

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

GENTRY T. BEACH,

Plaintiff

against

TOURADJI CAPITAL MANAGEMENT, LP, and
PAUL TOURADJI,

Defendant

Index No.

Plaintiff designates

New York

County as the place of trial

The basis of the venue is 0860361

Residence

Summons

Plaintiff resides at

1085 Park Avenue

New York, NY 10128

County of

New York

To the above named Defendant

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, December 9, 2008

Defendant's address:

Touradji Capital Management, LP
101 Park Avenue, 48th Floor
New York, NY 10178

Paul Touradji
92 Laight Street, Apt. 7A
New York, NY 10013



*Attorney(s) for Plaintiff
Office and Post Office Address*

Jeffrey L. Liddle, Esq.
Liddle & Robinson, L.L.P.
800 Third Avenue, 8th Floor
New York, NY 10022

FILED

DEC 09 2008

NEW YORK
COUNTY CLERK'S OFFICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
GENTRY T. BEACH,

Plaintiff,

-against-

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Defendants.
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Index No.

COMPLAINT

08603611
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NEW YORK
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Liddle & Robinson, L.L.P., for his

Plaintiff, Gentry Beach, by his attorneys, Liddle & Robinson, L.L.P., for his

Complaint, alleges as follows:

THE PARTIES

1. Plaintiff, Gentry T. Beach ("Beach"), resides at 1085 Park Avenue, New York, New York 10128.
2. Defendant, Touradji Capital Management LP ("Touradji Capital"), maintains its principal office at 101 Park Avenue, 48th Floor, New York, New York 10178. It is a limited partnership organized and existing under the laws of Delaware, and is a commodities hedge fund that primarily invests in commodities and commodity-related equities.

3. Defendant Paul Touradji (“Touradji”) is Touradji Capital’s founder, Managing Partner, and controlling General Partner. He resides at 92 Laight Street, Apartment 7A, New York, New York 10013.

4. Plaintiff Beach was employed by Touradji Capital as a Portfolio Manager from May 2005 to September 25, 2008.

NATURE OF THE ACTION

5. This is a civil action for damages in excess of \$23,000,000 for breach of contract, violation of the New York Labor Law, unjust enrichment, *quantum meruit*, the intentional infliction of emotional distress, and for the imposition of a constructive trust.

FACTS

6. Beach is a 1998 graduate of the University of Pennsylvania’s Wharton School. Following his graduation, Beach was employed as an investment banker at Morgan Stanley in the firm’s energy and utility banking group. From 2001 until early 2005, Beach was employed as a Portfolio Manager by Solstice Equity Management, a hedge fund. Beach has focused on the energy sector, with particular emphasis on the oil and gas subsector, throughout his career.

7. Touradji formed Touradji Capital in January 2005. In the spring of 2005, he recruited Beach and Rob Vollero, Beach's partner at Solstice, and the team of professionals Beach and Vollero managed there, to join Touradji Capital. These professionals were recruited by Touradji because of their substantial investment experience with commodity related equities.

8. Thereafter, in or about May 2005, Touradji and Touradji Capital formally offered Beach and Vollero employment at Touradji Capital, and they accepted, agreeing to the following terms and conditions of employment (collectively the "Agreement"):

- a) Beach and Vollero would join Touradji Capital as Portfolio Managers, investing a pool of its capital, subsequently named the Touradji OG portfolio, in equities including those in the oil and gas sector;
- b) As compensation for their management of the Touradji OG portfolio, the parties agreed that Beach and Vollero would split, equally, 15% of the net profits Touradji Capital earned annually on the OG portfolio (i.e., Beach and Vollero would each earn 7.5% of the net profits);
- c) In addition, a relative value equity energy fund, which became known as Touradji DeepRock Partners, LP ("DeepRock"), would be created and placed under the management of Beach and Vollero, and would charge its clients, on an annual

basis, a management fee of 2.0% of the assets under management, and 20% of net profits earned;

- d) As compensation for their management of the relative value equity energy fund, Beach and Vollero would split equally 1.0% of the annual management fee, and 15% of the annual net profits earned (i.e., Beach and Vollero would each earn .5% of the management fee and 7.5% of the net profits, respectively); and
- e) The incentive compensation paid annually to the investment professionals managed by Beach and Vollero at Touradji Capital would be determined by Beach and Vollero, and paid out of the annual compensation earned by Beach and Vollero from Touradji Capital.

9. During 2005, the Touradji OG portfolio managed by Beach and Vollero earned net profits of approximately \$98 million dollars.

10. Net profits of \$98 million dollars for 2005 represents a net return of over 22% on the Touradji OG portfolio during the second half of 2005, indicative of superior performance by Beach and Vollero in the management of the portfolio. Beach cannot determine the precise amount of net profits for the OG portfolio until an accounting has been provided by Defendants from the books and records of Touradji Capital.

11. Under their agreement with Defendants, Beach and Vollero were entitled to equally split 15% of the net profits Touradji Capital earned annually on the equity in the Touradji OG portfolio, and thus to split compensation of \$14.7 million dollars (15% of \$98 million dollars, equivalent to \$7.35 million dollars each).

12. After payment of \$1.6 million dollars in 2005 bonus compensation to the investment professionals who reported to them, Beach and Vollero were each entitled to \$6.55 million dollars in earned compensation for 2005 with respect to the Touradji OG portfolio.

13. On or about December 30, 2005, Touradji Capital paid Beach and Vollero \$2.4 million dollars each for their management of the Touradji OG portfolio in 2005.

14. This payment was \$4.15 million dollars less than the \$6.55 million dollars Beach and Touradji each earned under their Agreement with Defendants.

15. When Beach and Vollero complained about this underpayment, Touradji advised them for the first time that Touradji Capital had elected earlier in the year to defer its 2005 profits and reinvest them in the Touradji Global Resources Fund.

16. Touradji stated that for this reason Defendants were unable at that time to withdraw the profits and pay Beach and Vollero the full compensation required by the Agreement.

17. Touradji told Beach and Vollero that the unpaid portion of the profits they earned on their management of the OG portfolio would have to remain in the Touradji Global Resources Fund for eighteen months, until June 30, 2007, and thus that they could not receive the unpaid portion of their 2005 compensation and the additional earnings it generated by being invested in the Touradji Global Resources Fund until that time.

18. Despite having withheld this portion of Beach's 2005 OG portfolio management compensation, on December 1, 2006, Touradji directed Tom Dwan, the Chief Financial Officer of Touradji Capital, to provide Beach with a memorandum confirming that his Touradji Capital compensation for 2005 was "in excess of several million dollars."

19. Touradji caused Dwan to deliver a similar memorandum to Vollero at or about the same time.

20. Also in late 2005, Beach, Vollero, and Touradji agreed to form and jointly manage a separate pool of capital – designated for internal Touradji Capital

accounting purposes as the Touradji ST portfolio – that would adhere to longer term investment strategies than those applied to the Touradji OG portfolio.

21. Beach, Vollero and Defendants agreed that Touradji would personally be entitled to 10% of the annual net profits earned on this portfolio, and that Beach and Vollero would split the other 10% of the annual net profits earned by Touradji Capital on this portfolio (i.e., Beach and Vollero would each earn 5% of the annual net profits, respectively).

22. Touradji Capital launched the DeepRock relative value equity energy fund in February 2006. Approximately \$250 million dollars was raised from investors for this fund.

23. During 2006, the Touradji Capital portfolios Beach and Vollero managed or co-managed achieved fair but not exceptional performance. The Touradji OG portfolio achieved profits of approximately \$7 million dollars and the Touradji ST portfolio achieved profits of approximately \$30 million dollars, while the DeepRock portfolio did not show a profit.

24. Based upon their Agreement with Defendants, Beach and Vollero were entitled together to total compensation for 2006 in the amount of \$6.05 million dollars, less \$1.8 million dollars in incentive compensation paid to their investment professionals, or a total of \$4.25 million dollars.

25. Accordingly, Beach and Vollero were entitled to total compensation of \$2.125 million dollars each for 2006. In January of 2007, Touradji Capital paid Beach and Vollero compensation of \$1.0 million dollars each, and thus \$1.125 million dollars each less than the Agreement provided.

26. During 2007, Touradji Capital decided to transfer certain portions of the Touradji OG and Touradji ST portfolios to be used for a more conservative and diversified investment strategy, and to raise additional capital from investors for that purpose.

27. As a result, certain capital was directed into an OG Diversified (or "OGD") portfolio, and a ST Diversified (or "STD") portfolio.

28. The creation of these diversified portfolios within the OG and ST portfolio umbrellas did not alter the compensation Agreement between the parties for the management of the OG or ST portfolios, or DeepRock.

29. By June 30, 2007, the \$4.15 million of Beach's 2005 compensation Defendants refused to pay him, and instead "invested" in the Touradji Global Resources Fund, had a value of approximately \$6.21 million dollars in light of the fund's performance in the 18 month period following December 31, 2005.

30. At that time, Beach and Vollero again demanded that Defendants pay them the 2005 compensation due them under the Agreement plus the earnings achieved on those funds.

31. Touradji responded by stating that this compensation would be paid to Beach and Vollero within a few months.

32. On or about November 14, 2007, Touradji Capital wired Beach \$282,079.29 (\$453,503.60 before tax withholding), purportedly representing part of the withheld 2005 compensation and generated earnings to which Beach was entitled.

33. Beach's 2005 compensation and the earnings it generated had a value, however, of approximately \$8.29 million dollars by December 31, 2007, and thus the payment made by Touradji Capital was almost \$8 million dollars less than Beach was owed under the Agreement for 2005.

34. 2007 proved to be a successful year for Touradji Capital, based in significant part on Beach's management and investment performance, and the returns achieved by the three funds Beach and Vollero managed.

35. The oil and gas sector in which Beach specialized was a primary contributor to the profits achieved for Touradji Capital.

36. Specifically, the Touradji OG and OGD portfolios achieved in excess of \$50 million dollars in net profits in 2007.

37. DeepRock earned approximately \$45 million dollars in net profits for 2007 (with approximately \$300 million dollars under management).

38. The Touradji ST and STD portfolios did not show a profit.

39. Approximately \$3 million dollars in bonus compensation was paid to the investment professionals who reported to Beach and Vollero for their services in 2007.

40. Under the Agreement, Beach and Vollero were entitled to total 2007 performance compensation of \$14.25 million dollars, or \$7.125 million dollars each, on the performance of the Touradji OG, OGD, and DeepRock portfolios (15% of \$95 million dollars profits on the OG, OGD, and DeepRock portfolios).

41. Beach and Vollero were also entitled to split equally a 1% DeepRock management fee equal to \$3 million dollars, or \$1.5 million each, and thus total 2007 performance compensation of \$8.625 million dollars each.

42. For 2007, Beach and Vollero were each responsible in for \$1.5 million in bonus compensation paid to the investment professionals they managed, which reduced their total 2007 compensation for the year to \$7.125 million dollars each.

43. Despite demand for payment, Defendants refused to pay Beach or Vollero the compensation to which they were entitled for 2007 under the Agreement.

44. Between January and May 2008, Beach repeatedly demanded that Defendants pay him the compensation to which he was entitled under the Agreement for 2005, 2006, and 2007, as well as the gain on the \$4.15 million dollars in 2005 performance compensation that Touradji had involuntarily invested in the Touradji Global Resources Fund.

45. Despite repeated promises by Touradji, the payments were never made.

46. In May 2008, Touradji told Beach that Touradji Capital would pay him all of the compensation and investment gains owed to him if he would make a "public apology" to Touradji Capital employees for investment decisions made by the Touradji Capital Investment Committee.

47. At the same time, Touradji informed Beach that if he refused his request "I will destroy you and ruin your career no matter what the cost."

48. Fearful for his employment, his career in the industry, and his ability to receive the millions of dollars in earned compensation he was owed by Defendants, Beach made the apology Touradji had requested.

49. Touradji, however, again refused to pay Beach the compensation he was owed for 2005, 2006, and 2007 despite these events.

50. Between May and September 2008, Beach continued to demand that Touradji and Touradji Capital pay him the compensation to which he was entitled for 2005, 2006, and 2007.

51. This compensation included the \$4.15 million in 2005 compensation that Touradji had involuntarily invested in the Touradji Global Resources Fund that had a value at that time in excess of \$8 million dollars.

52. On September 5, 2008, Touradji told Beach he would have Touradji Capital pay him the compensation he was owed within two weeks. At the same time, Touradji made threatening statements regarding a former Touradji Capital employee, Chuck Ray, who had recently threatened legal action after Touradji failed to pay his 2007 deferred compensation, bonus, and other money owed to him.

53. Touradji told Beach that he would ruin Ray's career if he sued him, and that if he lost a suit by Ray over his compensation, he would have Ray "killed" rather than pay him.

54. It was clear to Beach that this threat against Ray was intended to threaten and intimidate Beach from taking any action to collect his earnings from Defendants.

55. When two weeks passed, and Defendants still had not paid Beach the compensation owed to him, Beach emailed Touradji, to no avail.

56. Beach then approached Touradji again, on September 25, 2008, on the firm's trading floor. Touradji instructed Beach to come into his private office, where he immediately began verbally assaulting and threatening Beach.

57. Among other things, Touradji told Beach that if he failed to do exactly what Touradji said, he would do everything in his power to destroy Beach and ruin his career, no matter the cost, and that he had the "war chest" to do it.

58. Touradji added that he would do everything in his power to ruin Beach's marriage and family, even if it meant saying things that were untrue.

59. Touradji promised that when he was “finished with [Beach], [Beach] would be ruined and completely unemployable on Wall Street.” Touradji added that he had had no intention of paying Beach the compensation he was owed.

60. At the end of the meeting, Touradji repeated his threat to destroy Beach and his family, and stated that he would have Beach killed if he crossed him.

61. Because Touradji screamed at Beach during much of this September 25, 2008 meeting, his threats were overheard by other Touradji Capital employees.

62. As a result of the foregoing events, Beach was compelled to resign from his employment with Touradji Capital on September 26, 2008, and thus was constructively discharged.

63. At the same time, he provided Tom Dwan, Touradji Capital’s Chief Financial Officer and Compliance Officer with a letter formally reporting Touradji’s September 5 and 25, 2008 verbal attacks and physical threats.

64. On September 26, 2008, Beach filed a police report in New York City detailing the threats Touradji made against him and his family, including the threat to have him killed.

65. In addition to the compensation owed to him for 2005, 2006, and 2007, Beach is also entitled under the Agreement to compensation from Defendants for the outstanding performance of the portfolios he managed in 2008 through the date of his forced departure.

66. Early in 2008, Beach generated an investment strategy that positioned the Touradji OG, Touradji OGD, and DeepRock portfolios to take advantage of a newly discovered natural gas shale known as the Haynesville Shale.

67. As of September 26, 2008, the date of Beach's constructive discharge from Touradji Capital, the Touradji OG and OGD portfolios had recorded net profits of approximately \$80 million dollars for the year.

68. DeepRock had net profits of approximately \$10 million dollars for that period, and also earned a management fee of approximately \$4 million dollars on approximately \$200 million dollars of assets under management.

69. Accordingly, as of September 26, 2008, under the compensation formulas included in the Agreement for the OG and OGD portfolios, and for DeepRock, Beach and Vollero were entitled to split equally \$15.5 million dollars in earned compensation for 2008 (\$13.5 million dollars in net profits and \$2 million dollars in management fees) or \$7.75 million dollars each, minus the amount reasonably allocated to the investment professional bonus pool.

FIRST CAUSE OF ACTION
(Breach of Contract)

70. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 69 as if separately set forth herein.

71. Under their May 2005 Agreement, Defendant Touradji Capital, Defendant Paul Touradji, and Plaintiff Beach agreed Beach would be paid 7.5% of the annual net profits of the Touradji OG portfolio and the DeepRock fund; 5% of the annual net profits of the Touradji ST portfolio, and a 0.5% annual management fee on the assets under management in the DeepRock fund.

72. Defendants breached the Agreement, by failing to pay Plaintiff the compensation he earned under the Agreement for 2005, 2006, 2007, and 2008, including the earnings on the \$4.15 million of Beach's 2005 compensation Defendants invested in the Touradji Global Resources Fund, all as described above, and subject to a proper accounting for that compensation and earnings.

73. As a direct and proximate result of Defendants' breach of the Agreement, Plaintiff has suffered damages, in an amount to be determined at trial, but believed to be not less than \$23,000,000, not including prejudgment interest.

SECOND CAUSE OF ACTION
(Violation of the New York Labor Law)

74. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 69 as if separately set forth herein.

75. Touradji and Touradji Capital are employers, Beach was an employee, and all of the amounts owed by Defendants to Beach as described above are wages within the meaning of Article 6 of the New York Labor Law.

76. Defendants' failure to pay Plaintiff his earned compensation pursuant to the Agreement for 2005, 2006, 2007, and 2008 constitutes an unlawful withholding of wages in violation of Sections 191 and 193 of the New York Labor Law.

77. As Defendant Touradji's verbal and physical threats against Beach and other evidence make clear, Defendants' violation of Article 6 of the New York Labor Law was willful, in that Defendants failed to pay wages they had acknowledged were due Beach, thus entitling Beach to liquidated damages.

78. Defendants are liable to Plaintiff for unpaid wages in an amount to be determined at trial, liquidated damages, attorney's fees and costs under § 198 of the New York Labor Law.

THIRD CAUSE OF ACTION
(Unjust Enrichment)

79. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 69 as if separately set forth herein.

80. Defendants have been unjustly enriched by Beach's services to Touradji Capital.

81. Beach conferred a benefit upon Touradji and Touradji Capital by generating trading strategies and profits, investing in Touradji Capital, managing some of its portfolios and funds, and introducing and developing clients who invested significant assets in Touradji Capital's funds for investment management.

82. Defendants have unjustly retained the benefit of the revenue generated by Beach's efforts and services without adequately compensating him. The amount unjustly retained specifically includes, but is not limited to \$4.15 million of Beach's 2005 compensation, which was invested by Defendants in the Touradji Global Resources Fund and its current value, estimated to be in excess of \$8 million dollars.

83. Plaintiff is entitled to just compensation for the benefit that his services conferred upon Touradji Capital in an amount to be determined at trial.

FOURTH CAUSE OF ACTION
(Quantum Meruit)

84. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 69 as if separately set forth herein.

85. Defendants owe Beach the reasonable value of the services he performed as a portfolio manager, trader, and recruiter of clients with significant assets for Touradji Capital to invest.

86. Beach is entitled to be paid the reasonable value of the services he performed on behalf of Defendants Touradji and Touradji Capital.

FIFTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

87. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 69 as if separately set forth herein.

88. In an attempt to extort Beach's relinquishment of his employment and compensation rights, Defendants engaged in intentional and reckless conduct that was extreme and outrageous. This conduct included, inter alia, threatening to kill the Plaintiff, harm his family, ruin his marriage, and destroy his career in the hedge fund industry.

89. As a proximate result of the foregoing egregious conduct, Plaintiff has suffered severe emotional distress, and had incurred damage and injury.

SIXTH CAUSE OF ACTION
(Imposition of Constructive Trust)

90. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 69, as if separately set forth herein.

91. Beach reposed trust and confidence in Defendants to keep accurate records of monies it earned from assets under management and net profits from its fund and portfolio investments, accurate records of Beach's earnings under the Agreement, and accurate records of the earnings on the portion of Beach's 2005 compensation that Defendants reinvested in the Touradji Global Resources Fund.

92. Beach's earnings under the Agreement for the period 2005-2008 have been unlawfully retained by Defendants, including the transfer of a portion of his 2005 compensation into the Touradji Global Resources Fund.

93. Beach has demanded that his earnings and property be paid to him, and Defendants have refused to render him a proper accounting, and have refused to pay him the compensation to which he was entitled under the Agreement.

94. Defendants have been unjustly enriched by their retention of Beach's earnings, and earnings of his 2005 unpaid compensation, as alleged above.

95. A constructive trust should be imposed upon the full amount of damages incurred by Beach as a result of the claims asserted above, following the determination by accounting of the full amount of Beach's 2005 to 2008 earned compensation that has not been paid to him, including the earnings on his 2005 compensation that was involuntarily invested by Touradji in the Touradji Global Resources Fund.

WHEREFORE, Plaintiff Gentry T. Beach, respectfully prays for an award of compensatory damages, in an amount to be determined at trial but not less than \$23,000,000, for punitive damages, for liquidated damages, for attorneys fees and costs, for the imposition of a construction trust upon the earned compensation wrongfully withheld from him, for an accounting, and for such other and further relief as may be deemed just and proper.

Dated: New York, New York
December 9, 2008

LIDDLE & ROBINSON, L.L.P.

By: 

Jeffrey L. Liddle

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COMPLAINT

Attorneys for Plaintiff

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