

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION**

J & A OF LOUISIANA, LLC, LEONARD
Q. "PETE" ABINGTON, AND CALVIN
H. JONES

Plaintiffs,

V.

ANDREW J. BRYANT, BRYANT
ASSET ADVISORS, LLC, AND THE
WELFONT GROUP, LLC

Defendants.

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CIVIL ACTION NO.: 5:20-cv-00980

JUDGE: S. MAURICE HICKS, JR.

MAG.: KAYLA D. MCCLUSKY

**PLAINTIFFS' SECOND AMENDED, SUPPLEMENTAL AND RESTATED
COMPLAINT**

NOW INTO COURT, through undersigned counsel, come PLAINTIFFS, J&A of Louisiana, LLC, Leonard Q. “Pete” Abington, and Calvin H. Jones, which respectfully submit this *Second Amended, Supplemental and Restated Complaint* as follows:

1.

Plaintiff herein is J & A of Louisiana, LLC, a Louisiana limited liability company (established and formed in Louisiana) having its principal place of business in Sabine Parish, Louisiana (hereinafter “J&A”), and having as its sole members—Leonard Q. “Pete” Abington and Calvin H. Jones—being both individuals of the full age of majority and domiciled in and residents of Sabine Parish, Louisiana.

2.

Also named Plaintiff herein is Leonard Q. (“Pete”) Abington, an individual of the full age of majority; and, is domiciled in and a resident of Sabine Parish, Louisiana.

3.

Also made and named Plaintiff herein is Calvin H. Jones, an individual of the full age of majority; and, is domiciled in and a resident of Sabine Parish, Louisiana.

4.

Made Defendants herein are the following:

- a. ANDREW J. BRYANT (hereinafter referred to as “Mr. Bryant”), an individual of the full age of majority; and, domiciled in and a resident of Noblesville, Hamilton County, Indiana. For purposes of service of process, can be served at his place of business and employment, Bryant Asset Advisors, LLC, 11715 Fox Road, Suite 400-127, Indianapolis, Indiana 46236;
- b. BRYANT ASSET ADVISORS, LLC (hereinafter referred to as “Bryant Asset”), a limited liability company organized under the laws of the State of Indiana, having, upon information and belief, its principal place of business in Indiana; and having its sole member—Andrew J. Bryant—an individual of the full age of majority; and, domiciled in and a resident of Hamilton County, Indiana.¹ For purposes of service of process, Bryant Asset Advisors can be served via its agent for service of process, Matthew R. Macaluso, 760 3rd Ave SW, Suite 210, Carmel, Indiana 46032; and,
- c. THE WELFONT GROUP, LLC (hereinafter referred to as “Welfont”), a limited liability company organized under the laws of the State of Delaware, with such foreign LLC registered in the State of Florida, having its principal place of business in Tampa, Hillsborough County, Florida. Welfont’s sole members are (1) “Amy Stevenson, a

¹ See R. Doc. 11, at ¶6.

person of the full age of majority who is domiciled and resides in Florida”²; and, (2) Welfont, L.L.C., “which is wholly owned by The Welfont Companies, Inc., a corporation organized in Delaware with its principal place of business in Tampa, Florida.”³ For purposes of service of process, The Welfont Group, LLC can be served via its agent for service of process both in Delaware and Florida at: (a) A Registered Agent, Inc., 8 The Green, Suite A, Dover, Delaware, 19901; and, (b) Registered Agents Inc., 3030 N. Rocky Point Drive, Suite 150A, Tampa, Florida 33607.

5.

Also made defendants herein, pursuant to the provisions of the Louisiana Direct Action Statute, La. R.S. 22:1269, are:

- a. HISCOX INSURANCE COMPANY, INC., (hereinafter referred to as “Hiscox”), a foreign insurance corporation, incorporated in the state of Illinois, and authorized to do business in the state of Louisiana, with its principal place of business at 104 South Michigan Ave., Suite 600, Chicago, IL 60603.⁴ Hiscox can be served through its agent for service of process, according to the Louisiana Department of Insurance, through the Louisiana Secretary of State at 8585 Archives Ave., Baton Rouge, Louisiana 70809; and,
- b. GREAT AMERICAN INSURANCE COMPANY, (hereinafter referred to as “Great American”), a foreign insurance corporation incorporated in the state of Ohio, authorized to do business in the state of Louisiana, with its principal place of business

² R. [Doc. 11](#), at p. 4 ¶ 7.

³ *Id.*

⁴ *See* R. [Doc. 59](#).

at 301 E. Fourth Street, Cincinnati, OH 45202.⁵ Great American can be served through its agent for service of process, according to the Louisiana Department of Insurance, through the Louisiana Secretary of State at 8585 Archives Ave., Baton Rouge, Louisiana 70809.

6.

This Court has venue over this action pursuant to Louisiana Code of Civil Procedure Article 74.

7.

Jurisdiction is proper as the sale took place in Desoto Parish, Louisiana, where the property at issue is located.

8.

J&A was the owner of the tract of real estate in DeSoto Parish, Louisiana consisting of 9.64 acres, more or less, located near Stonewall, Louisiana (the “Subject Tract”).

9.

The Subject Tract was listed for sale by the prior owners for \$1,059,300.00 but was subsequently re-surveyed and the listing price was reduced to \$882,750.00 on February 7, 2015.

10.

On May 11, 2016, J&A purchased the Subject Tract for \$337,400.00, which amount the principals of J&A believed was well below the actual value of the property.

11.

J&A purchased the property because of the price at which it was then available and because it was thought that real estate prices in North DeSoto Parish was subject to significant appreciation.

⁵ See R. Doc. 62.

Additionally, the area within which the property is located has been the source of significant natural gas production, which increased the speculative value of the Subject Property.

12.

In 2017, the Subject Tract was offered for sale and listed with Doug Abington of Sealy Real Estate of Shreveport, Louisiana. Doug Abington is the son of Leonard Q. Abington.

13.

In mid-2017, Sealy Real Estate was approached by Welfont with an expression of interest in purchasing the Subject Tract.

14.

After obtaining initial information about the Subject Tract, Welfont proposed a purchase of the Subject tract utilizing a structure that Welfont characterized as a “bargain sale” to a charitable organization—pursuant to Internal Revenue Code § 170—whereby the property can be sold for a very low purchase price and the seller can obtain a tax deduction for the amount of the difference between the appraised value of the property for purposes of the sale and the cash purchase price. This type of purchase/sale is commonly known in the industry as a “Bargain Sale” and is referred to as such herein.

15.

Welfont held itself out to have special expertise in Bargain Sales, about which J&A and their realtor, Doug Abington, were completely unfamiliar.

16.

Welfont suggested J&A confirm with its tax professionals that Bargain Sales are, in fact, permitted by the Internal Revenue Code, and that such transactions can be beneficial to sellers.

17.

Welfont further explained, and the parties understood, that the actual beneficiaries of the tax benefits resulting from such Bargain Sale would be the principals of J&A, Pete Abington and Calvin Jones.

18.

J&A, Pete Abington and Calvin Jones consulted their tax professional(s) and confirmed this information.

19.

Welfont advised Sealy Real Estate and J&A that, based on its experience, the Subject Tract would be appraised at or near the value of one million dollars (\$1,000,000.00) and it compiled pro forma estimates of the net proceeds of the transaction to the Buyer and its members, after taxes.

20.

On or about August 11, 2017, a Letter of Intent was forwarded by Welfont, on behalf of its proposed purchaser, to Doug Abington at Sealy & Company, realtor for the Seller. The Letter of Intent is annexed hereto as **Exhibit "A"**.

21.

As set forth in the Exhibit "A" Letter of Intent, Welfont proposed a Bargain Sale, and contained an estimate of the tax benefits to the Seller, based upon an appraisal value of the Subject Property of just more than \$1,000,000.00.

22.

The Exhibit “A” Letter of Intent provided, *inter alia*, that “Seller shall engage an appraiser to prepare an appraisal of the Property during the Inspection Period,” that the appraisal would comply with Internal Revenue rules and regulations and that the appraisal would be provided to the Buyer within five days of Seller’s receipt of same (Exhibit “A”, at p. 2 ¶9).

23.

At or about the time the Letter of Intent was provided, Welfont also provided a one page “Offer,” a one page “Comparison,” a one page “Projected Cash Benefit,” and a one page “Opinion of Value,” all four pages of which are collectively annexed hereto as **Exhibit “B”**.

24.

As set forth more fully in the “Opinion of Value,” the Welfont opinion valued the Subject Property at \$1,052,000.00, using four comparable property values. (*See* Exhibit “B”, at p. 4).

25.

However, the “Opinion of Value” contains a fine print, boilerplate “Disclaimer” stating that, “[t]his IRS Section 170 Bargain Sale Opinion of Value is not an actual appraisal, but simply the author’s opinion of what this property may ultimately be appraised at for the purposes of valuing donated property as described in IRS Code Section 170 and IRS Publication 561. The opinion is calculated in good faith based on information available on the internet and key real estate databases. The opinion author has not had the opportunity to actually inspect the property. Therefore, the opinion author has no way to verify or assure that all of the information submitted is completely accurate. If the seller is interested in the proposed transaction, the seller must obtain an actual qualified appraisal according to Section 170 of the Internal Revenue Code and IRS Publication 561.” (Exhibit “B”, at p. 4 (emphasis added)).

26.

The structure of the transaction as described by Welfont, and the after-tax benefits of the Bargain Sale, appeared beneficial to J&A, Pete Abington, and Calvin Jones, so J&A agreed to proceed with the appraisal and sale based on the representations made by Welfont.

27.

Welfont also advised that it represented a qualified charitable organization for purposes of the Bargain Sale and that Food Assistance, Inc. of Greensboro, North Carolina would purchase the property.

28.

On or about September 11, 2017, J&A and Food Assistance entered into a Real Estate Purchase Agreement, a copy of which is annexed hereto as **Exhibit “C”**. The form for the Real Estate Purchase Agreement was provided to Sealy Real Estate by Welfont, which drafted the form.

29.

As set forth more fully on Exhibit “C”, the sale was conditioned upon the receipt of an appraisal of at least ninety percent (90%) of \$1,053,000.00.

30.

Unlike the Letter of Intent, however, in the Real Estate Purchase Agreement, Welfont undertook to identify and engage the appraiser for the transaction. The Real Estate Purchase Agreement provides that, “The Welfont Group, LLC shall coordinate and facilitate the Appraisal with an independent appraisal management company, or another qualified appraiser that complies with the requirements of Section 170 of the IRC, the Treasury Regulations and rulings and other pronouncements of the Internal Revenue Service (the ‘IRS’).” (See Exhibit “C”, at p. 2 ¶4(a))

(emphasis in original)). Thus, Welfont undertook to provide the “actual qualified appraisal” referred to in its “Disclaimer” on its Opinion of Value (discussed in more detail *infra*).

31.

J&A now knows that on November 1, 2017, “Bryant Asset Advisors” entered into an Engagement Agreement to conduct a Bargain Sale Opinion of Value of the Subject Property, based on IRS Publication 561, all as set forth in **Exhibit “D”** annexed hereto, (*See* Exhibit “D,” at pp. 60-61). For reasons that are not clear, Bryant Asset Advisors was engaged by Linda Scull on behalf of “Tax Appraisal Group” or “TAG”, which shows an address of 701 Howard Avenue, Suite 106260, Tampa, Florida, which is near the offices of Welfont Group in Tampa, Florida.

32.

The Engagement Letter states, next to Linda Scull’s signature “Appraisal Management Approval (per Purchase Agreement Section 4(A))” (Exhibit “D”, at p. 60). J&A is informed and believes and hereby alleges that Linda Scull has or had an employment relationship with Welfont Group and was acting in concert with Welfont Group in connection with securing the Appraisal. J&A is also informed and believes and alleges that Welfont has engaged Bryant in other transactions.

33.

At no point prior to the sale did J&A nor Abington nor Jones communicate with Bryant Asset Advisors or Andrew J. Bryant. Nevertheless, at page 12 of the Appraisal, Bryant identifies J & A of Louisiana, LLC and its affiliates and assigns, as the “client” and “intended user” of the appraisal. (*See* Exhibit “D,” at p. 12).

34.

At all times relevant hereto, Welfont, Bryant Asset Advisors and Andrew J. Bryant understood that the objective of J&A in entering into the subject sale was to enjoy the benefits of a bona fide Bargain Sale, compliant with all applicable Internal Revenue Service rules and regulations pertaining to same, having been introduced to the concept and advised about its desirability and applicability by Welfont.

35.

As set forth more fully in the Exhibit “C” Agreement, all parties acknowledged that “the Seller’s motivation is for charitable purposes.” (Exhibit “C”, at p. 2 ¶3).

36.

Food Assistance, Inc. has a website that reflects a charitable purpose, and the members of J&A believed DeSoto Parish would benefit by the presence of such an organization in that area of the State.

37.

Pursuant to the Exhibit “C” Agreement, Food Assistance was to pay \$100,000.00 for the Subject Tract, an amount that was later reduced to \$28,182.00. (*See* Exhibit “C”, at p. 1; *and* “Addendum to Real Estate Purchase Agreement,” annexed hereto as **Exhibit “E”**).

38.

During negotiations for the sale of the subject property, Food Assistance conditioned the purchase of the subject property on the inclusion of the mineral rights therein and thereunder.

39.

Defendant Andrew J. Bryant performed an appraisal of the Subject Tract dated November 20, 2017 providing an appraised value of one million one hundred fifty thousand dollars

(\$1,150,000.00), which was considerably higher than J&A's original asking price and an appraisal obtained a few years earlier by a local appraiser, but consistent with the value opinion submitted by Welfont. However, neither Welfont nor Bryant timely forwarded a copy of this appraisal to J&A or its principals, all as set forth below.

40.

J&A was assured that Andrew J. Bryant was well qualified in commercial appraisals throughout the country, was well familiar with Bargain Sales, and the accountants for J&A's principals assured them that charitable deductions for qualifying Bargain Sales were quite lawful and beneficial to the charitable organizations which participate therein.

41.

At some point in November 2017, Welfont indicated to Sealy Real Estate that the appraisal would, in fact, reflect an appraised value in excess of \$1,000,000.00 in order to fulfill that condition of the sale, and the parties began preparing for a Closing. Doug Abington of Sealy Real Estate conveyed this information to J&A.

42.

Closing documents were drafted, with a majority of such documents drafted and exchanged between Welfont and Sealy Real Estate on or about November 30, 2017.

43.

On December 5, 2017 by 12:58 PM, the purchase price for the sale had been funded and all closing documents were signed. However, the actual appraisal from Andrew J. Bryant, dated November 20, 2017 still remained in the possession of Welfont.

44.

Finally, at 1:32 PM on December 5, 2017 Savannah Audino of Welfont Group forwarded the actual appraisal, which Welfont called (and labeled) the “Final Appraisal”, to Doug Abington at Sealy Real Estate, permitting the disbursal of funds and final closing within minutes thereafter. The appraisal was placed in Sealy Real Estate’s files. This “Final Appraisal” was sent by Welfont to J&A by overnight mail on December 5, 2017, with the result that neither J&A, Pete Abington nor Calvin Jones had access to the Appraisal (either final or otherwise) until after the sale closed.

45.

J&A sold the Subject Tract to Food Assistance, Inc. as reflected in the Cash Sale Deed, was executed on or about December 4, 2017 and recorded in DeSoto Parish on or about December 8, 2017. The Cash Sale Deed, as recorded, is annexed hereto as **Exhibit “F”**.

46.

Shortly after the consummation of the subject transactions set forth above, Food Assistance, Inc. sent the principals of J&A plaques, thanking them for their charitable assistance to that organization.

47.

At closing, despite never having communicated or signed a written contract with Bryant Asset Advisors, Linda Scull or TAG—or seen the actual “Final Appraisal”— the closing documents reflect that J&A paid for the appraisal and, for reasons completely unknown to J&A, also paid \$1,000.00 to TAG/Linda Scull. (*See* Closing Statement, annexed hereto as **Exhibit “G”**).

48.

As another condition of sale, J&A had to pay off the remainder of the mortgage loan on the property, which at the time of closing was \$139,713.30. *See* Exhibit “G”.

49.

After the sale, Pete Abington and Calvin Jones took tax deductions based upon the difference between the cash purchase price of \$28,182.00 and the appraised value of \$1,150,000.00.

50.

Following the sale, J&A noted that no one took occupancy of the Subject Tract. Instead, and unbeknownst to J&A, six months later, Food Assistance had “flipped” the Subject Tract to Deborah Dowden Dees for the cash purchase price of \$210,000.00.

51.

On or about November 5, 2019, Messrs. Abington and Jones, through their CPAs, received a communication from the IRS that pursuant to an audit, the deductions for the sale were being disallowed because the “appraised value has been unrealistically and grossly understated.” As a result, the deductions of Messrs. Abington and Jones for the difference between the appraised fair market value and their basis was completely disallowed”, and substantial penalties have been assessed to them. As a result, J&A has been deprived of all or virtually all of the sale price for the subject property and is left to pay penalties and interest.

52.

The IRS audit noted that the actual appraisal was facially deficient by improperly using urban property comparables in Shreveport, Louisiana and was the product of data obtained on the

internet, not a physical inspection. J&A and its members were unaware of the deficiencies in the Appraisal until the IRS pointed them out in November 2019.

53.

Upon receipt of information from the Internal Revenue Service, J&A examined the subject appraisal, which had been withheld by Welfont until the final moments of the closing, and which was not actually *received* by J&A until after closing.

54.

When the IRS sought information from J&A and Bryant regarding the Appraisal, J&A, through its accountants repeatedly sought to obtain cooperation from Bryant, but despite representations that he would, in fact, cooperate, Bryant failed to provide the information requested. Finally, on the day of the final conference call with the IRS, Andrew J. Bryant responded by email, a copy of which is annexed hereto as **Exhibit “H.”** As set forth in Exhibit “H,” Bryant declined to assist and directed J&A to Welfont.

55.

A close examination of the Appraisal reveals that appraiser used as “comparable” tracts for land valuations, the sales of three urban tracts of land located in Shreveport (not Stonewall, Louisiana) with each such site located across the highway from some of the busiest shopping locales in Shreveport. J&A is now informed that use of these “comparable” tracts as a basis for the appraisal is unrealistic, professionally irresponsible and inappropriate, and results in a much higher appraisal value than justified.

56.

A close examination and comparison of the Appraisal and the “Opinion of Value” reflects that the appraiser utilized one or more comparables previously chosen by Welfont in its Opinion. (*Compare* Exhibit “B”, at p. 4 *with* Exhibit “D”, at pp. 48-50).

57.

A close examination of the appraisal also reflects that Bryant was not licensed as an appraiser with the State of Louisiana and was required to secure a temporary license in order to conduct the subject appraisal—which did not occur until three (3) days before the date of the Appraisal—, strongly suggesting that Bryant is similarly unfamiliar with real estate markets and prices in Northwest Louisiana. (*See* Exhibit “D”, at p. 59).

58.

A close examination of the Appraisal reflects that the subject appraisal was conducted without the appraiser ever having set foot in the state of Louisiana let alone perform a physical inspection of the property, and that, instead, the analysis was based on Google Maps and similar information available on the internet. (*See* Exhibit “D,” at p. 12).

59.

As a result of the foregoing, including the lack of personal inspection of the property and reliance on information available on the internet and key real estate databases, the subject appraisal is identical, in all material respects to Welfont’s “Opinion of Value” and subject to the same disqualifying disclaimers which rendered Welfont’s Opinion of Value inadequate for use in a Bargain Sale.

60.

Upon information and belief, Welfont, which holds itself out as an expert in real estate transactions generally and Bargain Sales in particular, was aware of these defects as of the date of the Appraisal on or about November 20, 2017, but chose to withhold delivery of the Appraisal until the final minutes of the actual closing on December 5, 2017 (and even then, only provided it to J&A by placing same in “overnight mail” on the day of closing).

61.

J&A alleges that Welfont’s failure to disclose these facts enabled it to secure J&A’s consent to the sale.

62.

J&A alleges that Andrew J. Bryant and Bryant Asset Advisors failed to exercise the degree of care, expertise, and diligence—and to utilize the skills and procedures—necessary to provide a competent and professional real estate appraisal for purposes of this transaction, as set forth hereinabove.

63.

J&A alleges that Welfont failed to exercise reasonable care in undertaking to retain a qualified and competent appraiser for purposes of the subject transaction.

64.

J&A alleges that Welfont also breached its agreement to retain a qualified and competent appraiser for purposes of the subject transaction.

65.

Welfont negligently and/or intentionally selected an appraiser who it knew or should have known was not likely to provide an accurate appraisal.

66.

Welfont negligently and/or intentionally selected an appraiser who was unfamiliar with the market and was unlikely to provide a qualified, appropriate appraisal.

67.

Upon receipt and review of the appraisal, Welfont knew or should have known that the appraisal provided was inadequate or otherwise inaccurate.

68.

After receipt of the appraisal, Welfont negligently and/or intentionally withheld the appraisal from J&A until after the closing of the sale of the subject property.

69.

Moreover, for the reasons detailed above, J&A allege that Andrew J. Bryant and Bryant Asset Advisors breached their respective agreement(s) to provide a competent, accurate and appropriate appraisal of the subject property.

70.

J&A, Pete Abington, and Calvin Jones have each been damaged as a result of the sale of property without adequate compensation, and seek damages and interest for the disparity in the sell price and the fair market value of the property, along with interest, as well as any fees and penalties assessed to Pete Abington and Calvin H. Jones by the IRS.

71.

Hiscox issued a policy for professional liability insurance to Welfont Companies, LLC, to include Defendant, Welfont, which policy affords coverage for the liability of Welfont to Plaintiffs as set forth herein.

72.

Great American issued a real estate appraisers E&O policy to Defendant(s) Andrew Bryant and/or Bryant Asset Advisors, LLC (the company of which Mr. Bryant is presently a principal and/or employee and was at the time of the events alleged herein), which policy affords coverage for the liability of Bryant Asset Advisors, LLC and Andrew J. Bryant to Plaintiffs as set forth herein.

WHEREFORE, PLAINTIFFS, J & A of Louisiana, LLC, Leonard Q. “Pete” Abington, and Calvin H. Jones, pray that Defendants each be cited and served herein and that, after due proceedings are had, a judgment be rendered in favor of Plaintiffs and against each Defendant, *in solido*, for the following:

- A. Damages for the disparity in J&A’s sell price and the fair market value of the subject property, including but not limited to additional fees, costs and payments associated with the closing (e.g.: remainder of mortgage, appraisal, commissions, etc...);
- B. Interest from December 4, 2017, to the present;
- C. Judicial interest;
- D. Fees and penalties assessed to Pete Abington and Calvin H. Jones by the IRS, including accounting fees associated therewith;
- E. Attorneys’ fees and costs incurred by Plaintiffs herein; and,
- F. For such other equitable relief as the Plaintiffs shall show themselves justly entitled and/or that this Court deems proper.

{Signatures Appear on the Following Page}

Respectfully Submitted,

HARPER LAW FIRM
(*A Professional Law Corporation*)

BY: /s/ Anne E. Wilkes

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**ATTORNEYS FOR J & A OF LOUISIANA,
LLC, LEONARD Q, "PETE" ABINGTON,
and CALVIN H. JONES**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the **20th day of August 2021**, a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system. All other parties will be served in accordance with law.

/s/ Anne E. Wilkes

Anne E. Wilkes