To excuse the shortcoming in her complaint, the Receiver protests that she “does not know which accounts Alexander Seawright investors’ funds passed through before they made it to Madison Timber.” Opp’n 3. That is both inaccurate and problematic. The Receiver does know which accounts those funds passed through. Alexander and Seawright collected funds into Alexander Seawright Timber Fund I, LLC and from there invested in Madison Timber. *See* AC ¶ 73. She has records from Alexander Seawright LLC. *See* Opp’n 5. A simple review of those records would have confirmed that no funds arrived from the Baker Donelson escrow account. In any event, the Amended Complaint does not allege that a single dollar ever passed through Baker Donelson’s accounts.

II. The Amended Complaint Does Not Allege Alexander Seawright Timber Fund I, LLC Was a Service That Baker Donelson Provided to Clients.

Baker Donelson is a law firm. Jon Seawright is an attorney. Brent Alexander is a public-policy advisor. Together, they provided legal and public-policy advice to clients of the firm. Baker Donelson is not an investment firm, and its employees do not provide investment services to its clients. The Receiver attempts to bridge the chasm between those services with a non-sequitur: “[B]ecause every firm client receives some ‘legal or public-policy advice’” from the firm,” she argues, “any firm client who became an investor necessarily also received some ‘legal or public-policy advice’ from the firm.” Opp’n 8. That is nonsensical. There is no allegation that Alexander Seawright Timber Fund I, LLC provided legal or public-policy advice, and it did not. The timber fund’s investment activity had nothing to do with the firm’s legal advice and

was not a “service” the firm provided for clients. The Amended Complaint does not allege otherwise.

III. The Amended Complaint Does Not Allege Alexander Seawright Timber Fund I, LLC Served Baker Donelson’s Interests.

The Receiver concedes that Lamar Adams and Madison Timber were not clients of the firm and that the firm did not receive a penny from either. Opp’n 9. The Receiver likewise concedes that Baker Donelson did not profit from Alexander and Seawright’s independent investment venture. *Id.*

To paper over those shortcomings in her theory, the Receiver takes liberties with her allegations. She argues in her opposition that Baker Donelson “encouraged” Alexander and Seawright Timber Fund I, LLC. Opp’n 9. The Amended Complaint never says the firm did so. The Receiver also attempts to shift the burden: If the timber fund “had disserved Baker Donelson’s interests,” she argues, then the firm would have acted differently. *Id.* The Receiver is not entitled to such speculation. She must allege facts sufficient to support her affirmative case. If the Amended Complaint met that burden, her opposition would have been straightforward—she could simply have pointed to the paragraphs that allege the facts at issue. At ten pages, however, her opposition proves the opposite: The Amended Complaint does not allege the facts on which the Court’s Order denying Baker Donelson’s motion to dismiss relied.

CONCLUSION

Baker Donelson respectfully asks the Court to reconsider its Order and hold that the facts alleged in the Amended Complaint do not state a claim for vicarious liability against Baker Donelson because Alexander’s and Seawright’s personal business activities were outside the scope of their employment and not on behalf of the firm.

Dated this 14th day of June, 2021

Respectfully submitted,

**BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ PC**

/s/ Craig D. Singer

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CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2021, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

/s/ Craig D. Singer
Craig D. Singer