CAUSE NO. 10-11915

JEFF BARON, Plaintiff, v. GERRIT M. PRONSKE, INDIVIDUALLY AND PRONSKE & PATEL, P.C. Defendants.	§ § § § § § § § § §	IN THE DISTRICT COURT, DALLAS COUNTY, TEXAS 193rd JUDICIAL DISTRICT

PLAINTIFF'S MOTION TO STRIKE INTERVENTION

COMES NOW Jeffrey Baron ("Baron"), and files *Plaintiff's Motion to Strike Pleas in Intervention of Lyon and Taylor* and would respectfully show the Court as follows:

1. On July 3, 2014, Gary Lyon ("Lyon") filed a Plea in Intervention

2. On May 8, 2014, Powers Taylor, LLP ("Taylor") filed a Plea in Intervention (Collectively, Lyon, Taylor are hereinafter referred to as the "Interveners")

3. Gary Lyon is a client of Defendants Gerrit Pronske and PGK. Mr Lyon, not licensed by the state Bar of Texas, entered into a written contract with Mr. Baron to provide legal services in the state of Texas. In 2010, Mr. Lyon released all claims against Baron and executed an accord and satisfaction with Mr. Baron. Despite this agreement and release, Mr. Lyon made a fraudulent claim in the receivership action along with Defendants Pronske and PGK, falsely claiming $____ against Mr. Baron. After being rebuffed by the 5th Circuit Court of Appeals in December 2012, Mr. Lyon took his same fraudulent claim to the bankruptcy court, filing an involuntary bankruptcy petition against Baron. The petition was dismissed for lack of standing.

4. Taylor and Powers is a client of Defendants Gerrit Pronske and PGP. Taylor and Powers represented Baron in a civil action. Taylor and Powers have a written engagement agreement with Baron and have been paid in full in accordance with the agreement. Taylor and Powers sent Baron confirmation that they considered Baron to have fully complied with the agreement. After being solicited by Lyon and Pronske, Taylor made a groundless claim in the bankruptcy court and in the receivership action suddenly alleging an additional $_____ in fees. After being rebuffed by the 5th Circuit Court of Appeals in December 2012, Taylor took his same groundless claim to the bankruptcy court, filing an involuntary bankruptcy petition against Baron. The petition, like his claim in the receivership was dismissed for lack of standing.

5. A suit is currently pending in the bankruptcy court against Mr. Lyon, Mr. Taylor and Mr. Pronske for attorney fees and damages resulting from their bad faith filing of the involuntary bankruptcy against Baron. Defendants Pronske and PGK represent Mr. Lyon and Mr. Taylor in the bankruptcy court suit.

6. As much as Defendants Pronske and PGK desire them to participate and complicate this proceeding, the Intervenors do not have standing to intervene. An intervening party must demonstrate a "justicable interest" in the pending suit. *In re Union Carbine Corp*., 273 S.W.3d 152, 155 (Tex. 2008); *Mendez v. Brewer*, 626 S.W.2d 498, 499 (Tex. 1982); *Zeifman v. Michels*, 229 S.W.3d 460, 464 (Tex. App.-Austin 2007, pet. denied). The Intervenors have not and cannot do so.

7. The Texas Supreme Court explained the "justiciable interest" requirement: "Because intervention is allowed as a matter of right[1], the "justiciable interest" requirement is of paramount importance: it defines the category of non-parties who may, without consultation with or permission from the original parties or the court, interject their interests into a pending suit to which the intervenors have not been invited" *Union Carbide* at 154-55 (internal citations omitted) (emphasis added).

8. In *Union Carbide*, the Texas Supreme Court had an opportunity to examine an intervention similar to that of the Interveners in this case. In rejecting such intervention, the Court explained that disruptive interlopers are not entitled to intervene in a cause, keenly observing that "[t]he intervenor's interest must be such that if the original action had never been commenced, and he had first brought it as the sole plaintiff, he would have been entitled to recover in his own name to the extent at least of a part of the relief sought" in the original suit. *Id* quoting *King v. Olds*, 12 S.W. 65, 65 (Tex. 1888). "In other words, a party may intervene if the intervenor could have "brought the [pending] action, or any part thereof, in his own name." *Id* .

9. Here, the Intervenors are precisely the type of disruptive interlopers that the Supreme Court describes in *Union Carbide*[2]. The Interveners are entitled to bring their claims, provided

[1] Texas Rule of Civil Procedure 60 provides that "[a]ny party may intervene by filing a pleading subject to being stricken out by the court for sufficient cause on the motion of any party."

[2] "The justiciable interest requirement protects pending cases from having interlopers disrupt the proceeding. *Id.*

that they can overcome the standard for bringing frivolous claims, in new actions; however, they are not entitled to disrupt and complicate this proceeding by intervening [3]

For the forgoing reasons, Plaintiff prays that the Court strike Interveners Petition in Intervention.

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[3] Factors that a court may consider when faced with a motion to strike include whether the intervention will complicate the case by the "excessive multiplication of the issues" and whether the intervention is "almost essential to effectively protect the intervenor's interest." *Guaranty Fed Sav. Bank v. Horshoe Operating Co*., 793 S.W.2d 652, 657; see Law Offices of *Windle Turley, P.C. v. Ghiasinejad*, 109 S.W.3d 68, 72 (Tex. App.-Fort Worth 2003, no pet.) (court may consider "other avenues available" to protect intervenor's interest when determining whether intervention "almost essential").

CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2014 I served the above and foregoing by email and by electronically filing the foregoing with the Clerk of the Court using the Court's electronic filing system, which will send notification of such filing to:

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