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Elan Coplin

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
12/19/2017 at 10:17:04 AM
Clerk of the Superior Court
By Dollie Campos, Deputy Clerk

SUPERIOR COURT OF COUNTY OF ORANGE

Judge Walter Schwann

ELAN COPLIN

Plaintiff,

vs.

DUWAYNE MCCLENDON

Defendant.

) Case No.: 30-2017-00962241-CU-FR-CJC
)
) COMPLAINT FOR APPROPRIATION OF NAME AND
) LIKENESS; CONCEALMENT; FRAUD;
) INTENTIONAL MISREPRESENTATION;
) CONVERSION; UNJUST ENRICHMENT; AND
) INTENTIONAL INFLICTION OF EMOTIONAL
) DISTRESS
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Plaintiff ELAN COPLIN agrees:

I. PARTIES AND JURISDICTION

1. Plaintiff is a resident of County of Marin, State of California.
2. Defendant is a resident of County of Los Angeles, State of California. The incidents that gave rise to the fraud occurred in Orange County

ELC 1104

II. STATEMENT OF FACTS

1. On or about May 31, 2002, Plaintiff and Defendant were involved in a romantic relationship.
2. Around that time, without Plaintiff's knowledge, Defendant started, owned and operated a motor sports business named ELC Motorsports.
3. Defendant chose this business name based on Plaintiff's initials (E.L.C.).
4. Defendant had access to all of Plaintiff's private information, including her driver's license and social security number.
5. On May 31, 2002, an account was opened with Cardservice International in the name of ELC Motorsports.

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Plaintiff Elan Coplin was named as the Principal.

6. Defendant opened the account for credit card processing services for his business.
7. To open the account, Plaintiff's driver's license number, social security number, and signature had to be provided. These three things were provided to Cardservice International without Plaintiff's knowledge. Plaintiff believes that the signature on the bottom of the credit application was fraudulently forged by Defendant.
8. For a substantial period of time thereafter, Plaintiff had no knowledge of the contract with Cardservice International that had been executed in her name.
9. Plaintiff did not authorize Defendant to use her name to open the account.
10. Plaintiff did not grant Defendant permission to use her private information, including her driver's license and social security number.
11. Plaintiff did not receive any benefit, money, goods, or services as a result of Defendant's fraudulent actions.
12. After the conclusion of Plaintiff and Defendant's romantic relationship, Plaintiff moved to Marin County, California.
13. On or about December 2003, Cardservices International made a first attempt to file a complaint against Plaintiff in reference to an ELC Motorsports balance in the amount of \$9,113.82 remaining due. Plaintiff had never heard of ELC Motorsports before she received the summons and complaint.
14. On or about February 2004, Plaintiff met with Defendant to discuss the matter. Defendant wrote a note to Plaintiff stating that he was the owner of ELC Motorsports and that he would take full responsibility for the \$9,113.82 debt.
15. On or about February 2004, Plaintiff discovered a checkbook from Toyota Federal Credit Union in the name of Defendant Duwayne McClendon, DBA ELC Motorsports.
16. On April 19, 2004, Plaintiff discovered that ELC Motorsports no longer existed.
17. On June 7, 2004, Plaintiff filed an incident report with the Police Department of San Rafael, California.
18. On or about July 2004, Cardservices International successfully served Plaintiff with a summons and complaint in reference to an ELC Motorsports balance in the amount of \$9,113.82 remaining due.
19. Since August of 2004, Plaintiff has been plagued by the financial and emotional ramifications of Defendant's actions and the Cardservices International lawsuit. She has experienced more than \$22,220.72 worth of damages plus an additional \$1,687.38 with extra interests; and additional charges and damages.

III. LAW

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FIRST CAUSE OF ACTION

(APPROPRIATION OF NAME OR LIKENESS)

Appropriation of name or likeness may be pleaded by alleging (1) the defendant's use of the plaintiff's identity; (2) the appropriation of plaintiff's name or likeness to defendant's advantage, commercially or otherwise; (3) the lack of consent; and (4) resulting injury.

1. Defendant and Plaintiff were romantic partners. During the course of their relationship, Defendant had access to Plaintiff's personal identification information, including her social security number and her driver's license.
2. Defendant used Plaintiff's personal identification information to open a Cardservices International credit account in Plaintiff's name. Defendant forged Plaintiff's signature to open the aforementioned account.
3. The appropriation of Plaintiff's name to open the credit account was to the advantage of Defendant's company, ELC Motorsports. Defendant accumulated debt in Plaintiff's name for the benefit of operating his personal business.
4. Plaintiff had no knowledge that ELC Motorsports existed. Plaintiff did not consent to the opening of a credit account in her name for the benefit of Defendant's business. Plaintiff did not consent to Defendant using her personal information to open the account.
5. Plaintiff did not receive any of the advantages or benefits of the fraudulent credit account. As a result of Defendant's appropriation of Plaintiff's name and personal information, a collection action was opened against Plaintiff in the amount of \$9,113.82. Additionally, she has suffered economic loss in the form of interest, lawyer's fees, and damaged career reputation.

SECOND CAUSE OF ACTION

(CONCEALMENT)

A defendant is liable for concealment if they concealed or failed to disclose a material fact during a transaction, causing damage to the victim.

6. Plaintiff realleges and incorporates herein each and every allegation contained in paragraphs 1 through 5.
7. Defendant concealed the following facts from Plaintiff: 1) that he opened a Cardservices International credit account in her name for the benefit of his business ELC Motorsports; and 2) that he used her social security

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number, driver's license number, and forged signature to open the aforementioned account.

- 8. Defendant intentionally failed to disclose these facts to Plaintiff.
- 9. Plaintiff did not know of these concealed facts and could not have discovered them.
- 10. Had the omitted information been disclosed, Plaintiff reasonably would have behaved differently.
- 11. Plaintiff was harmed by the debt that was accrued to the benefit of Defendant's business.
- 12. Defendant's concealment of these facts was a substantial factor of Plaintiff's harm.

WHEREFORE, Plaintiff prays for judgment as set forth hereafter.

THIRD CAUSE OF ACTION

(FRAUD)

A fraud cause of action consists of: (1) a representation of fact; (2) its falsity; (3) its materiality; (4) the representer's knowledge of its falsity or ignorance of its truth; (5) the representer's intent that it should be acted upon by the person in the manner reasonably contemplated; (6) the injured party's ignorance of its falsity; (7) the injured party's reliance on its truth; (8) the injured party's right to rely thereon; and (9) the injured party's consequent and proximate injury.

- 13. Plaintiff realleges and incorporates herein each and every allegation contained in paragraphs 1 through 12.
- 14. Plaintiff alleges that by providing her social security number, driver's license, and fraudulent signature, Defendant represented to Cardservice International that Plaintiff consented to having a credit account opened with them in her name.
- 15. Plaintiff alleges that this representation of her consent was false, as she did not grant permission to Defendant for her personal information to be provided to third parties, nor did she provide consent for Defendant to open and a credit account with Cardservice International in her name.
- 16. Plaintiff alleges that this representation was material to Defendant's unlawful actions.
- 17. Plaintiff alleges that Defendant was aware of the falsity of this representation.
- 18. Plaintiff alleges that Defendant's intent was to induce Cardservice International to open an account that he could use for the benefit of his business, ELC Motorsports, without Plaintiff's knowledge so as to prevent her from taking the necessary steps to protect her credit history and assets.
- 19. Plaintiff was ignorant of the false representation presented to Cardservice International.

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2 20. Plaintiff relied on Defendant's false representation of fact because she had no reason or evidence to believe that he
3 had used her information to open a secret account.

4 As a result of Defendants' fraudulent actions, a collection action was opened against Plaintiff in the amount of
5 \$9,113.82. Additionally, she has suffered economic loss in the form of interest, lawyer's fees, and damaged career
6 reputation. The aforementioned conduct was an intentional misrepresentation, deceit and/or concealment of material facts
7 known to Defendants, with the intention on the part of Defendants of thereby depriving Plaintiff of property, legal rights or
8 otherwise causing injury and was despicable conduct that subjected to cruel and unjust hardship and conscious disregard of
9 Plaintiff's rights, so as to justify an award of exemplary and punitive damages.

10 WHEREFORE, Plaintiff prays for judgment as set forth hereafter.

11
12 **FOURTH CAUSE OF ACTION**

13 (INTENTIONAL MISREPRESENTATION)

14 Intentional misrepresentation consists of 1) Defendant's false representation; 2) Defendant's knowledge that the
15 representation was false or reckless disregard as to its truthfulness; 3) Defendant's intent to induce the plaintiff to act in
16 reliance on the misrepresentation; 4) the misrepresentation caused the Plaintiff to rely on the misrepresentation; 5)
17 Plaintiff's reliance was justifiable; and 6) Plaintiff suffered actual economic loss.

18 21. Plaintiff realleges and incorporates herein each and every allegation contained in paragraphs 1 through 21.

19 22. Plaintiff alleges that Defendants falsely represented the following to her in a written note on or about February
20 2004: that as the owner of ELC Motorsports he would take full responsibility for the \$9,113.82 debt that he had
21 fraudulently accrued in her name.

22 23. Plaintiff alleges that Defendants knew that his representation that he would remedy the debt was false.

23 24. Plaintiff alleges that Defendants intended to induce Plaintiff to act in reliance on the misrepresentation, preventing
24 her from taking immediate steps to protect her reputation and assets from the consequences of the unpaid debt.

25 25. Plaintiff relied on the misrepresentations contained in Defendant's note.

26 26. Plaintiff alleges that her reliance was justifiable, as she had no evidence or cause to believe that Defendant was
27 lying.

28 27. Plaintiff suffered actual loss in the amount of \$9,113.82. Additionally, she has suffered economic loss in the form
of interest, lawyer's fees, and damaged career reputation. These actions justifies the award of punitive damages.

WHEREFORE, Plaintiff prays for judgment as set forth hereafter.

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FIFTH CAUSE OF ACTION

(CONVERSION)

A defendant is liable for conversion if they intentionally commit an act 1) depriving the plaintiff of possession of their chattel; or 2) interfering with the plaintiff's chattel in a manner so serious as to deprive the plaintiff of the use of the chattel.

28. Plaintiff realleges and incorporates herein each and every allegation contained in paragraphs 1 through 28.

29. Plaintiff alleges that Defendant intentionally committed acts that deprived her of possession of more than \$9,113.82 of her assets. These acts included: 1) opening a credit account with Cardservice International in Plaintiff's name, without her knowledge; 2) using Plaintiff's personal information without her knowledge to open the Cardservice account; 3) accruing debt in the account for the benefit of his business, ELC Motorsports; and 4) refusing and failing to reimburse Plaintiff for the debt.

30. Plaintiff demanded the immediate return of the amount mentioned above; however, Defendant failed and refused, and continue to fail and refuse, to return the money to Plaintiff.

31. Defendant's actions have seriously deprived Plaintiff of use of funds that lawfully belong to her.

WHEREFORE, Plaintiff prays for judgment as set forth hereafter.

SIXTH CAUSE OF ACTION

(UNJUST ENRICHMENT)

An unjust enrichment cause of action consists of: 1) the enrichment of the party accused of unjust enrichment; 2) the enrichment was at the expense of the party seeking restitution; and 3) the circumstances were such that in equity and good conscience restitution should be made.

32. Plaintiff realleges and incorporates herein each and every allegation contained in paragraphs 1 through 32.

33. Plaintiff alleges that Defendant's aforementioned fraudulent and unlawful acts caused Defendant to be unfairly enriched.

34. Plaintiff alleges that this enrichment was at the expense of her personally as she was not a recipient of the benefits of the Creditservice International credit account.

35. Plaintiff alleges that this enrichment was at the expense of her personally as she has suffered consequences of the debt that include 1) repayment of the debt; 2) garnished wages; 3) damaged career reputation; and 4) lawyers fees.

36. Plaintiff alleges that this enrichment was unjust, as Defendant used fraudulent and unlawful methods to open the

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credit account in her name.

37. Defendant has refused and still refuses to restore any portion of the amount they unlawfully spent in Plaintiff's name.

WHEREFORE, Plaintiff prays for judgment as set forth hereafter.

SEVENTH CAUSE OF ACTION

(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

A cause of action for intentional infliction of emotional distress consists of: (1) outrageous conduct by the defendant with the intention to cause or reckless disregard of the probability of causing emotional distress, (2) severe emotional suffering and (3) actual and proximate causation of the emotional distress.

38. Plaintiff realleges and incorporates herein each and every allegation continued in paragraphs 1 through 38.

39. Plaintiff alleges that Defendant systematically pursued a course of conduct in his dealings with Plaintiff that was outrageous.

40. Plaintiff alleges that Defendant pursued this conduct with intent to hurt and cause emotional pain to Plaintiff.

41. Plaintiff suffered severe emotional suffering as a result of Defendant's conduct.

WHEREFORE, Plaintiff prays for judgment against the Defendants, and each of them, as set forth:

- 1. Restitution damages;
- 2. Intentional infliction of emotional distress damages;
- 3. Punitive damages;
- 4. Attorney fees; and
- 5. For such other and further relief as the Court deems just and proper.

Dated: December 7 2017

SOFER LAW

s/s Avner D. Sofer
Avner D. Sofer, Esq.
Attorneys for Plaintiff

DECLARATION OF ELAN COPLIN

I, ELAN COPLIN, hereby declare under penalty of perjury that the foregoing is true and correct:

- 1. I am the Plaintiff in the above-entitled action. I make this declaration based on personal knowledge and, if called on to testify, would testify completely as stated herein.
- 2. In 2002 Defendant and I were involved in a romantic relationship.

3. Around that time, without my knowledge, Defendant started, owned, and operated a motor sports business named ELC Motorsports. I later discovered from Defendant that he chose his business name based on my initials (E.L.C.).
4. During the course of our relationship Defendant had access to all of my private information, including my driver's license and social security number.
5. On May 31, 2002, Defendant caused an account to be opened with Cardservice International in my name without my knowledge. To open the account, Defendant provided my driver's license number and social security number, and forged my signature on the paperwork.
6. I later discovered that Defendant opened this account for credit card processing services for his business (ELC Motorsports). In fact, for a longtime I had no knowledge of the contract with Cardservice International that had been executed in my name.
7. I did not authorize Defendant to use my name to open the Cardservice International account.
8. I did not grant Defendant permission to use my identification information, including my driver's license and social security number.
9. I did not receive any benefit, money, goods, or services as a result of Defendant's fraudulent actions.
10. After the conclusion of my romantic relationship with Defendant, I moved to Marin County, California.
11. On or about December 2003, Cardservices International made a first attempt to file a complaint against me in reference to an ELC Motorsports balance in the amount of \$9,113.82 remaining due. I had never heard of ELC Motorsports before the initiation of this lawsuit.
12. On or about February 2004, I met with Defendant to discuss the matter. Defendant wrote a note to me stating that he was the owner of ELC Motorsports and that he would take full responsibility for the \$9,113.82 debt.
13. Around that time I discovered a checkbook from Toyota Federal Credit Union in the name of "Defendant Duwayne McClendon, DBA ELC Motorsports."
14. On April 19, 2004, I discovered that ELC Motorsports no longer existed.
15. On June 7, 2004, I filed an incident report with the Police Department of San Rafael, California.
16. On or about July 2004, Cardservices International successfully served me with a summons and complaint in reference to an ELC Motorsports balance in the amount of \$9,113.82 remaining due.
17. Since August of 2004, I have been plagued by the financial and emotional ramifications of Defendant's actions and the Cardservices International lawsuit. I have experienced more than \$22,220.72 worth of damages plus an

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additional \$1,687.38 with extra interests.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 12/8/2017 in Marin County, California

Elan Coplin