

STATE OF MICHIGAN
IN THE 10TH DISTRICT COURT FOR THE COUNTY OF CALHOUN

161 East Michigan Avenue, Battle Creek, MI 49014

BERNARD F. ZEITLER, II,

Plaintiff,

vs.

Case No. 13-4319-GC

**2 MOON PRESS, LLC, MELINDA S.
LUNDY and DONALD O. SEMORA,**

HON. JOHN A. HALLACY

Defendants.

James D. Lance (P68202)
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FIRST AMENDED COMPLAINT

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action, not between these parties, arising out of the same transaction or occurrence as alleged in this complaint that is either pending or was previously filed and dismissed, transferred or otherwise disposed of after having been assigned to a judge in this court.

PARTIES, JURISDICTION, VENUE

1. Plaintiff, Bernard F. Zeitler, II (“Zeitler”), does business in Calhoun County.

2. Plaintiff, Ruth Bruegger (“Bruegger”), does business in Calhoun County, Michigan.

3. Plaintiff, Linda Eldred (“Eldred”), does business in Calhoun County, Michigan.

4. Plaintiff, Gregory Lentz (“Lentz”), does business in Calhoun County, Michigan. (Zeitler, Bruegger, Eldred, and Lentz shall be collectively referred hereafter as “Plaintiffs.”)

5. Defendant, Donald O. Semora (“Semora”), does business in Calhoun County, Michigan.

6. Defendant Melinda S. Lundy (“Lundy”), does business in Calhoun County, Michigan.

7. Defendant 2 Moon Press, LLC. (“2 Moon”), is a Michigan limited liability company, whose resident agent is Melinda S. Lundy, and does business in Calhoun County, Michigan. (Mr. Semora, Ms. Lundy and 2 Moon Press shall be collectively referred hereafter as “Defendants”).

8. Venue is appropriate because the events giving rise to this action occurred in the County of Calhoun, State of Michigan.

9. This court has jurisdiction pursuant to MCR 1.605(A)(2) because there is an actual controversy within this court’s jurisdiction necessitating a declaration of legal rights between the parties.

GENERAL ALLEGATIONS

10. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 9 above as if fully set forth herein.

11. On June 10, 2010, 2 Moon Press filed its Articles of Organization with the state of Michigan. **(See Attached Exhibit 1 – Articles of Organization).**

12. Mr. Semora is identified as the “President” and Resident Agent of 2 Moon Press in its 2011 Annual Statement. **(See Attached Exhibit 2 – 2011 Annual Statement).**

13. Mr. Semora is identified as the “President” and Resident Agent of 2 Moon Press in its 2012 Annual Statement. **(See Attached Exhibit 3 – 2012 Annual Statement).**

14. On March 29, 2013, 2 Moon Press filed a Certificate of Change of Resident Agent, changing Mr. Semora whom was serving as the Resident Agent for 2 Moon Press to Ms. Lundy, whom is now serving as the Resident Agent for 2 Moon Press. **(See Attached Exhibit 4 – Certificate of Change of Resident Agent).**

15. According to the state of Michigan Department of Licensing and Regulatory Affairs, 2 Moon Press is still active as a business. **(See Attached Exhibit 5 – LARA information).**

16. 2 Moon Press is a publisher, and catered to the smaller unknown author.

17. During the years 2011 and 2012, the Plaintiffs entered into contracts with Defendants.

18. Pursuant to the contracts, Plaintiffs paid money to Semora and 2 Moon Press, in exchange, the Plaintiffs expected to receive such things, including, but not limited to, books, royalties, and book signings.

19. Despite Plaintiffs paying money to Defendants, the Defendants failed to abide by the contract.

COUNT I
BREACH OF CONTRACT

20. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 19 above as though fully set forth herein.

21. Plaintiffs entered into contracts with the Defendants whereby the Defendants agreed to provide services and materials.

22. The Plaintiffs paid money and provided property and materials to the Defendants pursuant to the contacts.

23. The Plaintiffs have requested that Defendants abide by the terms of the contracts, but the Defendants refuse and/or failed to comply with Plaintiffs' requests.

24. As a result of Defendants' breach, the Plaintiffs have been damaged monetarily; excluding costs and attorney fees, as well as Defendants have unlawfully retained property and materials that belong to Plaintiffs.

WHEREFORE, Plaintiffs pray that this Court enter judgment against the Defendants, jointly and severally, plus interest, costs and attorney fees along with any other relief the court deems just.

COUNT II
UNJUST ENRICHMENT

25. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 24 above as though fully set forth herein.

26. The Plaintiffs paid Defendants money and provided Defendants with property and materials in reliance upon Defendants promises to provide goods and services.

27. The Defendants have enjoyed and retained the Plaintiffs' money, property and materials without providing the full goods and services and promised.

28. The Defendants have been unjustly enriched by the money, property and materials received by the Plaintiffs.

29. Plaintiffs have been damaged monetarily; excluding costs and attorney fees, as well as Defendants have unlawfully retained property and materials that belong to Plaintiffs.

WHEREFORE, Plaintiffs pray that this Court enter judgment against the Defendants, jointly and severally, plus interest, costs and attorney fees along with any other relief the court deems just.

COUNT III
PROMISSORY ESTOPPEL

30. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 29 above as though fully set forth herein.

31. Defendants explicitly promised the Plaintiffs that if Plaintiffs provided money, property and materials, the Defendants would provide goods and services in exchange.

32. Defendants' promise was clear, definite, and unequivocal and was specifically made to induce the Plaintiffs into providing money, property and materials to Defendants.

33. In reliance on Defendants' promise, and to their substantial detriment, the Plaintiffs provided money, property and materials to Defendants.

34. Despite the Plaintiffs repeated requests and demands to the Defendants for goods and complete performance of services and or refund, the Defendants refuse to provide Plaintiffs with goods and complete performance of services and or refund.

35. To avoid injustice, this Court must specifically enforce Defendants' promise to provide goods and complete performance of services and or refund to Plaintiffs.

36. At the time of making the promise and inducing the action on the Plaintiffs' part, the Defendants could reasonably foresee that their failure to perform pursuant to the promise would cause the damages the Plaintiffs have suffered.

37. As a direct and proximate result of Defendants' failure to perform as promised, the Plaintiffs have suffered monetarily; excluding costs and attorney fees, as well as Defendants have unlawfully retained property and materials that belong to Plaintiffs.

38. The Plaintiffs are entitled to a judgment of this Court compelling specific performance by Defendants to fully and completely refund the Plaintiffs money, property and materials, including costs, interest and attorney fees.

WHEREFORE, Plaintiffs pray that this Court enter judgment against the Defendants, jointly and severally, plus interest, costs and attorney fees along with any

other relief the court deems just.

COUNT IV
CONVERSION

39. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 38 above as if fully set forth herein.

40. Plaintiffs' at all relevant times possessed title to the property and materials that they provided Defendants.

41. Plaintiffs provided limited authorization to Defendants to use Plaintiffs' property and material as consistent within the contract, provided that Defendants also complied with the contract.

42. Defendants have used Plaintiffs' property and materials without Plaintiffs' permission and without any lawful right to do so.

43. Plaintiffs have repeatedly, both orally and in writing, demanded that Defendants return their property and materials.

44. The Defendants have, both expressly and by their silence, refused to return Plaintiffs' property and materials.

45. Defendants have unlawfully taken and asserted dominance over Plaintiffs' property and materials.

46. The acts described above constitute an unlawful conversion of Plaintiffs' property and goods, resulting in damages to Plaintiffs.

WHEREFORE, Plaintiffs pray that this Court enter judgment against the Defendants, jointly and severally, plus interest, costs and attorney fees along with any other relief the court deems just.

COUNT V
FRAUDULENT MISREPRESENTATION

47. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 46 above as if fully set forth herein.

48. Defendants intentionally made false representations of material facts to the Plaintiffs regarding the contracts.

49. Defendants' representations were false when they were made.

50. Defendants knew that their representations were false when they were made or they made them recklessly, without knowing whether they were true.

51. Defendants intended that Plaintiffs rely on the representations.

52. Plaintiffs relied on Defendants' false representations in paying money and providing property and materials to Defendants.

53. As a result of Defendants fraudulent misrepresentations, Plaintiffs have suffered substantial economic losses.

54. Plaintiffs suffered substantial economic losses as a result of paying money and providing property and materials to Defendants, and their losses benefited Defendants.

WHEREFORE, Plaintiffs pray that this Court enter judgment against the Defendants, jointly and severally, plus interest, costs and attorney fees along with any other relief the court deems just.

COUNT VI
SILENT FRAUD

55. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 54 above as if fully set forth herein.

56. The Plaintiffs in paying Defendants money and providing property and materials to the Defendants were substantially motivated to have Defendants provide goods and services for the Plaintiffs.

57. Defendants throughout the contract were fully aware that Plaintiffs' interest in paying money and providing property and materials to the Defendants was substantially motivated by having the Defendants provide goods and services for the Plaintiffs.

58. The contract which was prepared by the Defendants and provided to the Plaintiffs provided expressly what Defendants were to do in exchange for Plaintiffs' money, property and materials.

59. Plaintiffs completed the contracts and abided by the terms of the contracts.

60. Defendants were fully aware that it did not intend to comply with the contracts at all times throughout the contracts.

61. Defendants entered into the contracts in a deceptive manner.

62. Defendants had knowledge of Plaintiffs' misunderstanding regarding Defendants' intent regarding the contracts, and were under a legal duty to disclose to Plaintiffs this intent.

63. Defendants' representations to Plaintiffs were false when they were made.

64. As a result of Defendants fraudulent misrepresentations, Plaintiffs have suffered substantial economic losses.

65. Plaintiffs suffered substantial economic losses as a result of paying money and providing property and materials to Defendants, and their losses benefited Defendants.

WHEREFORE, Plaintiffs pray that this Court enter judgment against the Defendants, jointly and severally, plus interest, costs and attorney fees along with any other relief the court deems just.

COUNT VII
INNOCENT MISREPRESENTATION

66. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 6. above as if fully set forth herein.

67. Defendants representations, as set forth in the preceding paragraphs, were made in connection with the contracts with the Plaintiffs.

68. The Plaintiffs would not have paid money or provided property and materials to the Defendants if Defendants had not made the representations.

69. Plaintiffs suffered substantial economic losses as a result of paying money and providing property and materials to Defendants, and their losses benefited Defendants.

WHEREFORE, Plaintiffs pray that this Court enter judgment against the Defendants, jointly and severally, plus interest, costs and attorney fees along with any other relief the court deems just.

COUNT VIII
CIVIL CONSPIRACY

70. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 69 above as if fully set forth herein.

71. Defendants illegally, maliciously, and wrongfully conspired with one another with the intent to and for the illegal purpose of defrauding the Plaintiffs.

72. Defendants, in combination, conspired to defraud the Plaintiffs.

73. This conspiracy resulted in the illegal, unlawful, or tortious activity of fraud against the Plaintiffs.

74. As a result of the conspiracy and Defendants' illegal, wrongful, or tortious acts, the Plaintiffs suffered substantial economic losses as a result of paying money and providing property and materials to Defendants, and their losses benefited Defendants.

75. Defendants are jointly and severally liable to Plaintiffs for all of their injuries and damages.

WHEREFORE, Plaintiffs pray that this Court enter judgment against the Defendants, jointly and severally, plus interest, costs and attorney fees along with any other relief the court deems just.

COUNT IX
CONCERT OF ACTION

76. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 75 above as if fully set forth herein.

77. At all relevant times, several or all Defendants engaged in concerted activities described in paragraphs 1 - 75 above by express or implied agreement.

78. Plaintiffs may not be able to identify all of the activities of Defendants due to the generic similarity of such activities as produced and promoted by these Defendants.

79. As a direct and proximate result of Defendants' concerted activities, Plaintiffs have sustained and will continue to sustain severe damages as more specifically alleged in the preceding paragraphs.

80. Due to the concert of action among all of the various Defendants, each is liable to the Plaintiffs for these damages even if there was no direct relation to the activity conducted by that particular Defendant.

WHEREFORE, Plaintiffs pray that this Court enter judgment against the Defendants, jointly and severally, plus interest, costs and attorney fees along with any other relief the court deems just.

COUNT X
EXEMPLARY ACTIONS

81. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 80 above as if fully set forth herein.

82. Defendants representations were made intentionally and maliciously and have caused Plaintiffs to suffer humiliation, outrage, and indignation.

WHEREFORE, Plaintiffs pray that this Court enter judgment against the Defendants, jointly and severally, including exemplary damages, plus interest, costs and attorney fees along with any other relief the court deems just.

Respectfully submitted,

KREIS, ENDERLE, HUDGINS &
BORSOS, P.C.

Dated: November ___, 2013

By: _____

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