

12-Person Jury

FILED
12/31/2019 3:32 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
7902848

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

CRYPTO ASSET FUND, LLC, a Delaware)
limited liability company, DIGITAL)
CAPITAL MANAGEMENT, LLC, a)
Delaware limited liability company, and)
TIMOTHY ENNEKING, an individual,)

Plaintiffs,)

2019L014386

) CASE NO.: _____

vs.)

FAEGRE BAKER DANIELS LLP, an)
Illinois limited liability partnership;)

) PLAINTIFFS DEMAND A TRIAL BY JURY

Defendant.)

COMPLAINT

Plaintiffs, Crypto Asset Fund, LLC, Digital Capital Management, LLC and Timothy Enneking, by the undersigned counsel, hereby complaint of the Defendant, Faegre Baker Daniels LLP, as follows.

NATURE OF THE ACTION

1. Plaintiffs bring this action against Defendant for legal malpractice, and seek compensatory damages, including for fees and costs incurred, reputational harm, and lost profits, other consequential damages, restitution of all attorneys' fees paid to Defendant, and any other available legal remedies and/or equitable relief the Court may deem appropriate.

PARTIES

2. Plaintiffs **Crypto Asset Fund, LLC** ("CAF") and **Digital Capital Management, LLC** ("DCM") are Delaware limited liability companies with offices in California. DCM is the successor in interest to Crypto Asset Management, LP ("CAM"), a Delaware limited partnership.

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3. Plaintiff Timothy Enneking is an individual who resides in San Diego County, California. Mr. Enneking is the founding, managing, and majority member of CAF and DCM and was at all relevant times a principal of CAM.

4. Defendant Faegre Baker Daniels LLP (“Faegre Baker Daniels” or “Defendant”) is a limited liability partnership law firm with an office in Cook County. Certain of the legal services at issue were performed in Cook County.

JURISDICTION AND VENUE

5. This Court has personal jurisdiction over the Defendant pursuant to Section 2-209 of the Illinois Code of Civil Procedure, because Defendant resides and transacts business in the State of Illinois.

6. Venue is proper in this county pursuant to Section 2-101 of the Illinois Code of Civil Procedure because Defendant resides, does business and performed at least some of the acts and omissions which are the subject matter of this complaint in Cook County.

FACTUAL ALLEGATIONS

7. CAF (sometimes also referred to herein as the “Fund”) was formed in March 2017 to engage in the acquisition and management of investments providing direct and indirect exposure to various cryptocurrencies, initial coin offerings (ICOs) and other assets associated with cryptocurrencies, blockchain ecosystems and related digital asset and technology opportunities (“Crypto Assets”). CAM was formed in May 2017 in order to manage the Fund.

8. The next month, in June 2017, Plaintiffs engaged Defendant to provide related legal services for the launch and operation of the Fund and CAM. Specifically, in a letter dated June 13, 2017, the parties confirmed that the firm would provide representation “in connection with . . . (a) regulatory compliance counseling with respect to the Investment Advisers Act of

1940, as amended, and other applicable federal and state securities laws; (b) one or more privately-offered pooled investment vehicles (the 'Funds') that will be advised by the Company; and (c) such other corporate, legal and regulatory matters relating to the operation of the Company or the Funds as you may from time to time specifically refer to us for our attention.”

9. Faegre Baker Daniels, primarily through partner Jeffrey Blumberg, provided legal advice, opinions, and services to Plaintiffs as to the manner of offering shares in the Fund and the structure of the Fund in light of its investments in Crypto Assets.

10. Defendant billed Plaintiffs for its services and Plaintiffs paid such bills.

11. One of the principal services that Defendant provided was to provide advice regarding registration under the Investment Advisers Acts of 1940 and other state and federal securities laws and the offering of Fund shares.

12. In particular, Defendant advised Plaintiff that Funds should be offered under Regulation D via Rule 506(b) as opposed to Rule 506(c).

13. Defendant further advised Plaintiffs that Crypto Assets are not securities and to structure CAF's and the Fund's business accordingly.

14. The Defendant's advice, including but not limited to that set forth above, was erroneous.

15. After the launch and operation of the Fund by CAM, Plaintiffs received notice from the U.S. Securities and Exchange Commission (“SEC”) that an inquiry had been instituted into CAM and its offering of interests in the Fund.

16. Faegre Baker Daniels continued to represent and to provide legal advice, opinions, and services to Plaintiffs in connection with the SEC's inquiry with partner Michael MacPhail stepping in to take the lead. This representation included an interview plaintiff

Enneking voluntarily gave to the SEC on advice of counsel in or about late January 2018 and various written and oral communications between Faegre Baker Daniels and the SEC.

17. In the course of the representation, Defendant provided inaccurate analysis and advice that resulted in damage to the Plaintiffs.

18. In or about the spring of 2018, formal notice was received that the SEC intended to commence an enforcement action against CAM and Enneking for allegedly violating federal securities laws.

19. In or about early May 2018, Plaintiffs terminated the services of Faegre Baker Daniels and engaged new counsel to represent them in connection with the SEC inquiry.

20. In September 2018, the SEC issued a cease and desist order in which, *inter alia*, CAM and Enneking were censured and agreed, without admitting or denying the order's findings, to pay a \$200,000 civil money penalty to settle the SEC's claims.

21. In addition to the above-referenced penalty which was paid, Plaintiffs incurred various costs and fees, including but not limited to attorneys' fees, in connection with CAM and the Fund and have suffered reputational harm and other damages.

COUNT I

Legal Malpractice

22. Plaintiffs repeat and re-allege each and every allegation above as if set forth herein.

23. An attorney-client relationship existed between Plaintiffs and Defendant.

24. Defendant owed Plaintiffs a duty to provide legal advice, opinions, and services that did not fall below the standard of care of an ordinary, reasonable lawyer.

25. Defendant breached that duty by providing legal advice, opinions, and services that fell below the standard of care of an ordinary, reasonable lawyer.

26. At all times herein mentioned, Defendant failed to exercise reasonable care and skill in performing those legal skills for Plaintiffs to register and sell Fund shares.

27. As a direct and proximate result of Defendant's negligence and breach of professional duty, Plaintiffs sustained damages of more than \$75,000.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment and relief as follows:

- A. Awarding Plaintiffs damages according to proof at trial;
- B. Awarding Plaintiffs pre- and post-judgment interest at the applicable statutory legal rate(s);
- C. Awarding Plaintiffs the costs of this action;
- D. Ordering such other and further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury of all claims in this Complaint so triable.

Respectfully submitted,

CRYPTO ASSET FUND, LLC, DIGITAL CAPITAL MANAGEMENT, LLC and TIMOTHY ENNEKING,

By: / s / Joshua R. Diller

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