

PT

( Addressed To: )  
District Court of Shawnee County, Kansas  
200 East 7<sup>th</sup>  
Topeka, Kansas 66603  
Division 07  
Chapter 60

FILED BY CLERK  
KS. DISTRICT COURT  
THIRD JUDICIAL DIST.  
TOPEKA, KS

2011 OCT 21 P 4:02

Case Number 11-C-001038

Jared Rowley  
Plaintiff 1  
vs.

October 7, 2011

Jesse Dimmick  
Defendant 1

### Defendants Answer To Petition

Now comes the defendant, Jesse Dimmick, in the above styled cause, wishing to dispute the claim in order to avoid judgement by default as required by law.

Defendant also wishes to state his own counter-claim in this answer in pursuant to K.S.A. Chapter 60

1. I, the defendant, Jesse Dimmick, am currently incarcerated in the Adams County Detention Facility in Brighton Colorado.
2. I, the defendant, am indigent, with no savings, no earnings, nor any other source of income.
3. I, the defendant, being indigent, am unable to afford an attorney to properly represent me in this matter.

4. I, the defendant, am answering this petition on my own free will, without the aid of professional legal counsel, in order to avoid default as required by law, until the court can provide me with legal counsel, under the paupers declaration law.

## II Dispute

5. I, the defendant, having read petition, wishes to dispute the facts as set forth herein, as well as deny all petitions allegations.
6. I, the defendant, having read petition, have noted flaws, inconsistencies, and untruths in document. (See paragraph 10)
7. After I, the defendant, entered the home of Jared Rowley, I told them that I was being pursued by a person, or persons, who appeared to be police officers, who were trying to kill me.
8. I, the defendant, asked the Rowleys to hide me because I feared for my life. I offered the Rowleys an unspecified amount of money which they agreed upon, therefore forging a legally binding oral contract.
9. Later, the Rowleys reneged on said oral contract, resulting in my being shot in the back by authorities.
10. At no time was a knife, or any type of weapon brandished in order to attempt to force, or persuade the Rowleys to hide me, or agree to an oral contract. This was proven in defendants criminal proceeding.

### III Counter Claim

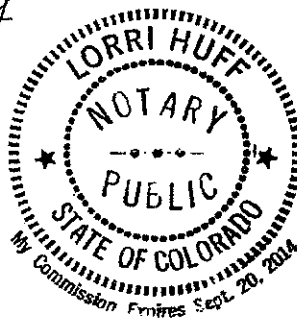
11. As a result of the plaintiffs breach of contract, I, the defendant, suffered a gunshot to my back, which almost killed me. The hospital bills alone are in excess of - \$160,000.<sup>00</sup> (one hundred sixty thousand dollars.), which I have no way to pay.
12. I, the defendant, due to the Rowleys negligence, and breach of contract, have suffered physical and mental manifestations, pain and suffering, post traumatic stress, and anxiety and emotional distress.

### IV Relief Sought

13. Wherefore, I the defendant, Jesse Dimmick, prays for judgement against the plaintiffs for \$160,000.<sup>00</sup> in hospital bills. I would also ask the court for a judgement of an additional \$75,000.<sup>00</sup> for pain and suffering.
14. Furthermore, I the defendant, prays the court will dismiss plaintiffs petition for reasons disclosed herein, and would further bar plaintiff from filing any future claims arising from this action.

Dated this 12<sup>th</sup> day of  
October, 2011

Lorri Huff  
ACDF Notary



Respectfully,  
Jesse Dimmick  
Jesse Dimmick

10/12/11

SCOTT, QUINLAN, WILLARD,  
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TOPEKA, KS

2011 OCT 27 P 3:31

IN THE DISTRICT COURT OF SHAWNEE, COUNTY, KANSAS  
Division 7

JARED AND LINDSAY ROWLEY,  
Plaintiffs,

vs.

Case No. 11-C-1038

JESSE DIMMICK  
Defendants

**PLAINTIFF'S RESPONSE TO DEFENDANT'S ANSWER**

*COMES NOW* the Plaintiffs by and through their attorney, Robert E. Keeshan and for its response to Defendant's Answer, admits, denies and alleges as follows:

1. The answering Plaintiffs are without sufficient knowledge and information to form a belief as to the truth or veracity of paragraphs 1 through 6, and the same are therefore denied.

2. The answering Plaintiffs admit the allegations in paragraph 7 in so far as Defendant stated those words, but not to the fact that the Plaintiffs' believed the Defendant.

3. The answering Plaintiffs deny the allegations of paragraph 8 and point the court to paragraphs 5 through 8 of the Plaintiffs' Petition. The answering Plaintiffs admit that Defendant offered them money to hide him, but deny that they ever accepted his offer or that it would or could lead to a valid

contract.

4. The answering Plaintiffs deny the allegations of paragraph 9 as they were not in any way the cause of Mr. Dimmick being shot by the police.

5. The answering Plaintiffs deny the allegations in paragraph 10. The answering Plaintiffs clarify Paragraph 7 from their Petition. Defendant entered the Rowley's residence with the knife clipped on this belt and when Jared attempted to forcefully remove Defendant from the premises Defendant indicated that Jared did not want to do that. The answering Plaintiffs deny this was proven at Defendant's criminal proceeding. Plaintiffs also believed Defendant Dimmick had a gun.

6. The answering Plaintiffs are without sufficient knowledge or information to form a belief as to the truth or veracity of the allegations of paragraph 11, except for the fact that he suffered a gun shot wound.

7. The answering Plaintiffs deny the allegations in paragraph 12 that they in any way caused any damages to Mr. Dimmick and are without sufficient knowledge and information to form a belief as to the truth or veracity of the remaining allegations and thus the same are therefore deemed denied.

**AFFIRMATIVE DEFENSES**

8. For further answer and by way of affirmative defense these answering Plaintiffs allege that the Defendant's Answer fails

to state a claim upon which relief can be granted.

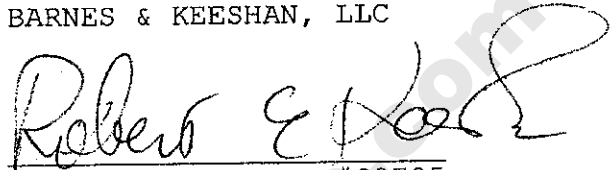
9. For further answer and by way of affirmative defense, these answering Plaintiffs allege that if they were negligent, which they specifically deny, the negligence of the Defendant and any other individuals or entities not parties to this lawsuit should be compared with that of these answering Plaintiffs so as to bar or diminish the Defendant's right to recover from these answering Plaintiffs, if any.

10. For further answer and by way of affirmative defense, these answering Plaintiffs allege that if there was a contract, which is specifically denied, then said contract should not be enforced by this court because of illegality, public policy, misrepresentation, undue influence, and/or duress.

11. For further answer and by way of affirmative defense, these answering Plaintiffs reserve the right to assert other affirmative defenses as they become known during the course of discovery and reserve the right to supplement these affirmative defenses and this Response to Defendant's Answer.

*WHEREAS*, Plaintiffs, Jared and Lindsay Rowley, pray that the court enter judgment in their favor and against the Defendant on Defendant's Answer and Counterclaim, that Defendant go hence with his cost of his counterclaim, and for other and further relief as the court shall deem just and proper.

SCOTT, QUINLAN, WILLARD  
BARNES & KEESHAN, LLC



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DREW A. CUMMINGS, #25096  
3301 VAN BUREN  
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(785) 267-0040  
(785) 267-6745 (fax)  
Attorney for Plaintiffs

CERTIFICATE OF MAILING

I hereby certify that on this 27<sup>th</sup> day of October, 2011,  
a true and correct copy of the above and foregoing document was  
deposited in the United States mail, first class postage prepaid  
and addressed to the following:

Jesse Dimmick  
ACDF# 11-6152, Unit A-4-53  
Adams County Detention Facility  
150 North 19<sup>th</sup> Ave.  
Brighton, CO 80601-1951



Drew A. Cummings

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2011 NOV -4 P 3:17

IN THE DISTRICT COURT OF SHAWNEE, COUNTY, KANSAS  
Division 7

JARED AND LINDSAY ROWLEY,  
Plaintiffs,

vs.

Case No. 11-C-1038

JESSE DIMMICK  
Defendants

**MOTION TO DISMISS**

**COMES NOW** the Plaintiffs, Jared and Lindsay Rowley, and pursuant to K.S.A. 60-212(b)(6) moves the court for an order dismissing Defendant's claims against them for failure to state a claim upon which relief can be granted.

**Background.** On September 12, 2009, Defendant Jesse Dimmick fleeing from the police entered the residence of Jared and Lindsay Rowley located at 13450 SW 5<sup>th</sup> Street in Dover, Shawnee County, Kansas. When Jesse Dimmick fell asleep the Rowleys were able to escape. When the police entered the house, Jesse Dimmick was shot and has filed a lawsuit versus the City of Topeka, Kansas, 10C1373 and Police Officer Guy Gardner alleging negligent discharge of a firearm and that as a proximate result of the negligence of those Defendants, Jesse Dimmick sustained injuries and damages. Jesse Dimmick was convicted of kidnaping for ransom or as a shield or hostage, a violation of K.S.A. 21-3420(a) in 09CR2113, presently on appeal.

For and in support of their Motion to Dismiss, these Plaintiffs show the Court:

1. Defendant counterclaims that he and the Rowleys had a legally binding oral contract. He asserts in his conversation that the contract was for an "unspecified" amount of money. This "unspecified" amount of money was to be paid for the Rowleys to hide the Defendant in their house.

2. No contract was formed because there was no specific dollar amount for any services provided. In order for parties to form a binding contract, there must be a meeting of the minds on all essential terms, including and most specifically, an agreement on the price. Because Defendant has stated in his pleadings that the alleged contract was for an unspecified amount of money, then no valid contract could have been formed. (See **Ellis v. Berry**, 19 Kan. App.2d 105, 867 P.2d 1063 (1993).)

3. If there was a contract, which is specifically denied, then said contract should not be enforced because it would have been entered into under duress. Duress is a wrongful threat, by words or other conduct, which was intended or should reasonably have been expected to cause such fear as to deny the threatened party the exercise of free will and judgment and their decision to enter into a transaction. Here, Defendant was a fugitive fleeing police after a high speed chase. The Rowleys believed he had a gun and knew that he had a knife. He also refused to leave the house when Mr. Rowley attempted to remove him forcefully. Any alleged

contract was entered into based on the duress the Rowleys were under by Defendant. See *Libel v. Libel*, 5 Kan. App.2d 367, 616 P.3d 306 (1980).

4. If there was a contract, which is specifically denied, then said contract should not be enforced by this court because of illegality. See *State v. Boswell*, 30 Kan. App.2d 9, 37 P.3d 40 (2001). If the Rowleys had accepted the contract, it would be void because it would be violating the criminal statute of accessory after the fact, K.S.A. 21-3812, which in 2010 was replaced with obstructing apprehension or prosecution, K.S.A. 21-5913. Accessory after the fact was the law in effect when the alleged contract was formed. Because hiding a fugitive is illegal, there can be no contract. Defendant, at his criminal trial, was convicted of two counts of kidnaping, theft and fleeing or attempting to flee a police officer. Shawnee County Case 09CR2113.

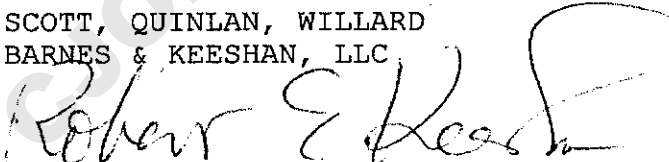
5. If there was a contract, which is specifically denied, then said contract should not be enforced by this court because of public policy. Contracts are unenforceable on grounds of public policy if the interest in its enforcement is clearly outweighed and the circumstances by a public policy against the enforcement of such terms. *Loscher v. Hudson*, 39 Kan. App.2d 417, 182 P.3d 25 (2008). The hiding of a fugitive is a violation of public policy, and thus the court should not enforce any alleged contract.

6. If there was a contract, which is specifically denied .

and the contract was enforceable, which is specifically denied, the proximate cause of Jesse Dimmick's injuries were not the actions of the Plaintiffs as Jesse Dimmick has so alleged in his civil lawsuit of which the court may take judicial notice.

**WHEREFORE**, Plaintiffs respectfully requests their Motion to Dismiss be granted, that Defendant's counterclaim be dismissed for failure to state a claim upon which relief can be granted, and for such other and further relief as the court deems just and proper.

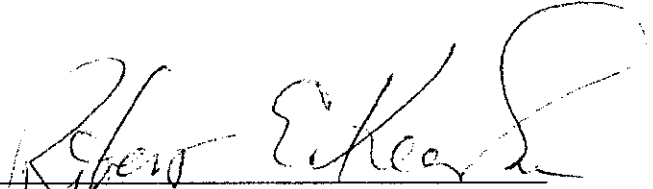
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Attorney for Plaintiffs

CERTIFICATE OF MAILING

I hereby certify that on this 4th day of November, 2011, a true and correct copy of the above and foregoing document was deposited in the United States mail, first class postage prepaid and addressed to the following:

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