

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Chris Gregerson,

Plaintiff,

Case Type: OTHER CIVIL

Court File No.: _____

Judge: _____

v.

[original Plaintiff], a Minnesota Corporation; [owner of original, corporate Plaintiff], Morgan Smith, Boris Parker, and Vladimir Kazaryan; Smith & Raver, LLP, Saliterman & Siefferman, PC, and Bassford Remele, PA, Minnesota Law Firms,

Defendants.

COMPLAINT¹

NOW COMES the Plaintiff, Chris Gregerson, and for it's complaint against the Defendants, states and alleges the following:

PARTIES

1. Plaintiff Chris Gregerson (“Gregerson”) is a natural person, residing at 150 N. Green Ave., New Richmond, WI, 54017.
2. Defendant [original Plaintiff] (“[original Plaintiff]”) is a Minnesota corporation, with a registered place of business of 5747 West Broadway, Crystal, MN, 55428.
3. Defendant Smith & Raver, LLP, is a Minnesota Limited Liability Partnership with a registered place of business of 1313 5th Street SE, Minneapolis, MN 55414.
4. Defendant Saliterman & Siefferman, P.C., is a Minnesota corporation with a registered place of business of 200 South Sixth Street #2000, Minneapolis, MN, 55402.
5. Defendant Bassford Remele, P.A., is a Minnesota corporation with a registered

¹ Note: this is a redacted version, with the name of the original Plaintiff removed following a settlement agreement.

place of business of 33 South Sixth Street, Ste. 3800, Minneapolis, MN. 55402.

6. Defendant [owner of original, corporate Plaintiff] (“[owner of original, corporate Plaintiff]”) is a natural person and the sole owner and board member of defendant [original Plaintiff] Upon information and belief, he resides in Hennepin County and is employed at 5747 West Broadway, Crystal, MN, 55428.

7. Defendant Vladimir Kazaryan is a natural person and resides in Hennepin County at 6828 Narcissus Lane N., Plymouth, MN. and does business at 3021 Harbor Ln N, Suite 210, Plymouth, MN 55447. He is a former employee of Defendant [original Plaintiff]

8. Defendant Morgan Smith, Esq.(“Smith”), is a natural person who does business at 1313 5th Street SE, Ste. 128, Minneapolis, MN, 55414. He is a former attorney for Defendant [original Plaintiff]

9. Defendant Boris Parker, Esq.(“Parker”), is a natural person who resides in Hennepin County at 2441 Forest Meadow Circle, Minnetonka, MN, 55305 and does business at 1700 US Bank Plaza South, 220 South 6th Street, Minneapolis, MN 55402. He is a former attorney for Defendant [original Plaintiff]

INTRODUCTION

10. In early 2005, [original Plaintiff] unlawfully procured two photos from Chris Gregerson's stock photography website and used them in a series of advertisements.

11. Gregerson discovered the use of one photo, demanded payment, and [original Plaintiff] refused. Gregerson publicized [original Plaintiff]'s infringement of his photo in an essay on his web site.

12. In retaliation, [original Plaintiff] and their attorneys, (consecutively) Morgan Smith and Boris Parker, maliciously prosecuted Gregerson in Minnesota District Court and US District Court from October, 2005, to February, 2008, based on fraudulent evidence that the

photo was not Gregerson's, but was taken by Michael Zubitskiy, a person they fabricated.

13. [original Plaintiff] and counsel engaged in abuse of process, using litigation over trademark and trade practices to pressure Gregerson to stop publicizing [original Plaintiff]'s copyright infringement.

14. Smith's firm, Smith & Raver, and Parker's law firms, (consecutively) Saliterman & Siefferman and Bassford Remele, are vicariously liable for their attorney's malicious prosecution, abuse of process, and intent to deceive the court.

15. Defendant Vladimir Kazaryan materially aided and abetted the malicious prosecution of Gregerson by providing a false notarization for the forged sales agreement, for which he lost his notarial license. Kazaryan also provided false sworn testimony.

16. [original Plaintiff] is the corporate alter-ego of defendant [owner of original, corporate Plaintiff], and [owner of original, corporate Plaintiff] is personally liable for his tortuous conduct as an officer of [original Plaintiff].

JURISDICTION AND VENUE

17. This court has jurisdiction over this case pursuant to Minn. Stat. § 484.01(1).

18. Venue in Hennepin County is proper under Minn. Stat. §§ 542.01 & 542.09..

FACTUAL ALLEGATIONS

[owner of original, corporate Plaintiff] stole Gregerson's photos to use in ads for [original Plaintiff]

19. Plaintiff Gregerson is a professional photographer by trade, and displays photos on his website for licensing at www.cgstock.com (the original website address, www.phototour.minneapolis.mn.us, is also still in use).

20. In early 2004, with no prior relationship, defendant [original Plaintiff] unlawfully procured two photos from Gregerson's website and used them in a series of advertisements without Gregerson's knowledge or consent. This was litigated between Gregerson and [original

Plaintiff], with a bench trial in November, 2007. US District Court Judge Ann D. Montgomery found:

Defendants[[original Plaintiff]] did not procure the Skyline and Kenwood photos from Zubitskiy, rather, they unlawfully procured them from Plaintiff's [Gregerson's] website.

Findings of Fact, Conclusions of Law, and Order for Judgment, *Gregerson v. [original Plaintiff]*, D. Minn. 06-cv-01164 (see Exhibit A, ¶ 17, pp. 7)

...Defendants flagrantly disregarded Plaintiff's rights as a copyright owner.

Id. at pp. 11

21. In May of 2005, Gregerson was living in Minneapolis when he saw photo #2891 from his website (the “Skyline photo”) in a full-page ad for [original Plaintiff] and [original Plaintiff] in the Qwest Dex phone book. The photo showed reduced image resolution (“pixelation”) reflecting it had been taken from Gregerson's website. Further, just enough of the bottom was cropped away to remove Gregerson's website address from the photo. Exhibit B.

22. On June 22nd, 2005, Gregerson mailed [original Plaintiff] a letter explaining that payment was due for their use of his photo. [original Plaintiff] did not respond.

23. After 20 days, Gregerson called [original Plaintiff] and spoke to [owner of original, corporate Plaintiff]. [owner of original, corporate Plaintiff] stated he obtained Gregerson's photo from a web designer named Michael Zubitskiy, whom he paid \$850 for it. He questioned Gregerson's claim to own the photo and refused any payment to Gregerson.

24. Gregerson called [owner of original, corporate Plaintiff] back and asked if Michael Zubitskiy had provided a high-resolution version of the photo, offering to produce his own high-resolution version to establish Gregerson created the photo. [owner of original, corporate Plaintiff] dismissed the offer, saying “I know it's your photo, but I'm not going to pay twice for the same photo”.

25. Gregerson attempted to locate Michael Zubitskiy. There were zero search results for that name on the world wide web. Exhibit C. Gregerson called [owner of original, corporate Plaintiff] back and requested Zubitskiy's contact information. [owner of original, corporate Plaintiff] refused to produce it without payment for his time, and threatened to sue Gregerson for harassment if he called again.

26. Gregerson filed a claim in Hennepin County conciliation court against [original Plaintiff] for the unpaid licensing fee for his photo.

[owner of original, corporate Plaintiff] and Kazaryan Forge a Sales Agreement for the Photos

27. [owner of original, corporate Plaintiff] fabricated a sales agreement stating that [original Plaintiff] had purchased an unspecified number of photos from Michael Zubitskiy for \$850. Exhibit D.

28. The document had a forged signature for Micheal Zubitskiy that was fraudulently notarized by Vladimir Kazaryan and falsely back-dated to March of 2004. Kazaryan surrendered his notary public commission to the Minnesota Department of Commerce over this misconduct. Exhibit E, Consent Order with the Minnesota Department of Commerce.

29. The existence of Zubitskiy was addresses by Judge Ann D. Montgomery:

"The court finds there is no credible evidence to support the belief that 'Zubitskiy' exists or was the source of the controverted photos."

Findings of Fact, Conclusions of Law, and Order for Judgment, Gregerson v. [original Plaintiff] (see Exhibit A at ¶ 13).

Gregerson's Conciliation Court Claim is Heard

30. Gregerson's small claims court case was heard on August 21st, 2005, with Morgan Smith, Esq. representing [original Plaintiff]. Smith produced the forged Zubitskiy photo agreement to the hearing officer during the proceedings, and argued that federal courts have

exclusive jurisdiction over copyright matters. The hearing officer dismissed Gregerson's claim without prejudice.

Gregerson Publishes a Web Page About [original Plaintiff]'s Infringement of his Photo

31. In September of 2005, Gregerson published a one-page essay in the “essays” section of his website about [original Plaintiff]'s unauthorized use of his photo. Exhibit F.

32. Two weeks later, Gregerson was contacted by Sam Dorfman, a stranger to Gregerson who knew [owner of original, corporate Plaintiff] and saw the essay. He informed Gregerson that [original Plaintiff] was using his Skyline photo in other ads, including in the Russian-language newspaper Zerkalo.

33. Gregerson was also contacted by Michael Walker, a former [original Plaintiff] employee, who had also seen Gregerson's web page. Walker informed Gregerson that the Zubitskiy sales agreement had been forged. Walker later testified to this at trial.

34. Gregerson's web page was constitutionally-protected speech and a vital means of communication with members of the public who had relevant evidence.

[original Plaintiff] Demands Gregerson Suspend All Speech About [original Plaintiff]

35. On October 4th, 2005, [original Plaintiff] sent a letter to Gregerson demanding he remove his web page or face a lawsuit for libel. Exhibit G. [original Plaintiff] did not identify any false statements on the web page, yet insisted it be removed and Gregerson make no further public statements about [original Plaintiff]. Minnesota District Court Judge Mark Wernick later wrote about this letter:

[original Plaintiff]'s lawyer surely knew he could only ask Gregerson to remove those statements in the essay that were allegedly false. Yet, except for a reference to the headline, [original Plaintiff]'s lawyer made no effort to describe to Gregerson what statements

in the essay were allegedly false. The lawyer's letter appears to be a bullying tactic designed to cause Gregerson to refrain from making statements which [original Plaintiff] knew Gregerson was entitled to make.

Order and Memorandum, *[original Plaintiff] v. Chris Gregerson*, April 10th, 2006 (see Exhibit H, pp. 11)

36. Gregerson answered the letter by offering to remove any statements that [original Plaintiff] could show were false. [original Plaintiff] did not respond, but instead sued Gregerson for defamation.

Malicious Prosecution Begins

37. On October 24th, 2005, [original Plaintiff], represented by Morgan Smith, filed a lawsuit for defamation against Gregerson in Minnesota State Court, 4th District, alleging Gregerson's web page was false and defamatory. Exhibit I. The Complaint included the forged Zubitskiy photo agreement as Exhibit A..

38. [original Plaintiff] obtained an *ex-parte* temporary restraining order (TRO) against Gregerson's web page based on their defamation complaint. Gregerson complied with the court's order and removed his web page on October 26th, 2005. Judge Mary DuFresne ruled the TRO was an unconstitutional prior restraint on Oct 31st, and Gregerson re-published the web page.

39. [original Plaintiff]'s lawsuit and TRO deceived the court by falsely claiming [original Plaintiff] bought the Skyline photo from Zubitskiy and submitting a forged sales agreement.

40. A web search would show there is no photographer named Michael Zubitskiy, while Gregerson is an established Minneapolis photographer known for exactly the type of photo in question, which can be found on his website as image #2891.

41. Gregerson obtained legal advise from Molly Lousart, Esq., of Fredrikson &

Byron. Gregerson proceeded *pro se*, but obtaining regular legal advice necessary for his defense.

42. Gregerson began devoting significant amounts of time to his *pro se* legal defense at the expense of his regular work, causing a loss of income.

[original Plaintiff]'s Discovery Responses

43. On January 12th, 2006, in response to Gregerson's request for admissions no. 3 and 4, [original Plaintiff] denied that Gregerson took the Skyline (Dex) photo and denied that Gregerson owned the copyright. [original Plaintiff] asserted that Michael Zubitskiy took the photo and owned the copyright. Later discovery responses reiterated these claims.

44. On February 24th, 2006, in response to Gregerson's 2nd interrogatories, [original Plaintiff] produced a document purporting to list itemized business expenses for March, 2004. It contained an entry for a payment of \$850 to Michael Zubitskiy.

45. [original Plaintiff] never amended or withdrew any of these discovery responses.

Discovery by Gregerson Confirms Michael Zubitskiy is Fictional

46. Gregerson requested information about Michael Zubitskiy from [original Plaintiff] during discovery. [original Plaintiff] responded that they have no contact information for him.

47. [original Plaintiff] further responded that [owner of original, corporate Plaintiff] met Zubitskiy in a Sauna at Lifetime Fitness, where they had a single, brief conversation. They allegedly agreed Zubitskiy would take photos for [original Plaintiff], and met only one other time, when Zubitskiy delivered the photos to [owner of original, corporate Plaintiff]. The photos were allegedly on a CD-ROM disk, which [original Plaintiff] lost, and Zubitskiy was allegedly paid \$850 in cash. The Zubitskiy photo agreement was allegedly signed at that time, and notarized by Vladimir Kazaryan. This account of [owner of original, corporate Plaintiff]'s was described by Judge Ann D. Montgomery in her copyright infringement verdict:

It is highly implausible that after a brief meeting in the sauna at the gym at which Zubitskiy did not provide contact information, references, or examples of his work, Defendants[[original Plaintiff]] commissioned Zubitskiy to perform the photography service. Defendants ask the Court to believe that Zubitskiy arrived at Defendants' office with the exact type of photos Defendants needed in the correct format and image resolution without so much as a phone call in the interim. Further undermining Defendants' story is the fact no contact information for Zubitskiy was included on the 3/19/04 [Zubitskiy photo] Agreement presented by Defendants and, despite Plaintiff's discovery requests, Defendants have failed to provide any information regarding the whereabouts or existence of Zubitskiy.

Exhibit A at ¶ 13, pp. 5

48. Gregerson subpoenaed the gym where [owner of original, corporate Plaintiff] claimed he met Zubitskiy, Lifetime Fitness, who responded that they had no member named Michael Zubitskiy. Gregerson employed a skip-trace service to locate Zubitskiy, who found no records of anyone by that name.

49. Gregerson produced the above evidence to [original Plaintiff] in discovery.

50. A public records search done by [original Plaintiff] also turned up no Michael Zubitskiy.

Gregerson Moves For Sanctions against [original Plaintiff]

51. Gregerson served [original Plaintiff] with a motion for sanctions under Minn. Stat. § 549.211 and Minn. R. Civ. P. 11.02 on December 22nd, 2005, alleging that [original Plaintiff] fabricated the Zubitskiy photo agreement. Gregerson allowed [original Plaintiff] 21 days to modify or withdraw their claims.

52. [original Plaintiff] did not respond. On January 23rd, 2006, after the statutory 21-day grace period to withdraw their claims, Gregerson filed his motion for sanctions with the

Court.

53. On February 23rd, 2006, Gregerson served [original Plaintiff] with a memorandum of law in support of his motion for sanction. It included the evidence (above) proving there is no such person as Michael Zubitskiy, as well as proof the Skyline photo was created by Gregerson:

- A. Publication of the Skyline photo on Gregerson's web in January, 2004;
- B. Gregerson's Certificate of Copyright Registration for the photo;
- C. Out-takes from the photo shoot that produced the Skyline photo;
- D. Publication of the photo in MPLS/St. Paul Magazine, crediting Gregerson.

54. [original Plaintiff] still did not amend or withdraw any of their claims against Gregerson.

55. Minnesota District Court Judge Mark Wernick postponed the hearing on Gregerson's motion, but kept the motion before the court.

District Court Judge Mark Wernick Warns [original Plaintiff] not to Proceed

56. Gregerson filed a motion to dismiss [original Plaintiff]'s defamation complaint under Minn. R. Civ. P. 12.02(e). At the hearing on January 13th, 2006, Judge Wernick stated to Morgan Smith, "I question your client's motives for bringing this suit".

57. On April 10th, 2006, Judge Wernick ruled that "...the Complaint fails to state a claim for relief under the substantive law of defamation".

58. Judge Wernick gave [original Plaintiff] the opportunity to amend their Complaint, but also wrote it appeared [original Plaintiff] stole Gregerson's photo, and he advised [original Plaintiff] to "find the elusive Mr. Zubitskiy" if they wished to proceed:

...[owner of original, corporate Plaintiff] said that he now has no idea how to locate Zubitskiy, and that the \$850 he paid Zubitskiy for the photograph was in cash. This testimony, along with other findings made by Gregerson, suggests

that [owner of original, corporate Plaintiff]
actually stole Gregerson's photograph...

Order and Memorandum, *[original Plaintiff] v. Chris Gregerson*, April 10th,
2006 (exhibit G, pp. 2, footnote 1)

*Gregerson Sues [original Plaintiff] for Copyright Infringement in Federal
Court*

59. On March 27th, 2006, Gregerson filed a claim for copyright infringement in US District Court, District of Minnesota, against [original Plaintiff] , [original Plaintiff] , and [owner of original, corporate Plaintiff] (*Gregerson v. [original Plaintiff]*, D. Minn, 06-cv-01164). Gregerson's Complaint alleged [original Plaintiff]'s Dex phone book ad infringed his copyright to the Skyline photo. Defendant Boris Parker, an attorney with Saliterman & Siefferman at the time, represented all three infringement defendants.

60. [original Plaintiff] moved to dismiss Gregerson's copyright lawsuit for failure to state a claim, arguing the phone book advertisement was non-commercial “fair use” of the Skyline photo.

61. In January, 2007, Gregerson discovered [original Plaintiff] had used a second photo of his in their advertisements, #2258 from his website, showing a Kenwood residence in summer. [original Plaintiff] claimed the photo was obtained from Zubitskiy at the same time as the Skyline photo.

*[original Plaintiff] Identifies the Statements by Gregerson Alleged to be
False*

62. On April 14th, 2006, Attorney Morgan Smith served Gregerson with an amended defamation complaint. Exhibit J. It added a cause of action for appropriation of name and likeness and identified the statements by Gregerson [original Plaintiff] alleged to be false and defamatory:

A. Gregerson owns the Skyline photo (image #2891) (Id. At ¶ 17.4, 17.5, 17.7,

17.13, 17.16, 17. 23, 17.24, 17.35, 17.46);

B. [original Plaintiff] used Gregerson's photo without permission (Id. At ¶ 17.4, 17.5, 17.7, 17.13, 17.16, 17. 23, 17.24, 17.35, 17.46);

C. Michael Zubitskiy does not exist, and the Zubitskiy photo agreement is forged (Id. At ¶ 17.27, 17.29, 17.36, 17.37, 17.39, 17.40, 17.43, 17.44).

63. Gregerson's first interrogatories to [original Plaintiff] requested they specify which of his statements were false and defamatory. [original Plaintiff] responded the same as in A, B, and C, above.

64. [original Plaintiff] never amended, modified, or withdrew their interrogatory answers.

[original Plaintiff] Attempts Voluntary Dismissal of their Defamation Complaint

65. On April 24th, 2006, Morgan Smith withdrew as counsel for [original Plaintiff].

66. On April 26th, 2006, a notice of voluntary dismissal without prejudice, signed by [owner of original, corporate Plaintiff] and with a cover letter signed by Boris Parker, was filed with the state Court.

67. On May 10th, 2006, Judge Wernick ruled that [original Plaintiff]'s voluntary dismissal of their defamation Complaint was not effective, and [original Plaintiff] could not dismiss as a matter of right because significant proceedings had occurred already.

68. At a May 26th, 2006, status conference, Boris Parker appeared as [original Plaintiff]'s counsel.

69. Parker never amended or withdraw any of [original Plaintiff]'s discovery responses.

[original Plaintiff] Removes Their Defamation Complaint to Federal Court

70. On June 12th, 2006, [original Plaintiff] filed a notice of removal of their state court

defamation Complaint to federal court, to be joined with Gregerson's copyright lawsuit. The removal was based on the two cases sharing the same nexus of operative facts.

71. On June 26th, 2006, Boris Parker filed [original Plaintiff]'s First Amended Complaint for defamation (exhibit J) with federal court as part of the removal process. It became ECF docket item number 11 at attachment #8. Gregerson's responsibility to respond to the defamation complaint now continued in federal court.

[original Plaintiff] Makes Six More Claims Against Gregerson over his Web Page

72. On August 26th, 2006, [original Plaintiff] served an Answer to Gregerson's copyright Complaint. Exhibit L. [original Plaintiff] denied Gregerson's claim to own the Skyline photo and denied Gregerson's claim that Zubitskiy is fictional. [original Plaintiff] again alleged Gregerson's web page about the dispute was false and defamatory, and brought six new causes of action over it:

- A. Trademark infringement
- B. Deceptive trade practices
- C. Unjust enrichment
- D. Interference with prospective contractual relations
- E. Injunction
- F. Cyberpiracy (added in a July 27th, 2007, Summary Judgment Memorandum)

Abuse of Process

73. [original Plaintiff] never asked Gregerson to remove any false statements from his web page, or remove any comments posted by visitors. The demand made was that Gregerson remove the web page entirely, post no other pages, and drop his copyright claims.

74. [original Plaintiff]'s complaint for Trademark infringement was not for the stated purpose of eliminating consumer confusion over [original Plaintiff]'s trademark, but to pressure

Gregerson to remove his web page about [original Plaintiff] and drop his copyright claims.

75. [original Plaintiff]'s claims of deceptive trade practices, unjust enrichment, interference with prospective contractual relations, and cyberpiracy were also not brought for the stated purpose of removing allegedly false statements from Gregerson's web page. This litigation was used to pressure Gregerson to remove the page entirely, which was beyond the scope of the proceedings.

Abuse of Discovery Process

76. On October 17th, 2006, Gregerson served subpoenas to Qwest, Dex Media, the Hennepin County Attorney, Vladimir Kazaryan, and Michael Walker seeking information about Michael Zubitskiy and the Zubitskiy photo agreement.

77. On November 16th, 2006, Boris Parker filed a motion to quash these subpoenas.

...all of these subpoenas are centered on the same issue, Michael Zubitskiy. All the information sought by Plaintiff by issuing these subpoenas is not relevant to this lawsuit because they do not support Plaintiff's claim for copyright infringement, or provide a defense to any one of Defendant's counterclaims.

Defendant's Memorandum of Law in Support of Motion to Limit Discovery and Quash Subpoenas, *Gregerson v. [original Plaintiff]*, D. Minn, 06-cv-01164

78. Parker's motion was not brought for the stated purpose of protecting non-parties from harassment, but to maintain the deception that Zubitskiy was real.

79. Parker's motion to quash was denied by Federal Magistrate Judge Arthur J. Boylan on Dec. 6th, 2006, who wrote that Zubitskiy's existence was relevant to the case.

80. In January, 2007, defendant Boris Parker left the law firm of Saliterman & Siefferman, PC, to join Bassford Remele, PA.

81. On April 10th, 2007, Boris Parker brought a motion to compel Gregerson to

produce all of his computer hard drives for [original Plaintiff] to copy, and produce email between himself and his attorney, Molly Loussaert of Fredrikson & Byron.

82. On May 3rd, 2007, Magistrate Judge Arthur J. Boylan ruled Gregerson did not have to produce his computer's hard drives or email between him and his attorney to [original Plaintiff].

83. The purpose of [original Plaintiff]'s motion was not to discover relevant evidence, but to jeopardize Gregerson's attorney-client privilege and threaten his privacy.

Partial Summary Judgment in Gregerson's Favor

84. Gregerson moved for summary judgment on all claims and counterclaims, other than the amount of damages for [original Plaintiff]'s copyright infringement. District Court Judge Ann D. Montgomery ruled on August 31st, 2007, as follows:

A. Defamation: Judge Montgomery ruled [original Plaintiff]'s defamation claim to be dismissed (See Exhibit J, Memorandum Opinion and Order, pp. 2, footnote 1).

B. Trademark infringement: dismissed with prejudice (Id., pp. 8)

C. Unjust enrichment: dismissed with prejudice (Id, pp. 15).

D. Cyberpiracy: dismissed with prejudice (Id., pp.11).

Gregerson Prevails on All Remaining Claims at Trial

85. All the remaining claims against Gregerson were tried on November 5th and 6th, 2007. Defendants [original Plaintiff] and Parker did not produce any testimony or evidence that challenged the truthfulness of Gregerson's web page statements – the entire basis of their claims for the past 25 months. In her ruling, Judge Montgomery wrote “Defendants[[original Plaintiff]] did not identify any specific comments by Plaintiff that were false.” (See exhibit A, pp. 18).

86. Judge Montgomery ruled in Gregerson's favor on all remaining claims against him – deceptive trade practices, appropriation of name and likeness, and interference with

prospective contractual relations (Id., pp. 19).

87. Judge Montgomery further ruled that [original Plaintiff] was guilty of willful infringement:

By unlawfully obtaining photos from Plaintiff's website, where it was clear both that use of Plaintiff's photos was only available for a fee and the photos were copyright protected, Defendants flagrantly disregarded Plaintiff's rights as a copyright owner.

Id. at pp. 11.

Malicious Intent of Defendants

88. [owner of original, corporate Plaintiff] demonstrated malice towards Gregerson by stealing photos Gregerson and repeatedly lying about it, as well as posting malicious comments (under his own name and anonymously) on Gregerson's web page.

89. Boris Parker was aware of [owner of original, corporate Plaintiff]'s malice, and acted to further it. He also expressed his own malice towards Gregerson. After a hearing on June 25th, 2006, he threatened to do the “same thing” to Gregerson's wife that Gregerson did to [original Plaintiff].

90. Morgan Smith also knowingly furthered [owner of original, corporate Plaintiff]'s malice for Gregerson, and demonstrated his own, taking a contemptuous tone with Gregerson in all interactions.

[original Plaintiff] is [owner of original, corporate Plaintiff]'s Corporate Alter-Ego

91. [owner of original, corporate Plaintiff] is the sole board member and shareholder of [original Plaintiff] .

92. [original Plaintiff] has failed to follow corporate formalities; in late 2007 [owner of original, corporate Plaintiff] allowed [original Plaintiff]'s corporate registration and mortgage

broker's license to expire.

93. [original Plaintiff] is under-capitalized. [owner of original, corporate Plaintiff] claimed [original Plaintiff] was unable to pay the \$19,642 copyright infringement judgment owed to Gregerson.

94. [owner of original, corporate Plaintiff] intermingles his own finances with [original Plaintiff]; [owner of original, corporate Plaintiff] made a personal, no-interest loan to [original Plaintiff] to eventually pay the judgment owed Gregerson.

95. [original Plaintiff] is the alter-ego of [owner of original, corporate Plaintiff], used for [owner of original, corporate Plaintiff]'s own, personal business dealings. [owner of original, corporate Plaintiff] engaged in willful infringement, forgery, perjury, and malicious prosecution, beyond the scope of his duties as CEO of [original Plaintiff].

GREGERSON'S DAMAGES

96. Over the 26 months [original Plaintiff], Parker, and Smith prosecuted their litigation against Gregerson, he paid \$4,747.50 in legal fees to Fredrikson & Byron and \$1,250 to Laurie & Laurie for legal advise necessary to defend himself. He paid \$960 in process server fees and \$250 for an expert's report necessary to his defense.

97. During the same 26 months, Gregerson (acting *pro se*) was forced to spend more than half of his working hours on his legal defense, doing legal research, drafting briefs, attending hearings, answering discovery requests, taking depositions, and preparing for trial. This came at the expense of Gregerson's regular self-employment as a photographer and stock photo service, and resulted in a loss of income estimated at \$35,000.

98. Gregerson was deprived of his first amendment rights by the defendant's fraudulently obtained TRO against his web page from October 24th, 2005 to October 31st, 2005. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably

constitutes irreparable injury”. See *Elrod v. Burns*, 427 U.S. 347 (1976).

Willful Disregard For Plaintiff's Rights

99. The defendant's actions showed a willful disregard for the Plaintiff's rights, including his constitutional right to free speech and due process.

COUNT I: MALICIOUS PROSECUTION – [original Plaintiff], SMITH, AND PARKER

100. Plaintiff re-alleges all prior paragraphs of this Complaint.

101. A claim for malicious prosecution lies if (1) an action is brought without probable cause or reasonable belief that the plaintiff will ultimately prevail on the merits, (2) the action is instituted and prosecuted with malicious intent, and (3) the action is terminated in the defendant's favor. *Dunham v. Roer*, 708 N.W.2d 552 (Minn. App. 2006), review denied, (Mar. 28, 2006), citing *Kellar v. VonHoltum*, 568 N.W.2d 186, 192 (Minn. App. 1997), review denied (Minn. Oct. 31, 1997), also *Stead-Bowers v. Langley*, 636 N.W.2d 334, 338 (Minn. App. 2001).

102. Defendants [original Plaintiff], Morgan Smith, and Boris Parker, initiated and maintained multiple legal claims against the plaintiff without probable cause or reasonable belief that they could ultimately prevail on their merits. The claims were: defamation, deceptive trade practices, unjust enrichment, trademark infringement, appropriation of name and likeness, injunction, and the October 24, 2005, temporary restraining order against Gregerson's web page.

103. These claims were brought with malicious intent.

104. Attorneys for [original Plaintiff], defendants Smith and Parker, were an instrumentality for the perpetration of fraud, and have no immunity. *Hoppe v. Klapperich*, 28 N.W.2d 780, 788 (Minn. 1947).

105. The Plaintiff prevailed on the legal claims brought against him (exhibits A, J).

106. Defendant's claims against Gregerson constitute malicious prosecution.

COUNT II: ABUSE OF PROCESS – [original Plaintiff], SMITH, AND PARKER

107. Plaintiff re-alleges all prior paragraphs of this Complaint.

108. The essential elements for a cause of action for abuse of process are the existence of an ulterior purpose and the act of using the process to accomplish a result not within the scope of the proceedings in which it was issued, whether such a result might otherwise be lawfully obtained or not. See *Kellar v. VonHoltum*, 568 N.W.2d 186, 192 (Minn. App. 1997), *review denied* (Minn. Oct. 31, 1997).

109. [original Plaintiff], Smith, and Parker brought claims against Gregerson for defamation, trademark infringement, deceptive trade practices, unjust enrichment, and motions to compel discovery and quash subpoenas, where were for the ulterior purpose of pressuring Gregerson to remove his web page about [original Plaintiff] and drop his claim for copyright infringement.

110. Defendant's claims against Gregerson constitute abuse of process.

COUNT III: VICARIOUS LIABILITY FOR MALICIOUS PROSECUTION/ABUSE OF PROCESS – SMITH & RAVER, SALITERMAN & SIEFFERMAN, AND BASSFORD REMELE

111. Plaintiff re-alleges all prior paragraphs of this Complaint.

112. Defendants Smith & Raver, Saliterman & Siefferman, and Bassford Remele are liable under the doctrine of respondeat superior, as well as under Minn. Stat. §§ 481.07 and 481.071, for the malicious prosecution/abuse of process committed by Smith and Parker.

113. The liability of a law firm under §§ 481.07 and 481.071 is based not on its knowledge of or participation in the fraud, but on its employee's violation of the statute while acting in the scope of employment. See *Baker v. Ploetz*, 597 N.W.2d 347, 352 (Minn. App. 1999), *reversed on other grounds*, 616 N.W.2d 263 (Minn. 2000).

COUNT IV: CONSPIRACY TO COMMIT MALICIOUS PROSECUTION/ABUSE OF PROCESS – [original Plaintiff], [owner of original, corporate Plaintiff], SMITH, AND PARKER

114. Plaintiff re-alleges all prior paragraphs of this Complaint.

115. Defendants [original Plaintiff] and [owner of original, corporate Plaintiff] conspired with defendants Morgan Smith and Boris Parker to maliciously prosecute the Plaintiff and engage in abuse of process.

COUNT V: AIDING AND ABETTING MALICIOUS PROSECUTION – VLADIMIR KAZARYAN

116. Plaintiff re-alleges all prior paragraphs of this Complaint.

117. Vladimir Kazaryan aided the malicious prosecution of Gregerson by providing a fraudulent notarization for the Zubitskiy photo agreement, and providing false sworn deposition testimony and false sworn testimony at trial in support of the fraudulent notarization.

118. Kazaryan's assistance was a significant element in [original Plaintiff]'s malicious prosecution, making him responsible for [original Plaintiff]'s actions (See *Restatement (Second) of Torts* § 876 cmt. d, at 317). Kazaryan's conduct amounts to aiding and abetting, making him jointly and severably liable for the consequences (See *Restatement (Second) of Torts*, § 876(b)).

COUNT VI: PIERCE THE CORPORATE VEIL – [owner of original, corporate Plaintiff]

119. Plaintiff re-alleges all prior paragraphs of this Complaint.

120. Piercing the corporate veil is allowed when the corporate entity is the alter-ego of the shareholder, and it is necessary to avoid fundamental unfairness. See *Barton v. Moore*, 558 N.W.2d, 746, 749 (Minn. 1997).

121. [original Plaintiff] was formed as the alter ego or mere instrumentality of [owner of original, corporate Plaintiff]. *Almac, Inc. v. JRH Dev., Inc.*, 391 N.W.2d at 922.

122. Holding [original Plaintiff] alone liable for the malicious prosecution committed by it's sole corporate officer and shareholder, [owner of original, corporate Plaintiff], would

deprive the Plaintiff of the ability to recover damages, thus resulting in a fundamental unfairness.

123. [owner of original, corporate Plaintiff] is personally liable for any damages awarded to Gregerson against [original Plaintiff] .

JURY DEMAND

124. Plaintiff is entitled to and hereby requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully asks this court to award judgment against the defendant(s) as follows:

A Against Defendants [owner of original, corporate Plaintiff], [original Plaintiff] , and Vladimir Kazaryan, jointly and severally, damages of \$43,167.50 in lost income, fees and disbursements;

B Against Defendants Morgan Smith, Boris Parker, Smith & Raver, Saliterman & Siefferman, and Bassford Remele, jointly and severally, triple Plaintiff's damages under Minnesota Statutes §§ 481.07 and 481.071 (to the extent it is not duplicative of item A, above).

C Against Defendants [owner of original, corporate Plaintiff], [original Plaintiff] , and Morgan Smith, jointly and severally, damages to be determined by a jury for the loss of the Plaintiff's free speech rights under the October, 2005, Temporary Restraining Order;

D Awarding Plaintiff such further relief as is just and proper.

Respectfully submitted,

Dated: May 28th, 2009

Chris Gregerson
Plaintiff, *pro se*
150 N Green Ave.
New Richmond, WI 54017
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ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney's fees may be awarded to the opposing parties pursuant to Minn. Stat. § 549.211

Dated: May 28th, 2009

Chris Gregerson
Plaintiff, pro se
150 N Green Ave.
New Richmond, WI 54017