

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO.

DRB CAPITAL, LLC, a Delaware
limited liability company,

Plaintiff,

v.

JACOB JOSEPH & ASSOCIATES, LLC, a
Delaware limited liability company, and
JOEL GOSSETT, an individual,

Defendants.

COMPLAINT

Plaintiff DRB Capital, LLC, a Delaware limited liability company (“DRB”), by and through its undersigned counsel, sues Defendants, JACOB JOSEPH & ASSOCIATES, LLC, a Delaware limited liability company (“JJ&A”), and JOEL GOSSETT (“Gossett”) (collectively, “Defendants”) as follows:

INTRODUCTION

1. This is an action for tortious interference with a business relationship, tortious interference with contract and violation of Florida’s Deceptive and Unfair Trade Practices Act.
2. This action is based on JJ&A’s parasitic approach to obtaining customers, rather than seeking its own customers through legitimate, marketing strategies. JJ&A searches courthouse records to obtain lists of pending petitions filed by competitors like DRB for the approval of transfer of structured settlement payment rights. After obtaining information about the individuals who have agreed to transfer their payment rights to DRB from the court dockets, JJ&A reaches out to these individuals to sway them into terminating their transfer agreements and

business relationships with DRB. In doing so, JJ&A uses unethical tactics in an attempt to induce the individuals to do business with JJ&A. JJ&A thereby seeks to misappropriate the fruit of DRB's labor through a scheme of tortious interference and unfair trade practices.

PARTIES, JURISDICTION, AND VENUE

3. Plaintiff DRB is a Delaware Limited Liability Company based in Delray Beach, Florida, that purchases structured settlement payment rights.

4. Defendant JJ&A is a Delaware limited liability company which, upon information and belief, is based in Coral Springs, Florida, and purchases structured settlement payment rights.

5. This Court has personal jurisdiction over Defendant JJ&A pursuant to § 48.193, Fla. Stat., in that: (1)(a)1. JJ&A operates, conducts, engages in or carries on a business or business venture in Florida and has an office in Florida; (1)(a)2. JJ&A committed a tortious act in Florida against DRB; (1)(a)6. JJ&A caused injury to DRB while engaging in solicitation of business in Florida; and (2) JJ&A engages in substantial and not isolated activity in Florida.

6. Defendant Gossett is an individual who, upon information and belief, resides in Lake Worth, Florida. Gossett is an employee and a principal of JJ&A.

7. This is an action for damages in excess of \$15,000, exclusive of interest, attorney's fees, and costs, and for injunctive relief.

8. Venue is proper in Broward County, Florida, because the causes of action accrued in this county.

GENERAL FACTUAL ALLEGATIONS

Overview of DRB's Business Model

9. DRB is a specialty business that assists people in meeting their immediate financial needs through the purchase of payment rights from structured settlement recipients and owners or

beneficiaries of annuities (the “Seller” or, in the alternative, the “Sellers”) in exchange for a lump sum.

10. As part of its business, DRB has expended countless hours and significant resources to build its reputation and business model. DRB has spent many millions of dollars marketing and generating its Seller base, and has designed and maintained a detailed database of existing and prospective Sellers. This business model and its organization represent years of development for DRB and the core of its business success in the secondary structured settlement market.

11. The majority of the states have enacted some form of a structured settlement protection act which provides for the process of seeking court approval for the transfer as contemplated under the agreement between companies such as DRB and the Sellers (each, an “SSPA” and collectively, the “SSPAs”).

12. If a Seller is interested in selling certain structured settlement payments to DRB, the Seller and DRB enter into a contract entitled “Absolute Sale and Security Agreement” (each, a “DRB Agreement”) wherein the Seller agrees to sell certain structured settlement payment rights in exchange for a lump-sum payment. Consistent with the relevant SSPAs, some of the DRB Agreements permit a Seller to cancel same within a limited period of time.

13. After the execution of the DRB Agreement, DRB then engages an outside counsel who files a petition for approval of the transfer of structured settlement payment rights as required by the respective SSPA (each, a “DRB Petition” and collectively, the “DRB Petitions”). Each DRB Petition attaches the corresponding DRB Agreement, as required by the SSPAs.

14. By signing a DRB Agreement, each Seller promises and agrees to cooperate with DRB throughout the court approval process and to refrain from entering into contracts with

competitors like JJ&A while the DRB Petition is pending. These obligations arise from the moment that each Seller signs the corresponding DRB Agreement.

Defendants' Wrongful Conduct

15. JJ&A is also engaged in the business of purchasing structured settlement payment rights.

16. On information and belief, JJ&A regularly trolls public court filings looking for petitions filed by DRB seeking the approval of transfer of structured settlement payment rights. Once it discovers a DRB Petition, and armed with the information included in the DRB Agreement attached to the petition, JJ&A then approaches the Seller to negotiate its own deal, encouraging such Seller to breach the DRB Agreement and sign a separate agreement with JJ&A for the same payment rights. JJ&A asks the Sellers not to speak to DRB and informs the Sellers that they will take care of everything relating to both the DRB Petition and JJ&A Petition.

17. As part of its strategy to induce the Sellers to breach their contracts with DRB, JJ&A uses unfair and deceptive practices. An example of such unfair and deceptive practices relates to JJ&A's interference with DRB's relationship with a Seller, Genisha Potter ("Potter"). DRB entered into an Agreement with Potter in December 2016 (the "Potter DRB Agreement"). The Potter DRB Agreement provided that she had three business days from the day she executed in order to cancel without penalty or further obligation.

18. On January 3, 2016, DRB filed a petition seeking approval of the Potter DRB Agreement (the "DRB Petition"). By the time the DRB Petition was filed, the 3-day cancellation period had already expired and the DRB Potter Agreement was no longer terminable at will.

19. Upon information and belief, JJ&A became aware of the DRB Petition by scrubbing the court records and immediately began to interfere with the Potter DRB Agreement.

JJ&A convinced Potter to sign a transfer agreement with JJ&A (the “JJ&A Agreement”). DRB found out about the JJ&A Agreement on January 27, 2017. Three days later, DRB received a “cancellation” letter from Potter, purportedly signed on January 25, 2017. Upon information and belief, this letter was drafted by JJ&A and was sent to Potter by JJ&A together with the JJ&A Agreement for her signature.

20. On January 31, 2017, DRB wrote to JJ&A requesting that it cease and desist its interference with the Potter DRB Agreement, and advising that DRB understood that JJ&A drafted Potter’s “cancellation” letter to DRB. Kobi Ribak, an employee and principal of JJ&A responded, denying JJ&A had drafted the “cancellation” letter sent to DRB. In his correspondence, Ribak essentially argued that tortious interference is not actionable in Florida, that DRB’s request was “meaningless” and that he had no time to deal with this matter.

21. On February 9, 2017, DRB learned JJ&A filed a petition for the approval of the JJ&A Agreement (the “JJ&A Petition”). The JJ&A Petition seeks approval of the transfer of the same payment rights that are the subject of the DRB Petition.

22. Despite JJ&A’s claim that it did not prepare the “cancellation” letter, the documents accompanying the JJ&A Petition suggest otherwise. Despite JJ&A’s attempts to conceal the identity of the notary used for the signing by Potter of the documents related to the JJ&A Agreement, the visible portion of the notary stamp, the notary’s commission expiration date and the handwriting on the *jurat* are the same as in the JJ&A Agreement and other documents prepared by JJ&A that were included with the JJ&A Petition.

23. Moreover, JJ&A engaged an attorney, Lisa Grossman (“Attorney Grossman”), to appear on behalf of Potter. Attorney Grossman filed a notice of appearance the night before the hearing on DRB’s petition; she did not appear in court, however, instead sending attorney Scot

Peschansky (“Attorney Peschansky”) to cover for her. Upon information and belief, Attorney Grossman and, by extension, Attorney Peschansky were engaged to represent JJ&A’s interest and not Potter’s.¹ Indeed, upon information and belief, Gossett was present at the courthouse and was directly instructing and directing Attorney Grossman and Attorney Peschansky, and such instructions and directions were against Potter’s interest.

24. For example, just before the hearing began, DRB made an offer to Potter to increase the purchase price in an attempt to mitigate JJ&A’s tortious interference. After discussing with Potter, Attorney Peschansky accepted DRB’s offer on Potter’s behalf and the parties began to work on an agreed order to present to the court. However, Gossett then approached Attorney Peschansky and handed him his mobile telephone for Attorney Peschansky to speak with a third party. After concluding his telephone conversation and without having first discussed with Potter or seeking her consent, Attorney Peschansky informed DRB’s representative that he could not accept the offer, thereby renegeing on the agreement that had been reached with DRB. When confronted by DRB’s representative as to the fact that he had not spoken to Potter, Attorney Peschansky reluctantly admitted that Attorney Grossman had given him instructions. The hearing then commenced, and Attorney Peschansky informed the court that Potter objected to DRB’s petition and requested a continuance.² That matter is still pending but, as far as DRB can tell, JJ&A continues in its efforts to intervene with the DRB Agreement with Potter.³

¹ Attorney Grossman and Attorney Peschansky could not possibly represent both Potter and JJ&A as they would have a conflict of interest. Among other things, if Potter goes forward with JJ&A, she would be breaching her agreement with DRB.

² Attorney Grossman withdrew from representing Potter almost immediately thereafter explaining that she had only been hired to appear at the hearing.

³ JJ&A convinced Potter to enter into an agreement with JJ&A. JJ&A then filed a petition to approve the transfer of the same payments to JJ&A. DRB filed a motion to intervene in the petition filed by JJ&A and requested the consolidation of the two petitions. The parties have since agreed to consolidate both petitions, and the joint motion for an agreed order of consolidation is still pending.

25. As another example of an unfair and deceptive practice, JJ&A called a different Seller, Barbara Pilozo (“Pilozo”) who had entered into an Agreement with DRB and as to which there was a pending petition in court at the time. Pursuant to Pilozo, JJ&A called several times identifying themselves as the “fraud department” in an attempt to get her to negotiate a different contract with them. In so doing, JJ&A implied that the deal with DRB is fraudulent. DRB suspects that JJ&A uses the same or similar deceptive practices with other Sellers, such as Potter, in their attempts to interfere with DRB Agreements.

26. Upon information and belief, Gossett has personally participated in the wrongful acts that are being alleged herein, and did so within the course and scope of his employment with JJ&A, and which benefitted JJ&A. Therefore, he is responsible for his own misfeasance and wrongful acts, jointly and severally with JJ&A.

27. DRB has retained the services of the undersigned counsel and is obligated to pay the fees and costs that it is incurring in this matter.

COUNT I
TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIP

28. DRB repeats and re-alleges allegations numbered 1 through 27 above as if specifically set forth herein.

29. This is an action against JJ&A and Gossett for tortious interference with business relationship.

30. DRB has an existing business relationship with Potter.

31. JJ&A and Gossett have had knowledge of DRB’s existing business relationship with Potter since they began to deal with her.

32. JJ&A and Gossett have intentionally and unjustifiably sought to interfere with DRB’s business relationship with Potter.

33. As a result of JJ&A's and Gossett's unlawful conduct and unjustified actions, DRB has suffered substantial damages.

WHEREFORE, Plaintiff, DRB CAPITAL, LLC demands judgment against Defendants, JACOB JOSEPH & ASSOCIATES, LLC and JOEL GOSSETT for damages, interest, costs and for such other and further relief this Court deems just and proper under the circumstances.

COUNT II
TORTIOUS INTERFERENCE WITH CONTRACT

34. DRB repeats and re-alleges allegations numbered 1 through 27 above as if specifically set forth herein.

35. This is an action against JJ&A and Gossett for tortious interference with contract.

36. DRB had an existing contract with Potter.

37. JJ&A and Gossett have had knowledge of the Potter DRB Agreement since they began to deal with Potter.

38. At the time that JJ&A and Gossett began to deal with Potter, the Potter DRB Agreement was no longer terminable at will.

39. JJ&A and Gossett engaged in the intentional procurement of the breach of the Potter DRB Agreement.

40. JJ&A and Gossett had no justification and/or privilege to procure the breach of the Potter DRB Agreement.

41. As a result of JJ&A's and Gossett's unlawful conduct and unjustified actions, DRB has suffered damages.

WHEREFORE, Plaintiff, DRB CAPITAL, LLC demands judgment against Defendants, JACOB JOSEPH & ASSOCIATES, LLC and JOEL GOSSETT for damages, interest, costs and for such other and further relief this Court deems just and proper under the circumstances.

COUNT III
VIOLATION OF FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

42. DRB repeats and re-alleges allegations numbered 1 through 27 above as if specifically set forth herein.

43. This is an action against JJ&A and Gossett for actual damages, declaratory relief and injunctive relief under the Florida Deceptive and Unfair Trades Practices Act, Florida Statutes §§ 501.201, *et seq.* ("FDUTPA").

44. DRB is an interested party and/or person under the FDUTPA and the subject transaction is trade or commerce as defined by the FDUTPA.

45. Potter and Pilozo are consumers as that term is defined by the FUDTPA.

46. The actions of JJ&A and Gossett constitute unfair trade practices because JJ&A's and Gossett's conduct offends established public policy, is immoral, unethical, oppressive, unscrupulous and/or substantially injurious to consumers. The actions of JJ&A and Gossett also constitute deceptive practices because JJ&A's and Gossett's misrepresentations, omissions, or practices are likely to mislead consumers acting reasonably in the circumstances to the consumers' detriment.

47. Specifically, JJ&A and Gossett knowingly induced consumers to breach their contracts with DRB without disclosing to consumers the implications of same, made misrepresentations to consumers and engaged attorneys purportedly to represent the Sellers but who are responding only to JJ&A's interests. These practices are likely to mislead, deceive and cause substantial injury to consumers.

48. As a direct and proximate result of JJ&A's and Gossett's false, misleading and deceptive practices, conducted in their trade and commerce, DRB has suffered damages and will continue to suffer substantial and irreparable harm.

49. Unless restrained by this Court, JJ&A and Gossett will cause further irreparable injury to DRB, for which there is no adequate remedy at law.

50. DRB has a substantial likelihood of success on the merits and is entitled to injunctive relief enjoining JJ&A and Gossett from engaging in further unfair trade practices.

51. The injury to DRB outweighs any possible harm to JJ&A and Gossett from the entry of an injunction, and entry of an injunction will serve the public interest by preventing JJ&A and Gossett from continuing to engage in the deceptive practices.

52. Pursuant to Florida Statutes § 501.211, DRB is entitled to injunctive relief.

53. Pursuant to Florida Statutes § 501.211, DRB is entitled to actual damages.

54. Pursuant to Florida Statutes § 501.2105, DRB is entitled to an award of reasonable attorneys' fees and costs incurred in connection with this action.

WHEREFORE, Plaintiff, DRB CAPITAL, LLC respectfully requests that the Court grant the following relief:

a. A declaration that Defendants, JACOB JOSEPH & ASSOCIATES, LLC and JOEL GOSSETT are violating FDUTPA and a preliminary and permanent injunction enjoining Defendants, JACOB JOSEPH & ASSOCIATES, LLC and JOEL GOSSETT, and all of their subsidiaries, affiliates, parent companies, related entities, officers, directors, shareholders, owners, agents, employees, representatives, attorneys, successors and assigns, from further violating FDUTPA;

b. Judgment against Defendants for actual damages;

c. An award of pre-judgment interest, attorneys' fees and costs incurred in connection with this action pursuant to Florida Statutes § 501.2105; and,

d. Such other and further relief as the Court deems just or proper under the circumstances.

RESERVATION OF RIGHT TO MOVE FOR PUNITIVE DAMAGES

Plaintiff, DRB CAPITAL, LLC specifically reserves the right to move this Court to amend this Complaint to seek punitive damages.

Dated: May 15, 2017

Respectfully submitted,

s/ GREGORY S. WEISS
GREGORY S. WEISS
Florida Bar No. 163430
gweiss@mrachek-law.com
ERICA LESTER SADOWSKI
Florida Bar No. 0795291
esadowski@mrachek-law.com
MRACHEK, FITZGERALD, ROSE,
KONOPKA, THOMAS & WEISS, P.A.
505 S. Flagler Drive, Suite 600
West Palm Beach, FL 33401
Telephone: (561) 655-2250
Facsimile: (561) 655-5537

Attorneys for Plaintiff