

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

LEVI LUBARSKY & FEIGENBAUM LLP,

Plaintiff,

-against-

FORD F. GRAHAM, VULCAN CAPITAL
CORPORATION, LLC, VULCAN CAPITAL
MANAGEMENT, INC., and OTHER VULCAN
ENTITIES 1-99,

Defendants.

Index No.
Date Purchased:.

SUMMONS

12100650

Plaintiff Designates New York
County as the Place of Trial

Basis of Venue: Plaintiff's
Principal Office (CPLR § 503(d))

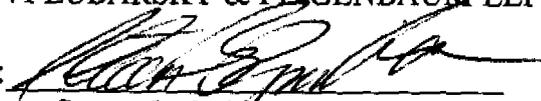
TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Verified Complaint in this action and to serve on plaintiff *pro se*, at its address stated below, a copy of your verified answer within 20 days after service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if the Summons is not personally delivered to you within the State of New York). If you fail to appear or answer, judgment will be taken against you by default for the relief demanded in the Verified Complaint.

Dated: New York, New York
January 19, 2012

LEVI LUBARSKY & FEIGENBAUM LLP

By:



Steven B. Feigenbaum
Adam D. Weiss

1185 Avenue of the Americas, 17th Floor
New York, New York 10036
(212) 308-6100
Plaintiff Pro Se

FILED

JAN 20 2012
COUNTY CLERK'S OFFICE
NEW YORK

DEFENDANTS' ADDRESSES:

FORD F. GRAHAM
260 Prospect Avenue
Princeton, New Jersey 08540

VULCAN CAPITAL CORPORATION, LLC
150 East 52nd Street
New York, New York 10022

VULCAN CAPITAL MANAGEMENT, INC.
150 East 52nd Street
New York, New York 10022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

LEVI LUBARSKY & FEIGENBAUM LLP,

Plaintiff,

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Index No.

VERIFIED COMPLAINT

Plaintiff Levi Lubarsky & Feigenbaum LLP (“LLF”), for its complaint against defendants Ford F. Graham (“Graham”), Vulcan Capital Corporation, LLC (“Vulcan Capital”), Vulcan Capital Management, Inc. (“Vulcan Management” and, with Vulcan Capital, the “Vulcan Entities”), and Other Vulcan Entities 1-99 (“Other Vulcan Entities”), alleges as follows:

NATURE OF THE ACTION

1. By this action, LLF seeks to recover \$31,875.37 in unpaid attorneys’ fees and expenses incurred for legal services that it rendered in late 2010 and early 2011 to Graham and the Vulcan Entities, both of which are part of a family of private equity investment firms that go by the “Vulcan” name. Graham is Vulcan Management’s Managing Partner and is also a principal and officer of Vulcan Capital. Although Graham and the Vulcan Entities agreed under their respective engagement letters with LLF to pay for LLF’s services at the firm’s then-existing rates, they ultimately paid for only a fraction of those services, leaving outstanding multiple invoices that LLF had sent monthly to Graham.

2. Graham, on behalf of himself and Vulcan, repeatedly acknowledged to LLF the validity and amount of LLF's outstanding invoices. Yet to date neither he, the Vulcan Entities nor any of the Other Vulcan Entities has paid the balance due and owing.

THE PARTIES

3. Plaintiff LLF is a law firm organized as a limited liability partnership under the laws of New York. LLF has its principal office at 1185 Avenue of the Americas, New York, New York 10036.

4. Upon information and belief, defendant Graham is a resident of New Jersey. Upon information and belief, Graham is the Managing Partner of defendant Vulcan Management and a principal and officer of defendant Vulcan Capital. According to Vulcan Management's website, Graham is "a founding General Partner of the Vulcan Partners family of funds and portfolio companies." Graham is believed to be the principal of, and otherwise to have sole control over, most or all of the entities within the Vulcan family of funds, including the Other Vulcan Entities.

5. Upon information and belief, defendant Vulcan Capital is a corporation organized and existing under the laws of Delaware, with its principal place of business at 150 East 52nd Street, New York, New York 10022.

6. Upon information and belief, defendant Vulcan Management is a corporation organized and existing under the laws of Delaware, with its principal place of business at 150 East 52nd Street, New York, New York 10022. Upon information and belief, Vulcan Management manages a family of Vulcan investment funds that focus primarily on energy-related investments. Vulcan Capital is believed to be part of the Vulcan family of funds.

7. Defendants Other Vulcan Entities, as defined in this complaint, are any other Vulcan-affiliated entities that were not specifically identified in LLF's engagement letter with the Vulcan Entities, but that were intended to be covered by the engagement to the extent they were brought into the dispute that was the subject of defendants' engagement of LLF.

8. In accordance with Part 137 of the Rules of the Chief Administrator of the Courts, LLF served Graham, on behalf of himself and the Vulcan Entities, with a "Notice of Client's Rights to Arbitrate a Dispute Over Attorneys Fees," together with copies of the Standard Written Instructions and Procedures to Clients for the Resolution of Fee Disputes Pursuant to Part 137 of the Rules of the Chief Administrator, a "Client Request for Fee Arbitration" form, the Joint Committee on Fee Disputes and Conciliation Attorney-Client Fee Dispute Resolution Program Local Program Rules, and a notice from the Joint Committee on Fee Disputes and Conciliation. None of the defendants filed a timely request for arbitration.

THE FACTS

9. On or about October 28, 2010, Graham and the Vulcan Entities, through Graham, entered into engagement letters with LLF under which LLF rendered legal advice to defendants on matters relating to the then-pending personal bankruptcy proceeding of Kevin Davis ("Davis"). Davis had long been Graham's business partner and a principal and officer of many of the entities within the Vulcan family. According to Graham, however, he and Davis had essentially split up several months earlier, and Davis was no longer working at the Vulcan Entities' Manhattan office.

10. As set forth in their respective engagement letters, in consideration of LLF's legal services, Graham and the Vulcan Entities agreed to pay for LLF's services at its

then-prevailing hourly rates, as well as reimburse LLF for disbursements incurred on defendants' behalf. At the outset of the representation, Graham paid LLF a \$15,000 retainer.

11. Pursuant to its engagement letters, LLF for some five months performed a variety of legal services for Graham and the Vulcan Entities, all of which related to Davis. Most of those services related specifically to what was then an anticipated adversary proceeding that the Trustee in the Davis bankruptcy was threatening to file in the Bankruptcy Court for the Southern District of New York against Graham, the Vulcan Entities, and various other individuals and Vulcan funds. LLF's services included, among other things, meetings, telephone calls and email exchanges with Graham to get background information, discuss particular documents, and address strategic matters; obtaining and reviewing the clients' relevant documents; meetings, telephone calls and email exchanges with counsel for the Davis bankruptcy trustee; and the review and analysis of the trustee's draft complaint, before the adversary proceeding was brought.

12. Once the trustee's adversary proceeding was filed, Graham originally requested that LLF represent him and the other defendants in the proceeding. But Graham ultimately selected a different law firm to appear as counsel of record in the proceeding, and LLF's representation of Graham and the Vulcan Entities at that point ended.

13. Throughout its representation of defendants, LLF sent monthly invoices for its services to Graham, both in his individual capacity and as representative of the Vulcan Entities. By the time LLF ceased work for defendants, and the representation concluded, LLF's outstanding bills had amounted to, and had a value of, \$46,875.37. Of that amount, only \$15,000 has ever been paid, leaving a balance due and owing of \$31,875.37, plus pre-judgment interest

since the date the last invoice was rendered. Of the outstanding balance, \$31,715.55 was for fees, and \$159.82 was for disbursements.

14. LLF's specific invoices, to which neither Graham nor anyone else on behalf of Graham or the Vulcan Entities ever objected, are as follows:

- a. On December 10, 2010, an invoice was rendered to Graham in the amount of \$26,914.55;
- b. On January 20, 2011, an invoice was rendered to Graham in the amount of \$15,773.39;
- c. On February 18, 2011, an invoice was rendered to Graham in the amount of \$1,457.50;
- d. On March 15, 2011, an invoice was rendered to Graham in the amount of \$1,246.00; and
- e. On April 12, 2011, an invoice was rendered to Graham in the amount of \$1,483.93.

15. In the months after LLF's representation of defendants ceased, Steven B. Feigenbaum of LLF spoke and emailed often with Graham about LLF's outstanding invoices, and Graham repeatedly acknowledged the validity of the invoices and the legal services underlying them. Among those acknowledgments were the following:

- a. In a telephone conversation between LLF and Graham on May 5, 2011, which was memorialized by email later that day, Graham acknowledged that he and the Vulcan Entities were indebted to LLF in the amount of \$31,875.37, and that the outstanding balance would be wired to LLF on or before May 10, 2011.

b. In a telephone conversation between LLF and Graham on July 12, 2011, which was memorialized by email on July 14, Graham acknowledged that he and Vulcan were indebted to LLF in the amount of \$31,875.37, and that the outstanding balance would be wired to LLF on or before July 15, 2011.

c. In a telephone conversation between LLF and Graham on July 29, 2011, which was memorialized by an exchange of emails on August 19, Graham acknowledged that he and Vulcan were indebted to LLF in the amount of \$31,875.37, and that the invoices “should have been paid long ago.”

d. In an email to LLF dated October 18, 2011, Graham stated that he would provide “timing for getting you [LLF] taken care of” as soon as he concluded a deal that was then near completion.

16. LLF’s legal services were rendered to, and were for the benefit of, both Graham individually and the Vulcan Entities. Graham, Vulcan Capital and Vulcan Management are accordingly jointly and severally liable for the outstanding balance of LLF’s invoices. Any of the Other Vulcan Entities ultimately found to have been covered by LLF’s services are likewise jointly and severally liable for the outstanding balance of LLF’s invoices.

FIRST CAUSE OF ACTION
(For Breach of Contract)

17. LLF repeats and realleges the allegations in paragraphs 1 through 16 as if they were fully set forth herein.

18. Defendants have breached their engagement letters with LLF by not paying the amount due and owing to LLF on its outstanding invoices.

19. As a result, Graham, Vulcan Capital and Vulcan Management are jointly and severally liable to LLF, for breach of contract, in the amount of \$31,875.37, together with pre-judgment interest since April 12, 2011, the date on which LLF's last invoice was rendered.

SECOND CAUSE OF ACTION
(For Quantum Meruit)

20. LLF repeats and realleges the allegations in paragraphs 1 through 16 as if they were fully set forth herein.

21. LLF performed legal services for Graham, Vulcan Capital and Vulcan Management at Graham's request and for defendants' benefit. Those services have a fair and reasonable value of \$46,875.37, of which defendants have paid LLF only \$15,000, leaving an outstanding balance of \$31,875.37.

22. As a result, Graham, Vulcan Capital and Vulcan Management are jointly and severally liable to LLF, for quantum meruit, in the amount of \$31,875.37, together with pre-judgment interest since April 12, 2011, the date on which LLF's last invoice was rendered.

THIRD CAUSE OF ACTION
(For Account Stated)

23. LLF repeats and realleges the allegations in paragraphs 1 through 16 as if they were fully set forth herein.

24. At Graham's specific requests, LLF performed legal services for Graham and the Vulcan Entities and made disbursements on their behalf. Defendants reaped the benefit of LLF's services, for which they agreed to pay LLF at the firm's then-existing hourly rates. Defendants also agreed to reimburse LLF for its disbursements made on their behalf.

25. As set forth in paragraph 14 above, LLF sent monthly invoices for its services to Graham, both in his individual capacity and as representative of the Vulcan Entities.

Graham never contested or objected to LLF's invoices or the legal services underlying them. He instead repeatedly acknowledged the validity of LLF's invoices and said that full payment would be forthcoming, though it ultimately never was.

26. As a result, Graham, Vulcan Capital and Vulcan Management are jointly and severally liable to LLF, for account stated, in the amount of \$31,875.37, together with pre-judgment interest since April 12, 2011, the date on which LLF's last invoice was rendered.

FOURTH CAUSE OF ACTION
(For Unjust Enrichment)

27. LLF repeats and realleges the allegations in paragraphs 1 through 16 as if they were fully set forth herein.

28. Defendants would be unjustly enriched if they were allowed to benefit from the services provided to them by LLF without paying for the fair and reasonable value of those services.

29. As a result, defendants are jointly and severally liable to LLF, for unjust enrichment, in the amount of \$31,875.37, together with pre-judgment interest since April 12, 2011, the date on which LLF's last invoice was rendered.

WHEREFORE, LLF requests the entry of a judgment against Graham, Vulcan Capital and Vulcan Management, on a joint and several basis, as follows:

1. On each of the four causes of action, awarding LLF damages in the amount of \$31,875.37, together with pre-judgment interest from April 12, 2011, the date of the last invoice rendered by LLF;
2. Awarding LLF its costs and expenses in this action; and

3. Awarding LLF such other and further relief as the Court deems just and proper.

Dated: New York, New York
January 19, 2012

LEVI LUBARSKY & FEIGENBAUM LLP

By: 

Steven B. Feigenbaum

Adam D. Weiss

1185 Avenue of the Americas, 17th Floor

New York, New York 10036

(212) 308-6100

Plaintiff *Pro Se*

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ANDREA LIKWORNIK WEISS, being duly sworn, deposes and says:

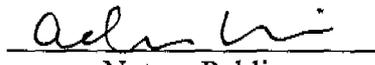
1. I am a member of the law firm of Levi Lubarsky & Feigenbaum LLP, plaintiff *pro se* in this action.

2. I have read the foregoing Verified Complaint and know the contents thereof. The complaint is true and accurate to my own knowledge, except as to the matters alleged upon information and belief, as to which I believe them to be true.



Andrea Likwornik Weiss

Sworn to before me this
19 day of January, 2012



Notary Public

**ADAM WEISS
NOTARY PUBLIC - STATE OF NEW YORK
NO. 02WE6133689
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES SEPTEMBER 19, 2013**

ORIGINAL

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**SUMMONS
VERIFIED COMPLAINT**

LEVI LUBARSKY & FEIGENBAUM LLP
Attorneys for

Plaintiff

1185 AVENUE OF THE AMERICAS
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NEW YORK, NEW YORK 10036
(212) 308-6100

COUNTY CLERK'S OFFICE
NEW YORK
JAN 20 2012

FILED