

2021-28763 / Court: 061

CAUSE NO. _____

MICHAEL BOLSINGER,
Plaintiff

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IN THE DISTRICT COURT OF

v.

HARRIS COUNTY, TEXAS

HOUSTON ASTROS, LLC,
Defendant.

_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF THIS COURT:

Comes now Plaintiff, MICHAEL BOLSINGER ("Plaintiff") and files his Original Petition, complaining of Defendant HOUSTON ASTROS, LLC ("Defendant") and would respectfully show this Court as follows:

Discovery Control Plan

1. Discovery will be conducted pursuant to TEX. R. CIV. PROC. 190.4 Level 3.

Relief

2. Plaintiff seeks monetary relief over \$1,000,000. Tex. R. Civ. P. 47(c)(4).

Parties

3. Plaintiff, Michael Bolsinger, is a Texas resident.
4. Defendant Houston Astros, LLC is a Texas limited liability company and may be served with process through its registered agent, Corporate Creations Network, Inc., 5444 Westheimer #1000, Houston, Texas 77056.

Jurisdiction & Venue

5. This Court has jurisdiction over the subject matter of this action and the parties because the Defendant Houston Astros, LLC is at home in and has its primary place of business in Houston, Texas.

Facts

The Purchase of the Houston Astros

6. The Defendant Astros' 2017 malicious conduct find its origins in the massive debt used to acquire the team in 2011.

7. From the outset, the Defendant Astros were motivated to pay down substantial debt, refinance, and avoid costs such as the luxury tax. Ultimately, this was done by any means necessary. Indeed, the annualized percent increase in the value of the Astros following the 2017 World Series Season was approximately 17 percent or \$300 million with the team now worth approximately \$2 billion – a 200 percent increase in the value of the team since its acquisition seven years earlier. This massive financial windfall was the direct result of the sign-stealing scheme.

Michael Bolsinger

8. After three successful seasons as a starting pitcher at the University of Arkansas, Plaintiff Mike Bolsinger began his professional baseball career in 2010, when he was selected by the Arizona Diamondbacks in the 2010 MLB Players Draft.

9. For the next four years, Plaintiff Bolsinger found success as a starting pitcher at each level of the minor leagues and was promoted the following year of each season.

10. In the beginning of the 2014 minor league season in Triple A, Plaintiff Bolsinger pitched a dominant first two games and was then called up following his second start. As many rookies find in their first year in the MLB, Plaintiff Bolsinger found himself getting sent up and down throughout the season while still performing well at the minor league level and showing promise in the MLB. At the end of the season, his contract was purchased by the Los Angeles Dodgers that November.

11. In 2015, Plaintiff Bolsinger was called up in late April to make a start where he did very well but was sent down after the game. Plaintiff was called up again in early May, where in that month he won the Dodgers' pitcher of the month at the MLB level. Plaintiff continued to have huge success, and he was sent down to the minors at the beginning of August due to trades within the organization. He then got called back up on September 1st to the MLB for September call-ups and finished the year with a 3.62 ERA.

12. In 2016 by the end of Spring Training, Plaintiff Bolsinger had made the opening day roster with the Dodgers as one of the five starting pitchers, but unfortunately, an oblique injury sidelined him right before the season started. From there, Plaintiff Bolsinger rehabbed in Triple A and was called up to the MLB on May 18th for six starts that were tainted by the lingering injury. Plaintiff Bolsinger was sent back to Triple A one month later with the thought of transitioning into a long relief role. Shortly thereafter, he was traded to the Toronto Blue Jays as a starting pitcher where he spent the rest of 2016 in Triple A readjusting once again to his new role.

13. Plaintiff Bolsinger remained with the Toronto Blue Jays for the 2017 season where he finished spring training and was designated to Triple A to start the year. After a successful start to the year in Triple A, Plaintiff was called up as a starting pitcher for three weeks in May to then be designated to Triple A on May 31st. From there, it was determined that Plaintiff Bolsinger could have extreme success as a reliever, so he spent the next month of June transitioning to this new role in Triple A.

14. On July 3rd, Plaintiff was called up to MLB to begin his new journey as a reliever for the Toronto Blue Jays. After five optimistic outings of relief, Plaintiff would enter his 6th and final outing of relief against the Defendant Astros in Houston.

15. On August 4th, Plaintiff Bolsinger only saw .1 innings against the Astros. Plaintiff Bolsinger gave up four runs due to the Houston Astros' sign stealing scheme. This ultimately cost him his job, as he was immediately sent down to Triple A after the game never to be called up again.

16. At the time, the Blue Jays believed as a result of the disastrous inning that Plaintiff Bolsinger was not capable of being a relief pitcher, and other MLB scouts shared that view. For a journeyman pitcher in the MLB like Plaintiff, a disastrous inning, such as was what took place in Houston on August 4th, could and did prove to be the death knell to Plaintiff's career in the MLB.

17. Due to the inning against the Houston Astros, Plaintiff Bolsinger was no longer seen as a successful relief pitcher that could be trusted in this role and was not picked up by the Blue Jays for the following year.

18. After being demoted by the Blue Jays, Mr. Bolsinger continued to dominate in Triple A where he finished the year with a 1.70 ERA.

19. Plaintiff Bolsinger could not secure a role in the United States after this, so he opted to take a job in Japan with the Chiba Lotte Marines, a team in the Japanese professional baseball league, where he was considered one of the top pitchers in all of Japan for 2018. Plaintiff Bolsinger was selected to play in the All-Star game that year and received the highest winning percentage award for the year.

20. Plaintiff Bolsinger remained with the Chiba Lotte Marines to finish out his contract for 2019 and is currently a free agent hoping to secure a job in the United States for the 2021 season.

The Astros' Electronic Sign Stealing

21. Ironically, the 2017 Defendant Astros were widely praised at the time for their purported unprecedented technological innovations and analytic and algorithmic approach to baseball, which they touted to mask their illicit sign stealing.

22. Before the sign stealing scheme was uncovered, copious news articles and even full books were written about the 2017 Defendant Astros and their data-based approach to the game.

23. By way of example, a November 2, 2017 article in the *New Yorker* entitled “Long Wait, Great Win,” stated, “This Astros championship began with fresh ownership and management after 2013 and 2014, when the team suffered more-than-a-hundred loss seasons. Brilliant draft picks and front-office algorithm strategizing brought us this case of thrilling newcomers.”

24. The bestselling book *Astrobball – The New Way to Win It All* by Brett Reiter proclaimed to be a “story of the next wave of thinking in baseball and beyond, at once a remarkable underdog story and a fascinating look at the cutting edge of evaluating and optimizing human potential . . . *Astrobball* is the inside story of how a gang of outsiders went beyond the stats to find a new way to win—and not just in baseball.”

25. As it turned out, the “new way to win” the Defendant Astros utilized was the duplicitous and tortious scheme of sign-stealing, which was uncovered in November 2019.

26. On or around November 2019, Evan Drellich and Ken Rosenthal of *The Athletic* published an article detailing how the Houston Astros electronically stole signs during their 2017 season. Current Oakland Athletics pitcher Mike Fiers, who spent three seasons with the

Defendant Astros, went on the record and admitted that his former team had a tech-fueled sign-stealing scheme in 2017.

27. Shortly after the article came out, MLB launched an investigation. Major League Baseball Commissioner Rob Manfred released his findings on January 13, 2020 and confirmed that the Defendant Astros engaged in the sign-stealing scheme throughout the 2017 regular season and postseason and in early 2018. Defendant Astros' Manager A.J. Hinch was suspended and fired as was Defendant Astros' General Manager Jeff Luhnow. Subsequently, the New York Mets fired their Manager Carlos Beltran, a member of the Defendant Astros 2017 team, and the Boston Red Sox fired their Manager Alex Cora, the bench coach for the Defendant Astros when they illicitly stole signs.

28. The Defendant Astros' sign stealing scheme involved the use of a camera positioned in center field to steal signs. Team personnel from the Defendant Astros would watch the feed in a hallway between the clubhouse and dugout and would relay what was coming to the hitter by hitting a garbage can. A "bang" usually meant that an off-speed pitch was coming, and the Defendant Astros personnel did not make any noise when a fastball was coming.

29. *The Athletic* published an article on January 31, 2020 where it conducted a deep statistical dive into the 2017 Astros revealing the historically unprecedented nature of how the team improved at making contact. It found the reduction in team strikeouts by 365 was by the far the most in the live-ball era (since 1920). *The Athletic* wrote that the Defendant Astros' "strikeout rate at home took a plunge. . . unlike anything we've seen in the last century. . . They went from punching out 1,452 times in 2016 to a mere 1,087 in 2017, which meant they transformed themselves from a team that was striking out at one of the highest rates in history to a team that struck out less than any team in baseball that season."

30. Further, a recent report prepared by graphic designer and web developer Tony Adams diligently documented every instance of trash can banging he could find by writing a web application to sync up the data with video footage of Defendant's plate appearances from all of the Astros' 2017 home games. The findings have been shocking and disturbing.

31. In the more than 8,200 pitches tracked, more than 1,100 trash can "bangs" were detected. According to the data, after the Defendant Astros appeared to experiment with the banging technique early in the 2017 season, it was in full effect by late May. The data detected 28 bangs in a May 28 game against Baltimore, an 8-4 Houston win, and then the sign stealing scheme accelerated in the summer with banging on an average of about 30 pitches per game.

32. The most bangs used by the Defendant Astros in the 2017 season took place on August 4, 2017, the game when Plaintiff Bolsinger was called in as a relief pitcher. In that game, there were 54 bangs documented with bangs on 12 of the 29 pitches or 41 percent of pitches thrown by Plaintiff Bolsinger in the .1 innings of play. Based on the data, the Defendant Astros had decoded and stolen the sign for essentially every pitch thrown by Plaintiff and transmitted it to the Astros' batters. As a direct result of that game, the Toronto Blue Jays cut Plaintiff from their roster. Plaintiff was viewed by the Blue Jays and MLB scouts as not having the ability to perform as a relief pitcher. Plaintiff has never played in the MLB again.

33. Following the August 4, 2017 game, members of the Defendant Astros spoke with the media about their performance that evening – of course concealing their sign stealing and bragging about their "talented offense." Defendant's manager A.J. Hinch told the media, "First and foremost we have a really good offense . . . it is not unusual for us to have big nights when we put good at-bats together."

Fraudulent Concealment

34. Defendant Astros fraudulently concealed their sign stealing scheme until it was preliminarily exposed on or around November 2019 and confirmed through the Commissioner's findings on January 13, 2020. Defendant Astros not only deceitfully concealed their unfair business practices, but they promoted and encouraged fraudulent statements such as those made to the media on or around August 4, 2017 regarding the performance of their offense.

35. Plaintiff could not have known of the Defendant's conduct at issue here and had no way of ascertaining information to otherwise place him on notice of Defendant's conduct, until such time as the fraudulent conduct was exposed and officially confirmed on January 13, 2020.

36. As a result of the fraudulent concealment of the conduct at issue, the running of any potentially pertinent statute of limitations would commence January 13, 2020.

COUNT I: TRADE SECRET MISAPPROPRIATION

37. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

38. The signs used by Plaintiff Bolsinger and the Toronto Blue Jays on August 4, 2017 were trade secrets as defined by section 134A.002(6) of the Texas Uniform Trade Secrets Act. The owners of these trade secrets had taken the reasonable measures customary in the baseball industry to keep the signs secret. Moreover, the signs derived independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

39. Defendant's stealing of the signs and subsequent communications of the stolen information to Astros batters constituted willful and intentional misappropriation of the trade secrets. Plaintiff therefore sues for trade secret misappropriation under the Texas Uniform Trade Secrets Act and the common law of Texas.

40. The unlawful conduct described herein resulted in economic harm to Plaintiff, including the loss of his job as a MLB pitcher with the Toronto Blue Jays and other potential opportunities at the Major League level.

41. Plaintiff Bolsinger is entitled to actual damages and restitution for his losses in an amount to be determined and other general and special damages permitted by law. He is further entitled to damages in the form of the unjust enrichment the Defendant Astros obtained through their unlawful misappropriation. Plaintiff further seeks exemplary damages and attorneys' fees for the Defendant Astros' willful and malicious misappropriation as provided by sections 134A.004(b) and 134A.005(3) of the Texas Uniform Trade Secrets Act.

COUNT II: CONVERSION

42. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

43. Plaintiff Bolsinger owned, possessed, or had the right to immediate possession of the signs used by Plaintiff Bolsinger and the Toronto Blue Jays on August 4, 2017, which was confidential information and thus a form of personal property.

44. As described more fully above, the Defendant Astros wrongfully exercised dominion or control over the property by electronically stealing the signs and transmitting the confidential information to Astros batters.

45. The unlawful conversion described herein resulted in economic harm to Plaintiff, including the loss of his job as a MLB pitcher with the Toronto Blue Jays and other potential opportunities at the Major League level. The Defendant Astros acted with malice, and so Plaintiff also seeks exemplary damages for the unlawful conversion.

DAMAGES

43. Defendant's misconduct as described above proximately caused injury to Plaintiff, which resulted in the following damages:

- a. Lost career earnings, amount to be determined at trial.
- b. Loss of reputation as a major league pitcher, amount to be determined at trial.
- c. Unjust enrichment to the Defendant Astros, amount to be determined at trial.
- d. Attorneys' fees, amount to be determined at trial.

TRIAL BY JURY

44. Plaintiff demands a trial by jury and has tendered the appropriate fee.

PRAYER

45. For these reasons, Plaintiffs ask that the Court issue citation for Defendant to appear and answer, and that Plaintiffs be awarded a judgment against Defendant for the following:

- a. For general damages in a sum in excess of the jurisdictional minimum;
- b. For compensatory damages according to proof at the time of trial;
- c. For punitive damages;
- d. For unjust enrichment;
- e. For costs of suit herein;

- f. For Attorneys' fees and costs in an amount determined by the Court to be reasonable as authorized by statute; and
- g. For any other relief that may be deemed to be appropriate.

Respectfully submitted,

THE AMMONS LAW FIRM, LLP

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