

DISTRICT COURT OF WASHINGTON COUNTY, NEBRASKA

EDWARD KOUNTZE,)	Case No. CI 15-_____
)	
Plaintiff,)	
)	
vs.)	COMPLAINT
)	
DOMINA LAW GROUP PC LLO,)	
)	
Defendant.)	

Case Overview

1. Edward Kountze (“Plaintiff” or “Kountze”) sues pursuant to **Neb. Rev. Stat. § 25-2002** and in equity to vacate a default judgment entered against him without proper service or notice.

Jurisdiction, Venue and Parties

2. The District Court has subject matter jurisdiction pursuant to Neb. Rev. Stat. § 24-302. Venue is proper in Washington County, Nebraska pursuant to Neb. Rev. Stat. § 25-403.01.

3. **Plaintiff is a Florida resident.**

4. Defendant, Domina Law Group pc llo (“Domina”) is a Nebraska professional corporation located in Douglas County, Nebraska, engaged in the practice of law and rendition of professional services, through the employment of lawyers licensed to practice law.

First Cause of Action

5. Domina had previously served as one of Kountze’s attorneys relating to trust proceedings in the Douglas County District Court, entitled *In the Matter of the Trust Created by Denman Kountze, Jr.*, Case No. PR-06-862 (the “Heirloom Trust Matter”).

6. On or about September 16, 2013, Domina caused a Complaint to be filed in this Court, entitled *Domina Law Group pc llo v. Edward “Ted” Kountze*, Case No. CI 13-202 (the

“Domina Complaint,” attached hereto as Exhibit A). The Domina Complaint sought to recover fees allegedly owed for professional services rendered on behalf of Kountze.

7. Domina’s Praceipe for Summons directed the clerk to issue summons for twelve different addresses allegedly belonging to Kountze (the “Praceipe,” attached hereto as Exhibit B).

8. On or about September 25, 2013, Domina allegedly caused a copy of the Domina Complaint and summons to be sent via certified mail to an address located at 933 Portland Place, Apartment #2, Boulder, CO 80304 (the “Colorado Address”). (See Service Return, attached hereto as Exhibit C).

9. Kountze had not resided at the Colorado Address since 2002. (See Affidavit of Edward Kountze, attached hereto as Exhibit D, ¶ 9).

10. Kountze did not sign for the alleged certified letter containing the summons and Domina Complaint, and has no knowledge as to who signed for it. (Ex. D, ¶ 8).

11. On or about April 7, 2014, Domina caused to be filed a Motion for Default Judgment on the Domina Complaint (the “Motion,” attached hereto as Exhibit E).

12. After an initial court hearing on the Motion on May 6, 2014, this Court ordered a re-hearing on the Motion but held the record open for additional evidence from Domina. On May 16, 2014, Domina submitted an affidavit explaining why Domina’s alleged service of Kountze via certified mail was proper. (See Jorde Aff., attached hereto as Exhibit F). The affidavit contains an address--433 Portland Plaza--that is inconsistent with the address where Domina alleges Kountze was served. (*Id.*).

13. On or about June 9, 2014, a default judgment was entered against Kountze on the Domina Complaint in the amount of: “\$103,548.43 for unpaid professional legal fees” and “\$82.50 in Court costs” (the “Default”, attached hereto as Exhibit G).

14. To date, Kountze has not received service of the summons and the Domina Complaint. (Ex. D, ¶ 6).

15. Kountze did not receive notice of the Domina Complaint, nor did he have any knowledge of it until late June, 2015, when his attorneys in an unrelated matter learned that it existed. (Ex. D, ¶¶ 6-7).

16. After further investigation, Kountze, through his attorneys, became aware that the Default was entered against him on the Domina Complaint. (Ex. D, ¶ 7).

17. During Domina’s representation of Kountze, David Domina (“Mr. Domina”) sent billing invoices to Kountze at PO Box 231, Boulder, Colorado 80306. At all relevant times, Domina knew or should have known that Kountze did not receive mail nor reside at the Colorado Address. (Ex. D, ¶ 11).

18. Kountze had previously informed Mr. Domina that he did not reside in the State of Colorado. (Ex. D, ¶¶ 11-12).

19. Kountze had previously informed Mr. Domina that he resided in the State of Florida. (Ex. D, ¶ 12).

20. Domina never served Kountze at his Florida residence. (Ex. D, ¶ 13).

21. Pursuant to Neb. Rev. Stat. 25-2001(4)(a), the Default was obtained with irregularity as Kountze has never received service of the summons or the Domina Complaint. Kountze was not aware of the Domina Complaint until after the Default was entered against him.

22. Pursuant to Neb. Rev. Stat. 25-2001(4)(g), the Default was entered for significantly more than was due, as Kountze denies that he owes Domina any additional fees for the professional services allegedly rendered on his behalf.

23. Kountze was not properly summoned and was not legally notified of the time and place of the hearing on the Domina's motion for default judgment.

24. **Kountze has meritorious defenses to the Domina Complaint.** (Ex. D, ¶ 14).

25. Kountze may defend against the Domina Complaint on the grounds that Domina materially breached the contract between Domina and Kountze by billing for unreasonable, excessive, and/or unauthorized work.

26. In addition, Kountze may defend against the Domina Complaint on the grounds that Mr. Domina failed to perform numerous tasks that Kountze requested of him, resulting in adverse consequences in the Heirloom Trust Matter.

27. To date, over a year after obtaining the Default, Domina has not attempted to enforce the Default against Kountze. (Ex. D, ¶ 15).

28. It would be equitable for this Court to vacate the Default entered against Kountze and to provide him with an opportunity to defend himself against Domina's allegations.

Request for Relief

WHEREFORE:

On the foregoing basis, pursuant to Neb. Rev. Stat. § 25-2002, Plaintiff prays for an Order and Decree vacating the default judgment entered by this Court on June 9, 2014, plus other and further relief as may be just and equitable.

Dated this 8th day of July, 2015.

EDWARD KOUNTZE, Plaintiff

By: /s/ Damien J. Wright
LARRY E. WELCH, JR., #20507
DAMIEN J. WRIGHT, #23256
WELCH LAW FIRM, P.C.
1299 FARNAM STREET, SUITE 1220
OMAHA, NE 68102
(402) 341-1200
(402) 341-1515 (FAX)

District Court, Washington County, Nebraska

DOMINALAW Group pc llo,

Case No.: _____

Plaintiff,

v.

Edward "Ted" Kountze,

**Complaint &
Jury Demand**

Defendant.

Plaintiff alleges:

Case Overview

1. DOMINALAW Group pc llo sues to recover fees for professional services.

Jurisdiction, Venue and Parties

2. The District Court has subject matter jurisdiction pursuant to *Neb Rev Stat* § 24-302. Venue is proper in Washington County, Nebraska pursuant to *Neb Rev Stat* § 25-403.01. Plaintiff will not resist if Defendant seeks leave to move this matter to Douglas County.

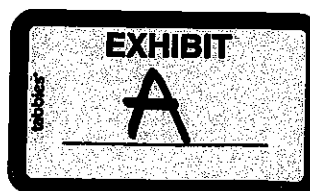
3. DOMINALAW Group pc llo (Domina Law) is the Plaintiff. It is a Nebraska professional corporation located in Douglas County engaged in the practice of law and the rendition of professional services, through the employment of lawyers licensed to practice law. It provided such services to Defendant.

4. Defendant is Edward Kountze, also known as Ted Kountze. Mr. Kountze resides between California, Colorado, and Florida.

Claim One – Kountze.Heirloom Trust

5. All allegations alleged above are renewed here.

6. Plaintiff provided professional services in proceedings knows as, In the Matter of the Supervised Administration of the Kountze Heirloom Trust, aka In the Matter of the Trust Created by Denman Kountze, Jr., Douglas County Court PR 06-862, for which they expected to be compensated by Defendant.



7. Defendant was aware of the services provided by Plaintiff, accepted those services on an ongoing and continuous basis, and obtained the benefit of those services and advancement of expenses on his behalf.

8. Defendant induced Plaintiff to rely on his promise to compensate Plaintiff for its continued performance of professional services rendered in these proceedings.

9. Defendant have not paid a significant portion of the fees and expenses due and owing and incurred by Plaintiff as a result of services performed for Defendant.

10. Legal services provided by Plaintiff had monetary value.

11. After all credits have been applied, the amount and fair and reasonable value of services and unpaid expenses due Plaintiff's are:

11.1. Claim One: \$103,548.43

12. Demand for payment has been made but payment has been refused. All credits due for Plaintiff's services have been accounted for and the sum sought is the balance due.

13. Prior to this lawsuit Plaintiff identified the sums owed by Defendant. No objection to these amounts was made and the amount due has not been disputed.

Requests for Relief

14. On the foregoing basis, Plaintiff requests judgment against Defendants for nonpayment of legal fees and expenses:

14.1. Claim One: \$103,548.43

14.2. All claims: prejudgment interest to the extent permitted by law, post-judgment interest, and taxable costs.

Settlement Demand

15. Pursuant to *Neb Rev Stat* § 42-103.02, Plaintiff will accept settlement of the above sums due and owing in and release any and all claims against Defendants for payment of \$95,000.00. This offer is made to trigger prejudgment interest. This offer shall be withdrawn upon expiration of thirty (30) days if it is not accepted.

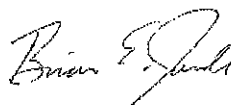
This paragraph 15 is not a judicial admission; it is an offer to settle and is separate in this respect from all other parts of the Complaint.

Jury Demand

16. Plaintiff respectfully demands trial by jury.

September 16, 2013.

DOMINALAW Group pc llo, Plaintiff



By: _____

Brian E. Jorde, #23613

DOMINALAW Group pc llo

2425 S. 144th Street

Omaha, NE 68144

(402) 493-4100

Plaintiff's Lawyers

District Court, Washington County, Nebraska

DOMINALAW Group pc llc,

Case No.: CI 13-202

Plaintiff,

v.

Edward "Ted" Kountze,

Praeceptum for Summons

Defendant.

TO: Clerk of the District Court

Pursuant to *Neb Rev Stat* §§ 25- 505.01 *et seq.*, please issue a Summons directed to the following:

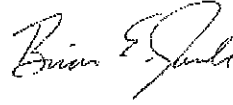
Edward Kountze 2690 Treasure Ln. Naples, FL 34102	Edward Kountze 933 Portland Pl., Apt. 2 Boulder, CO 80304
Edward Kountze 1018 Pine St. Boulder, CO 80302	Edward Kountze 150 S. 53 rd St. Omaha, NE 68132
Edward Kountze 1006 Howard St., Apt. 6 Omaha, NE 68102	Edward Kountze 813 Cornelia Ave. Omaha, NE 68100
Edward Kountze 704 57 th St. Omaha, NE 68132	Edward Kountze 661 50 th St. Omaha, NE 68132
Edward Kountze 261 Pierce St., Apt. 3 San Francisco, CA 94117	Edward Kountze 1135 Stanyan St. San Francisco, CA 94117
Edward Kountze 640 Octavia St. San Francisco, CA 94102	Edward Kountze 4794 Washtenaw Ave. Ann Arbor, MI 48108



Plaintiff elects to make service of process by certified mail.

September 20, 2013.

DOMINALAW Group pc llo, Plaintiff



By: _____

Brian E. Jorde, #23613

DOMINALAW Group pc llo

2425 S. 144th Street

Omaha, NE 68144

(402) 493-4100

Plaintiff's Lawyers

Image ID:
D00013820D29

SUMMONS

Filed in Washington District Court

*** EFILED ***

Case Number: D29C130000202

Transaction ID: 0000869454

Filing Date: 09/25/2013 02:37:20 PM CD

IN THE DISTRICT COURT OF Washington COUNTY, NEBRASKA

PO Box 431
Blair NE 68008 0431

Domina Law Group pc llo v. Edward Kountze

Case ID: CI 13 202

TO: Edward Kountze

FILED BY
Clerk of the Washington District Court
09/20/2013

You have been sued by the following plaintiff s):

Domina Law Group pc llo

Plaintiff's Attorney: Brian E Jorde
Address: 2425 S 144th Street
Omaha, NE 68144-3267

Telephone: (402) 493-4100

A copy of the complaint/petition is attached. To defend this lawsuit, an appropriate response must be served on the parties and filed with the office of the clerk of the court within 30 days of service of the complaint/petition. If you fail to respond, the court may enter judgment for the relief demanded in the complaint/petition.

Date: SEPTEMBER 20, 2013

BY THE COURT:

Susan K. Paulsen
Clerk

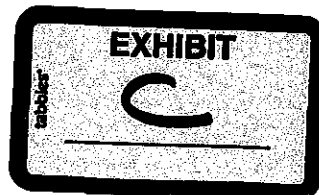



PLAINTIFF'S DIRECTIONS FOR SERVICE OF SUMMONS AND A COPY OF THE COMPLAINT/PETITION ON:

Edward Kountze
933 Portland Pl. Apt. 2
Boulder, CO 80304

Method of service: Certified Mail

You are directed to make such service within ten days after the date of issue, and file with the court clerk proof of service within ten days after the signed receipt is received or is available electronically, whichever occurs first.



SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<input checked="" type="checkbox"/> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. <input checked="" type="checkbox"/> Print your name and address on the reverse so that we can return the card to you. <input checked="" type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature <input checked="" type="checkbox"/>  <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: <p style="text-align: center;">Edward Kountze 933 Portland Pl., Apt. 2 Boulder, CO 80304</p>	B. Received by (Printed Name)	C. Date of Delivery
2. Article Number <i>(Transfer from service label)</i>	D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:	
PS Form 3811, February 2004	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
Domestic Return Receipt	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
<p style="text-align: center;">7012 3460 0003 2986 8674</p>		

8. I did not sign for a certified letter containing the Domina Complaint and summons at the address located at 933 Portland Place, Apartment #2, Boulder, CO 80304 (the "Colorado Address"). I have no personal knowledge as to whether such a certified letter was signed for, nor who would have signed for it.

9. I have not resided at the Colorado Address since 2002.

10. During Mr. Domina's representation of me, Mr. Domina sent billing invoices to me at PO Box 231, Boulder, CO 80306.

11. Defendant, and specifically Mr. Domina, knew or should have known that I did not receive mail at the 933 Portland Place, Apartment #2, Boulder, CO 80304 address, nor did I reside at this address.

12. During my professional relationship with Mr. Domina, I told him that I resided in the State of Florida.

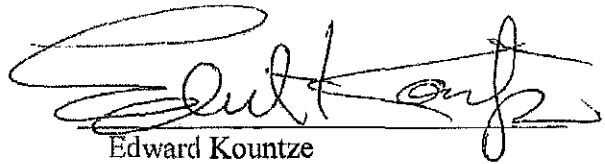
13. To the best of my knowledge, Defendant never attempted to serve me with this lawsuit at the Florida home where I reside.

14. Had I known about the Domina Complaint, I would have hired counsel and defended myself. I have viable defenses to Defendant's claims made against me in the Domina Complaint.

15. To the best of my knowledge, Defendant has not attempted to enforce the default judgment against me.

16. Should this Court vacate the default judgment, my intention is to file a responsive pleading to the Domina Complaint filed against me by Defendant.

FURTHER AFFIANT SAYETH NAUGHT.


Edward Kountze

SUBSCRIBED and SWORN to before me

This 7th day of July, 2015.

Gia M Ferro

Notary Public



District Court, Washington County, Nebraska

DOMINALAW Group pc ilo,

Case No.: CI 13-202

Plaintiff,

v.

Edward "Ted" Kountze,

Motion for Default Judgment

Defendant.

1. Pursuant to *Neb Ct R Pldg* § 6-1508, Plaintiff respectfully requests the Court render an Order granting Default Judgment against the Defendants Edward "Ted" Kountze, in the amount of \$103,548.43. Plaintiff's Complaint was filed on September 16, 2013 and served upon the Defendant on or about September 25, 2013. To date, no Answer has been filed. Defendants are not minors, not incompetent and not members of the military service. The amount owed is justly due and owing and no part of it has been paid.

2. Affidavit evidence will be presented by Plaintiff at the time of hearing on this Motion.

Request for Relief

Plaintiff requests this Court render Default Judgment in the amount of \$103,548.43 against Defendant Edward "Ted" Kountze, on all of Plaintiff's claims, pre-judgment interest at the applicable statutory rate of 2.091% per month, and for taxable court costs.

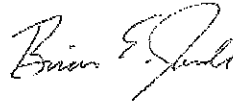
Notice of Hearing

Notice is hereby given that the above Motion for Default Judgment will be called for hearing before the Honorable John E. Samson on May 6, 2014 at 1:30 p.m. or as soon thereafter as the same may be heard. The hearing shall occur in District Court of Washington County, 1555 Colfax Street, Blair, Nebraska.

April 7, 2014.



DOMINALAW Group pc llo, Plaintiff



By: _____

Brian E. Jorde, #23613

DOMINALAW Group pc llo

2425 S. 144th Street

Omaha, NE 68144

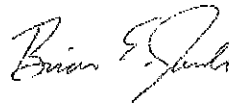
(402) 493-4100

Plaintiff's Lawyers

Certificate of Service

On April 7, 2014, a copy of Plaintiff's Motion for Default Judgment was served by U.S. Mail, certified, return receipt requested, to:

Edward Kountze
933 Portland Pl., Apt. 2
Boulder, CO 80304



Brian E. Jorde

Certificate of Service

I hereby certify that on Monday, April 07, 2014 I provided a true and correct copy of the Motion-Default Judgment to the following:

Kountze,Edward,"Ted" service method: Certified Mail

Signature: /s/ Jorde,Brian Emmanuel (Bar Number: 23613)

**Affidavit of
Brian E. Jorde**

FILED
2014 MAY 16 PM 2:29
WASHINGTON COUNTY, NE
SUSAN PAULSEN
CLERK OF DISTRICT COURT

State of Nebraska)
) ss.
Douglas County)

Brian E. Jorde, being first duly sworn states as follows:

1. My name is Brian E. Jorde. I am greater than 35 years of age. I am a lawyer at Domina Law Group pc llo. I previously testified through an affidavit, dated May 5, 2014, in this matter. This affidavit explains how certified mail service was perfected for Ted Kountze.

2. Domina Law Group pc llo sent billing invoices to Mr. Kountze his PO Box address in Colorado at Mr. Kountze request since he traveled often and this was more convenient for him that to his home address. The address for billing invoices was PO 231, Boulder, CO 80306.

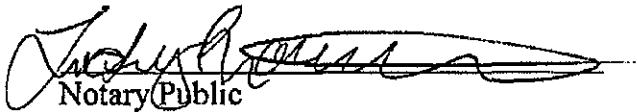
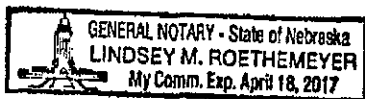
3. Service of the Complaint in this matter was to Mr. Kountze at his apartment address of 433 Portland Plaza, Apartment 2, Boulder, Colorado. This is Mr. Kountze's last known address confirmed by relying on public records gathered through Westlaw People Search, which is a service normally relied upon in the practice of law. We mailed the Complaint to his apartment address because it was reasonably calculated to reach Mr. Kountze.

Dated this 15 day of May, 2014.

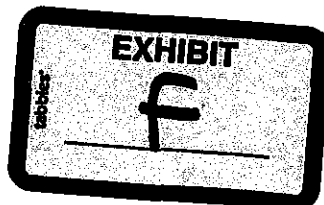


Brian E. Jorde

Subscribed and acknowledge before me this 15th day of May, 2014, by
Brian E. Jorde.



Notary Public



District Court, Washington County, Nebraska

DOMINA LAW Group pc llc,

Case No.: CI 13-202

Plaintiff,

v.

Edward "Ted" Kountze,

Order

Defendant.

2014 JUN -9 AM 10:25
WASHINGTON COUNTY, NE
SUSAN PAULSEN
CLERK OF DISTRICT COURT

FILED

1. This matter came before the Court on May 6, 2014 on Plaintiff Domina Law Group pc llc's Motion for Default Judgment. Evidence was received and argument heard. The Court finds and ORDERS that Plaintiff's Motion is sustained, and judgment is rendered against Edward "Ted" Kountze in the following amounts:

- 1.1 \$103,548.43 for unpaid professional legal fees; *and*
- ~~1.2 \$652.00 in prejudgment interest; and~~
- 1.2* \$82.50 in Court costs.

June 9, 2014
~~May~~ ____, 2014.

BY THE COURT:

[Signature]

Hon. John E. Samson
District Court Judge

