

Marissa Pittman

CAUSE NO. DC-16-15044

**ANTARES ENERGY COMPANY and
ANTARES ENERGY LIMITED
(ADMINISTRATORS APPOINTED),**

Plaintiffs,

v.

**JAMES CRUICKSHANK and
GREGORY SHOEMAKER,**

Defendants.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

95th JUDICIAL DISTRICT

PLAINTIFFS' FIRST AMENDED PETITION

Plaintiffs Antares Energy Company (“Antares”) and Antares Energy Limited (administrators appointed) (“AEL”) file their Original Petition against Defendants James Cruickshank (“Cruickshank”) and Gregory Shoemaker (“Shoemaker”) and respectfully show the Court as follows:

I. DISCOVERY CONTROL PLAN

1. Antares and AEL intend that discovery be conducted under Level 2 of the Texas Rules of Civil Procedure and affirmatively plead that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because Plaintiffs seeks monetary damages in excess of \$100,000.00, including attorney’s fees and costs.

II. CLAIM FOR RELIEF

2. Antares and AEL seek to recover over \$1,000,000.00 that Cruickshank and Shoemaker improperly, and in breach of fiduciary duties, transferred to themselves or to others for their benefit, as well as consequential damages, attorney’s fees, and general relief.

III. PARTIES

3. Antares is a Delaware corporation, registered to do business in the State of Texas, with its principal place of business at 3837 Greenbrier Drive, Dallas, Texas 75225. It has been engaged in the business of oil and gas exploration and production, particularly focused on the Permian Basin in West Texas leading up to the time of filing. Antares is a wholly owned subsidiary of Santa Energy Pty Ltd. (“Santa”). Santa is a wholly owned subsidiary of Australian entity AEL. Antares’ parent company, AEL, is currently the subject of an insolvency proceeding through which Quentin James Olde and Michael Joseph Ryan of FTI Consulting (Australia) PTY Limited (“FTI Consulting” or the “Administrator”), as estate administrators, are charged with identifying and marshalling the assets of AEL for the benefit of its creditors.

4. Defendant Cruickshank is a citizen of the State of Texas who may be served with process at his home address, 3837 Greenbrier Drive, Dallas, Texas 75225. He is the former Chairman, CEO, and sole director of Antares. Cruickshank was served with Plaintiffs’ Original Petition on January 3, 2017, pursuant to Texas Rule of Civil Procedure 106 and the Court’s Order Authorizing Substitute Service of Process on Defendants James Cruickshank and Gregory Shoemaker.

5. Defendant Shoemaker is a citizen of the State of Texas who may be served with process at what is, on information and belief, his home address, 35 Villa Canyon Place, Spring, Texas 77382.¹ Plaintiffs were previously unsuccessful in serving Shoemaker due to a mistaken address. Shoemaker is the former Chief Scientist and director of AEL.

¹ This Amended Petition has been updated to show what is, on information and belief, Shoemaker’s current home address.

IV. JURISDICTION AND VENUE

6. The Court has subject-matter jurisdiction over this action because the amount-in-controversy exceeds this Court's minimum jurisdictional requirements.

7. The Court has general and specific personal jurisdiction over Cruickshank because Cruickshank is and at all relevant times has been a resident of Dallas County. He also conducted business in Dallas County, including some of the events giving rise to this lawsuit.

8. The Court likewise has jurisdiction over Shoemaker. Shoemaker is and at all relevant times has been a resident of Texas.

9. Pursuant to Texas Civil Practice and Remedies Code Section 15.005, venue is proper in Dallas County, Texas, as the substantial part of the events giving rise to Plaintiffs' claims occurred in Dallas County.

V. FACTUAL BACKGROUND

10. Plaintiffs assert in this Petition claims for breach of fiduciary duty, fraudulent transfer, and theft against its former Chairman, CEO, and sole director, James Cruickshank, and against its former Chief Scientist and director, Gregory Shoemaker. These claims are based on Cruickshank's and Shoemaker's misappropriation and dissipation of company funds and breaches of the trust placed in them as directors and company insiders.

11. Shoemaker served as Chief Scientist and Director of AEL until his resignation on April 27, 2016.

12. Cruickshank served as Chairman, CEO, and Director of Antares, and also as Director of Santa, until he was removed as Director effective May 13, 2016.

13. On May 16, 2016, Cruickshank was notified of his removal via a letter from Santa's parent AEL². In this letter, Cruickshank was instructed to surrender all business records of Antares and to undertake in writing to cease dealing in the assets of Antares, including cash held in bank accounts. He was also directed to meet with representatives for the Administrator, FTI Consulting, in Dallas on May 17 or 18, 2016.

14. Cruickshank ignored the May 16th letter. He refused to return any property and failed to meet with the representatives for the Administrator. As a result, Cruickshank was removed as a director and officer of Antares effective May 18, 2016, by written resolution of Santa, Antares' sole shareholder.

15. On May 19, 2016, Antares notified Cruickshank of his removal as a director and officer of Antares via another letter.³ This letter reiterated the request that Cruickshank immediately surrender all Antares assets and business records in his possession, cease dealing in Antares assets, and return to the Administrators or account for all Antares assets converted to his personal control and use or otherwise dissipated. It also renewed the request for a meeting with the Administrators' representatives—this time on May 23, 2016.

16. A subsequent meeting proved fruitless, as Cruickshank ignored Antares' most urgent requests. He retained Antares' property, refused to relinquish control over Antares' bank accounts, and refused to meet with the representatives of the Administrator.

17. Around the same time, on or about May 18, 2016, the Administrators notified Bank of America and Credit Suisse (institutions where Antares has active bank accounts) that

² A true and correct copy of the May 16, 2016 letter from AEL to Cruickshank is attached hereto as Exhibit A.

³ A true and correct copy of the May 19, 2016 letter from Antares to Cruickshank is attached hereto as Exhibit B.

Cruickshank was no longer a director of Antares. This allowed the Administrators to obtain online access to view the Antares bank accounts.

18. What the Administrators uncovered was troubling. The account records revealed substantial irregular cash transfers among and from Antares bank accounts that appear to have been authorized by Cruickshank when he controlled Antares. Shoemaker is also implicated and was unjustly enriched by certain transfers that Cruickshank authorized. Antares' books and records reflect that, as of December 31, 2015, Antares had bank accounts with Bank of America and Credit Suisse totaling \$887,000. However, by May 17, 2016, Antares was left with only approximately \$187,000 in its accounts following (a) **\$628,625.20** in cash transfers to Cruickshank; (b) **\$161,206.10** in cash transfers to Shoemaker; and (c) **\$587,559.10** in IRS tax payments for the benefit of Cruickshank and Shoemaker. Specifically, the following irregular transfers have been identified:

- a. On April 27, 2016—the day before appointment of Bryan Hughes and Daniel Bredenkamp of Pitcher Partners as AEL's original voluntary administrator—two transfers, totaling \$511,000, were made to Cruickshank and Shoemaker. In addition, \$388,000 in IRS tax payments were made for the benefit of Cruickshank and Shoemaker. Shoemaker also tendered his resignation as Chief Scientist the same day.
- b. On May 10, 2016—the date that FTI Consulting was appointed as Administrator to replace Pitcher Partners—Antares had cash assets of \$549,000. However, on that day, transfers were made to Cruickshank and Shoemaker totaling \$279,000. A related

\$199,000 in IRS tax payments were made for the benefit of Cruickshank and Shoemaker on May 17, 2016.

19. These irregular transfers and payments reflect a dissipation of more than **\$1,377,000** of Antares' cash assets in less than five months—approximately **\$628,000** of which was transferred directly to Cruickshank, approximately **\$161,000** of which was transferred to Shoemaker, and approximately **\$588,000** of which were payments made for the benefit of Cruickshank and Shoemaker. As of May 17, 2016, Antares' cash assets had been depleted to only about \$187,000 on deposit in U.S. banks. The transactions at issue were made outside the ordinary course of business, with knowledge of corporate insolvency, and without the requisite approvals of disinterested directors acting in the company's best interest. Instead, the transactions were authorized by no one other than Cruickshank, through his position of authority and control over Antares, to benefit himself and Shoemaker—both, interested directors.

20. In addition, between December 31, 2015 and March 31, 2016, Antares sold 1,300,000 units of its investment in Breitburn Energy Partners (“Breitburn”), retaining 3,000,000 units of its investment in Breitburn. Antares' bank records reflect that these securities sales took place in three stages during the month of April 2016, resulting in gross proceeds of \$914,000. The proceeds from the Breitburn sale were transferred to Antares' Bank of America checking account, from which the funds were withdrawn as described in Paragraph 17, in the days and weeks that followed.

21. Pitcher Partners was appointed as voluntary administrator of AEL by its board of directors on April 28, 2016. As Chairman, CEO, and sole director of Antares, Cruickshank was privy to Antares' and AEL's financial situation and was aware that AEL was planning to appoint Pitcher Partners as voluntary administrator. Accordingly, Cruickshank had reasonable cause to

believe that AEL and Antares were insolvent at the time he made irregular transfers on April 27, 2016. Similarly, in Shoemaker's position as director and Chief Scientist he was privy to company financial information from which Shoemaker would have been aware that AEL and Antares were insolvent at the time he received an irregular transfer, and resigned, on April 27, 2016.

22. The first creditors meeting of AEL took place on May 10, 2016, the same date that Cruickshank made additional irregular transfers to himself and Shoemaker. At that meeting, FTI consulting was appointed as voluntary administrators to replace Pitcher Partners. Again, as Chairman, CEO, and sole director of Antares, Cruickshank not only had reasonable cause to believe that AEL and Antares were insolvent, but was well aware of this fact.

23. Because of Cruickshank's irregular transfers to himself and to Shoemaker, Antares' capital was almost entirely depleted. Consequentially, Antares was unable to retain certain valuable oil and gas interests that it would have kept but for the wrongful actions of Cruickshank and Shoemaker.

24. Antares and AEL have been damaged by the actions of Cruickshank and Shoemaker, through the loss of funds that they have either improperly received or refused to return. Additionally, Defendants' actions caused Antares to have a capital shortfall, resulting in its inability to retain certain valuable oil and gas interests. In written correspondence to Cruickshank, Antares has explained the basis of its claims, provided voluminous documentation, and demanded that Cruickshank return to Antares its property and funds. Cruickshank has unjustifiably refused to do so. Because all conditions precedent for recovery are satisfied, Antares and AEL bring this action for breach of fiduciary duty, fraudulent transfer, and theft against Cruickshank, and seek recovery of all consequential damages Cruickshank has caused as

well as reasonable and necessary attorney's fees, exemplary damages, and general relief. In addition, because all conditions precedent for recovery are satisfied, Antares and AEL bring this action for breach of fiduciary duty and fraudulent transfer against Shoemaker, and seek recovery of all consequential damages Shoemaker has caused as well as exemplary damages and general relief.

VI. COUNT I—BREACH OF FIDUCIARY DUTY BY CRUICKSHANK

25. Plaintiffs incorporate paragraphs 1–24 of the Petition as if fully set forth herein.

26. A fiduciary relationship existed between Cruickshank and Antares. Specifically, Cruickshank was in a position of trust and confidence as the Chairman, CEO, and sole director of Antares. In these positions, Antares relied on and trusted Cruickshank to manage the company and make decisions in the best interest of Antares. Cruickshank therefore owed fiduciary duties to Antares, including but not limited to the duties of loyalty and care.

27. Cruickshank breached his fiduciary duties to Antares by misusing company funds for his own personal benefit. He used his position of trust and confidence at Antares to wrongfully transfer—without appropriate authorizations—approximately \$1,377,000 of Antares' cash assets after voluntary administrators had been appointed, \$628,000 of which was transferred to Cruickshank himself.

28. Antares has been damaged by Cruickshank's breaches of fiduciary duty in the form of lost funds. Antares also has been forced to spend time and resources in its attempt to recoup these losses.

29. In addition, Antares has suffered consequential losses as a result of Cruickshank's breaches of fiduciary duty. Due to Cruickshank's improper transfer of funds and depletion of the

company's capital, Antares was left with insufficient funds to maintain certain valuable oil and gas interests that it would have maintained, but for Cruickshank's actions.

30. Moreover, Cruickshank's actions violate Texas Penal Code § 32.45 regarding misapplication of fiduciary property, and his bad acts rise to the level of both fraudulent and malicious. Cruickshank wrongfully took advantage of his privileged, insider knowledge of Antares' insolvency to make cash transfers that were in his interest, rather than the company's. In so doing, Cruickshank abused his position as a fiduciary of Antares in furtherance of his own personal financial interests. Because Cruickshank's actions were deceitful, fraudulent, and malicious, Antares is entitled to recover exemplary damages for this egregious conduct. Pursuant to Texas Civil Practice and Remedies Code § 41.008(c), exemplary damages for Cruickshank's misapplication of fiduciary property are subject to no cap.

31. Antares therefore demands that Cruickshank pay all actual and consequential damages caused by his breaches of fiduciary duty. Antares further requests that an appropriate award of exemplary damages be ordered for Cruickshank's intentional, fraudulent, and malicious conduct in violation of his fiduciary duty.

VII. COUNT II—BREACH OF FIDUCIARY DUTY BY SHOEMAKER

32. Plaintiffs incorporate paragraphs 1–24 of the Petition as if fully set forth herein.

33. A fiduciary relationship existed between Shoemaker and AEL. Specifically, Shoemaker was in a position of trust and confidence as Chief Scientist and director of AEL. In these positions, AEL relied on and trusted Shoemaker to perform his executive responsibilities and make decisions in the best interest of AEL. Shoemaker therefore owed fiduciary duties to AEL, including but not limited to the duties of loyalty and care.

34. Shoemaker breached his fiduciary duties to AEL by misusing company funds for his own personal benefit. In conjunction with Cruickshank, he used his position of trust and confidence at AEL in the wrongful personal receipt—without appropriate authorizations—of approximately \$161,000 of the company’s cash assets after voluntary administrators had been appointed.

35. AEL has been damaged by Shoemaker’s breaches of fiduciary duty in the form of lost funds. AEL also has been forced to spend time and resources in its attempt to recoup these losses.

36. In addition, AEL has suffered consequential losses as a result of Shoemaker’s breaches of fiduciary duty. Due to the improper transfer of funds and depletion of the company’s capital by Shoemaker in conjunction with Cruickshank, AEL’s ultimate subsidiary Antares was left with insufficient funds to maintain certain valuable oil and gas interests that it would have maintained, but for the wrongful actions of Shoemaker and Cruickshank.

37. Further, Shoemaker’s actions violate Texas Penal Code § 32.45 regarding misapplication of fiduciary property, and his bad acts rise to the level of both fraudulent and malicious. Shoemaker wrongfully took advantage of his privileged, insider knowledge of AEL’s insolvency to benefit from cash transfers that were in his interest, rather than the company’s. In so doing, Shoemaker abused his position as a fiduciary of AEL in furtherance of his own personal financial interests. Because Shoemaker’s actions were deceitful, fraudulent, and malicious, AEL is entitled to recover exemplary damages for this egregious conduct. Pursuant to Texas Civil Practice and Remedies Code § 41.008(c), exemplary damages for Shoemaker’s misapplication of fiduciary property are subject to no cap.

38. AEL therefore demands that Shoemaker pay all actual and consequential damages caused by his breaches of fiduciary duty. AEL further requests that an appropriate award of exemplary damages be ordered for Shoemaker's intentional, fraudulent, and malicious conduct in violation of his fiduciary duty.

**VIII. COUNT III—FRAUDULENT TRANSFER BY
CRUICKSHANK AND SHOEMAKER**

39. Plaintiffs incorporate paragraphs 1–24 of the Petition as if set forth fully herein.

40. At the time the transfers were made, AEL and Antares were insolvent, and, as Chairman, CEO, and director of Antares, Cruickshank had reasonable cause to believe that AEL and Antares were insolvent. Likewise, as Chief Scientist and director of AEL, Shoemaker had reasonable cause to believe that AEL and Antares were insolvent at the time the transfers were made.

41. Cruickshank (then Chairman, CEO, and sole director of Antares) and Shoemaker (then-Chief Scientist and director of AEL) were insiders of Antares/AEL when the irregular transfers, for antecedent debts, occurred.

42. These transfers were fraudulent and violated Tex. Bus. & Com. Code § 24.006(b).

43. Antares and AEL have been damaged by Cruickshank's and Shoemaker's fraudulent transfer in the form of lost funds. They have further been forced to spend time and resources in an attempt to recoup their losses.

44. Antares and AEL have also been damaged by Cruickshank's and Shoemaker's fraudulent transfer in the form of consequential losses. Due to the improper transfer of funds to Cruickshank and Shoemaker, Antares had insufficient funds available to maintain certain valuable oil and gas interests that it would have maintained, but for the wrongful actions of Cruickshank and Shoemaker.

45. Plaintiffs therefore demand that Cruickshank and Shoemaker pay all actual and consequential damages caused by their fraudulent transfer.

IX. COUNT IV—THEFT BY CRUICKSHANK AND SHOEMAKER

46. Plaintiffs incorporate paragraphs 1–24 of the Petition as if set forth fully herein.

47. At all times through the present, Antares has had a possessory right to its property, including the funds Cruickshank and Shoemaker misused and have refused to return.

48. Cruickshank’s transfer of assets and exercise of control over those assets were outside of Cruickshank’s authority because they had no business purpose and were done to unjustly enrich Cruickshank, at the expense of Antares. Shoemaker’s exercise of control over assets stolen from Antares likewise constitutes theft.

49. Cruickshank and Shoemaker intended to deprive Antares of its property. Antares has demanded the return of its funds including through written correspondence prior to filing this lawsuit. Nonetheless, Cruickshank has refused to return to Antares the funds he improperly transferred to himself and to Shoemaker.

50. Antares has been damaged by Cruickshank’s and Shoemaker’s failure to return its property in the form of the lost funds and the consequential loss of certain valuable oil and gas interests. It has further been forced to spend time and resources in an attempt to recoup these losses.

51. The actions of Cruickshank and Shoemaker violated the Texas Theft Liability Act and Texas Penal Code § 31.03.

52. In addition, Antares is entitled to recover exemplary damages under Texas Civil Practice and Remedies Code § 41.008(c), which authorizes exemplary damages—not subject to any cap—in cases of theft.

53. Antares is also entitled to recover reasonable and necessary attorney's fees pursuant to Texas Civil Practice and Remedies Code § 134.005(b), under which the prevailing party in a claim under the Texas Theft Liability Act is entitled to recover its reasonable and necessary attorney's fees. The award of fees to a prevailing party under this statute is mandatory.

54. Accordingly, Antares demands that Cruickshank and Shoemaker pay (1) all actual and consequential damages caused by their theft of Antares' property, (2) statutory damages of \$1,000.00 under the Texas Theft Liability Act (Tex. Civ. Prac. & Rem. Code § 134.005(a)(1)), (3) exemplary damages in an amount the Court deems appropriate, and (4) all reasonable and necessary attorney's fees and costs of suit (Tex. Civ. Prac. & Rem. Code § 134.005(b)).

X. JURY DEMAND

55. Plaintiffs demand a jury trial and tender the appropriate fee with this Petition.

XI. REQUEST FOR DISCLOSURE

56. Pursuant to Rule 194 Defendants Cruickshank and Shoemaker are requested to disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2(a)–(l).

XII. PRAYER

WHEREFORE, Antares and AEL request that Cruickshank and Shoemaker be cited to appear and answer, and that, after a jury trial on the merits, the Court enter judgment in their favor against Cruickshank and Shoemaker for the following:

- a. An award of all actual damages from Cruickshank's breaches of fiduciary duty;
- b. An award of all consequential damages caused by Cruickshank's breaches of fiduciary duty;

- c. An award of all actual damages from Shoemaker's breaches of fiduciary duty;
- d. An award of all consequential damages caused by Shoemaker's breaches of fiduciary duty;
- e. An award of all actual damages from Cruickshank's and Shoemaker's fraudulent transfers;
- f. An award of all consequential damages caused by Cruickshank's and Shoemaker's fraudulent transfers;
- g. An award of all actual damages from Cruickshank's and Shoemaker's theft;
- h. An award of all consequential damages caused by Cruickshank's and Shoemaker's theft;
- i. A statutory award of \$1,000.00 for theft pursuant to Tex. Civ. Prac. & Rem. Code § 134.005(a)(1);
- j. An award of exemplary damages in an amount sufficient to punish Cruickshank for his breaches of fiduciary duty and theft and to deter such conduct in the future;
- k. An award of exemplary damages in an amount sufficient to punish Shoemaker for his breaches of fiduciary duty and theft and to deter such conduct in the future;
- l. An award of all costs of suit and reasonable and necessary attorney's fees incurred by Antares pursuant to Texas Civil Practice and Remedies Code § 134.005(b);
- m. Pre- and post-judgment interest on any and all amounts awarded; and
- n. Any and all other relief to which Antares or AEL is entitled.

Dated: January 4, 2017

Respectfully submitted,

BAKER & MCKENZIE LLP

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**COUNSEL FOR PLAINTIFFS
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CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2017, a true and correct copy of Plaintiffs' First Amended Petition was served on Defendant James Cruickshank by certified mail, return receipt requested at his home address, listed below:

James Cruickshank
3837 Greenbrier Drive
Dallas, Texas 75225

/s/ Brian J. Hurst
Brian J. Hurst