

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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WILLIAM POISSON, JOHN McHALE and
ROBERT J. WALKER,

Plaintiffs,

VERIFIED COMPLAINT

-against-

THE NEW YORK JETS LLC, JETS STADIUM
DEVELOPMENT LLC and STUBHUB, INC.

Index No.:

Defendants.

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Plaintiffs, by their attorneys, GALLAGHER, WALKER, BIANCO & PLASTARAS, ESQS.,
complaining of the defendants, hereby allege the following upon information and belief:

FIRST: At all times hereinafter mentioned, William Poisson and Robert J. Walker were residents
of the State of New York.

SECOND: At all times hereinafter mentioned John McHale was a resident of the State of New
Jersey.

THIRD: Upon information and belief the defendant, The New York Jets LLC [hereinafter referred
to as the "Jets"] is a limited liability corporation formed under and existing by virtue of the laws of
the State of New York.

FOURTH: Upon information and belief the defendant, the Jets is a limited liability corporation
formed under and existing by virtue of the laws of the State of New Jersey.

FIFTH: Upon information and belief the defendant, the Jets is a corporation formed under and
existing by virtue of the laws of the State of New Jersey.

SIXTH: Upon information and belief the defendant, the Jets is a corporation formed under and
existing by virtue of the laws of the State of New York.

SEVENTH: Upon information and belief the defendant, the Jets is a partnership formed under and
existing by virtue of the laws of the State of New Jersey.

EIGHTH: Upon information and belief the defendant, the Jets is a partnership formed under and
existing by virtue of the laws of the State of New York.

NINTH: Upon information and belief the defendant, the Jets is a business entity formed under and
existing by virtue of the laws of the State of New York.

TENTH: Upon information and belief the defendant, the Jets is a business entity formed under and existing by virtue of the laws of the State of New Jersey.

ELEVENTH: Upon information and belief, the defendant, the Jets is a foreign corporation authorized to do business within the State of New York.

TWELFTH: Upon information and belief, the defendant, the Jets is a foreign corporation actually doing business within the State of New York.

THIRTEENTH: Upon information and belief, the defendant, the Jets regularly transact business within the State of New York.

FOURTEENTH: Upon information and belief the defendant, the Jets Stadium Development LLC [hereinafter referred to as the "Stadium"] is a limited liability corporation formed under and existing by virtue of the laws of the State of New York.

FIFTEENTH: Upon information and belief the defendant, the Stadium is a limited liability corporation formed under and existing by virtue of the laws of the State of New Jersey.

SIXTEENTH: Upon information and belief the defendant, the Stadium is a corporation formed under and existing by virtue of the laws of the State of New Jersey.

SEVENTEENTH: Upon information and belief the defendant, the Stadium is a corporation formed under and existing by virtue of the laws of the State of New York.

EIGHTEENTH: Upon information and belief the defendant, the Stadium is a partnership formed under and existing by virtue of the laws of the State of New Jersey.

NINETEENTH: Upon information and belief the defendant, the Stadium is a partnership formed under and existing by virtue of the laws of the State of New York.

TWENTIETH: Upon information and belief the defendant, the Stadium is a business entity formed under and existing by virtue of the laws of the State of New York.

TWENTY-FIRST: Upon information and belief the defendant, the Stadium is a business entity formed under and existing by virtue of the laws of the State of New Jersey.

TWENTY-SECOND: Upon information and belief, the defendant, the Stadium is a foreign corporation authorized to do business within the State of New York.

TWENTY-THIRD: Upon information and belief, the defendant, the Stadium is a foreign corporation actually doing business within the State of New York.

TWENTY-FOURTH: Upon information and belief, the defendant, the Stadium regularly transacts business within the State of New York.

TWENTY-FIFTH: Upon information and belief the defendant, StubHub, Inc. [hereinafter referred to as the “StubHub”] is a limited liability corporation formed under and existing by virtue of the laws of the State of New York.

TWENTY-SIXTH: Upon information and belief the defendant, StubHub is a limited liability corporation formed under and existing by virtue of the laws of another state.

TWENTY-SEVENTH: Upon information and belief the defendant, the StubHub is a corporation formed under and existing by virtue of the laws of another state.

TWENTY-EIGHTH: Upon information and belief the defendant, StubHub is a corporation formed under and existing by virtue of the laws of the State of New York.

TWENTY-NINTH: Upon information and belief the defendant, StubHub is a partnership formed under and existing by virtue of the laws of another state.

THIRTIETH: Upon information and belief the defendant, StubHub is a partnership formed under and existing by virtue of the laws of the State of New York.

THIRTY-FIRST: Upon information and belief the defendant, StubHub is a business entity formed under and existing by virtue of the laws of the State of New York.

THIRTY-SECOND: Upon information and belief the defendant, StubHub is a business entity formed under and existing by virtue of the laws of another state.

THIRTY-THIRD: Upon information and belief, the defendant, StubHub is a foreign corporation authorized to do business within the State of New York.

THIRTY-FOURTH: Upon information and belief, the defendant, StubHub is a foreign corporation actually doing business within the State of New York.

THIRTY-FIFTH: Upon information and belief, the defendant, the StubHub regularly transact business within the State of New York.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

THIRTY-SIXTH: The Jets is a business entity which owns, manages, markets, operates and controls the National Football League’s franchised team known as “the New York Jets”.

THIRTY-SEVENTH: Upon information and belief, the Stadium is a business entity which was created to facilitate development of the football stadium, currently under construction [hereinafter referred to as the “new stadium”], to be used jointly with the football Giants.

THIRTY-EIGHTH: Upon information and belief, the Jets and Stadium are under common ownership and control.

THIRTY-NINTH: Upon information and belief, agreements exist which delineate the respective rights and obligations of the Jets and Stadium and pursuant to which Stadium received the right to sell Personal Seat Licenses for the Jets home games at the new stadium.

FORTIETH: Upon information and belief, the Jets and Stadium agreed to develop and market an area of seating within the new stadium known as the "Coaches Club".

FORTY-FIRST: Upon information and belief, the Jets and Stadium consulted with and contracted with StubHub to assist with development and marketing of an online public auction of the seats within the Coaches Club.

FORTY-SECOND: The Coaches Club seat auction was advertised, marketed and promoted by the defendants through online advertising, radio, print and television commercial advertising, public interviews by company officials as well as advertising at Giants Stadium during the home games played by the Jets football team during 2008.

FORTY-THIRD: The Coaches Club seat auction was scheduled by the defendants to take place between October 19, 2008 and October 27, 2008.

FORTY-FOURTH: The defendants represented in their advertising, marketing and promotional materials that the personal seat licenses for the 2,000 seats in the Coaches Club would be sold "exclusively" through the online auction.

FORTY-FIFTH: The defendants represented in their advertising, marketing and promotional materials that there would be "2,000 Seats-One Chance to Bid".

FORTY-SIXTH: The defendants represented in their advertising, marketing and promotional materials that "selling PSLs via auction gives fans an unprecedented chance to set the price for the best seats in the house."

FORTY-SEVENTH: The defendants also represented in their advertising, marketing and promotional materials that "this will be the first time in sports that the market will set the price for the best seats in the house."

FORTY-EIGHTH: The defendants represented in their advertising, marketing and promotional materials that "the Jet's unique approach will break new ground in the primary ticketing market when the buyer decides what the seat is worth".

FORTY-NINTH: The defendants represented in their advertising, marketing and promotional materials that "rather than set a price, we'll let the marketplace decide".

FIFTIETH: The defendants represented in their advertising, marketing and promotional materials that they were “willing to take the risk” associated with letting the marketplace determine the value of the PSLs for the Coaches Club seats.

AS AND FOR A FIRST CAUSE OF ACTION

FIFTY-FIRST: Repeats and re-alleges paragraphs FIRST through FIFTIETH with the same force and effect as if fully set forth herein.

FIFTY-SECOND: The statements made by the defendants in the advertising, marketing and promotional materials were misleading in a material respect and constitute false advertising within the meaning of Section 350-a of the General Business Law of the State of New York.

FIFTY-THIRD: The aforesaid representations were false and misleading in that, among other things, the defendants reduced the number of seats available during the auction from 2,000 to approximately 600 in order to manipulate the auction to prevent the prices of the Coaches Club PSLs from falling to their true market value.

FIFTY-FOURTH: The defendants also engaged in conduct to manipulate the auction in an attempt to prevent the Coaches Club PSLs from falling to their true market value, including but not limited to limiting the number of PSL seats available and extending bidding times.

FIFTY-FIFTH: Jets Chairman and CEO, Robert W. (Woody) Johnson admitted after the auction that the defendants reduced the number of seats for sale from 2,000 because having too many available had hurt demand.

FIFTY-SIXTH: By engaging in false advertising the defendants engaged in unlawful conduct.

FIFTY-SEVENTH: As a direct and proximate result of the false advertising and unlawful conduct of the defendants, the public was misled.

FIFTY-EIGHTH: As a direct and proximate result of the false advertising and unlawful conduct of the defendants the plaintiffs were damaged.

FIFTY-NINTH: The plaintiffs seek treble damages pursuant to Section 350-e of the General Business Law.

SIXTIETH: The plaintiffs also seeks reasonable attorney’s fees pursuant to Section 350-e of the General Business Law.

AS AND FOR A SECOND CAUSE OF ACTION

SIXTY-FIRST: Repeats and re-alleges paragraphs FIRST through SIXTIETH with the same force and effect as if fully set forth herein.

SIXTY-SECOND: The acts and practices of the defendants constitute deceptive acts and practices as defined in Section 349 of the General Business Law.

SIXTY-THIRD: The deceptive acts and practices of the defendants include, but are not limited to, falsely advertising and promoting the public auction of the 2,000 Coaches Club seats and then manipulating the auction in an attempt to artificially inflate the selling prices, in withholding the majority of the Coaches Club seats from sale on the online auction, in falsely and deceptively representing that the Coaches Club seats would be available “exclusively” through the online auction when, in fact, the defendants withheld the majority of the seats for sale by other means in an attempt to obtain higher prices for the seats than would have been obtained had they been auctioned, in falsely and deceptively representing that there would be one chance to bid on the 2,000 Coaches Club seats, in falsely and deceptively representing that the auction would give the public the chance to set the prices, in falsely and deceptively representing that the marketplace would be permitted to set the price for sale of the 2,000 Coaches Club seats and then withholding the majority of the seats from sale at the auction, falsely and deceptively representing that the defendants were willing to take the risk associated with public auction of the 2,000 seats and then unlawfully conspiring and acting in an attempt to manipulate the auction in order to stop the prices of the seats from declining and then further acting deceptively in withdrawing the majority of the seats from sale when it became clear that the defendants would be unable to manipulate the prices to satisfactory levels, failing to run the auction in an honest, open in good faith manner.

SIXTY-FOURTH: Woody Johnson continued to represent after the auction that “We [the Jets] didn’t set the prices. The public determined them”.

SIXTY-FIFTH: Woody Johnson continued to represent after the auction that the process was “democratic”.

SIXTY-SIXTH: Woody Johnson continued to represent after the auction that the auction had proven “that there was a public market for them [the Coaches Club PSLs]”.

SIXTY-SEVENTH: These statements were false and deceptive as the defendants failed to permit the public from setting the prices, the auction process was manipulated, not democratic and in that the defendants deceptively acted to manipulate and intervene into the auction process in order to prevent Coaches Club seats from falling to their true market value.

SIXTY-EIGHTH: By engaging in deceptive acts and practices the defendants engaged in unlawful conduct.

SIXTY-NINTH: As a direct and proximate result of the deceptive acts and practices of the defendants, the public was misled.

SEVENTIETH: As a direct and proximate result of the deceptive acts and practices and unlawful conduct of the defendants the plaintiffs were damaged.

SEVENTY-FIRST: The plaintiffs seek treble damages pursuant to Section 349 of the General Business Law.

SEVENTY-SECOND: The plaintiffs also seek reasonable attorney's fees pursuant to Section 349 of the General Business Law.

AS AND FOR A THIRD CAUSE OF ACTION

SEVENTY-THIRD: Repeats and re-alleges paragraphs FIRST through SEVENTY-SECOND with the same force and effect as if fully set forth herein.

SEVENTY-FOURTH: The aforementioned representations made by the defendants were material and false.

SEVENTY-FIFTH: The defendants made the aforementioned representations with knowledge of their falsity.

SEVENTY-SIXTH: The defendants made the aforementioned false representations for the purpose of inducing the public, including the plaintiffs to participate in what was represented to be an honest, good faith auction of the 2,000 Coaches Club seats.

SEVENTY-SEVENTH: In direct reliance upon the representations made by the defendants the plaintiffs, believing that there would be an honest, good faith auction of the 2000 Coaches Club seats, planned auction strategy including whether to bid at a particular time, what to bid and the timing during the auction.

SEVENTY-EIGHTH: In addition to making false representations to induce the public, including the plaintiffs, to participate in the auction process, the defendants also acted deceptively in conducting the auction, specifically including unlawful attempts at manipulating the selling price, upon information and belief arranging for parties to artificially bid up the selling prices and in otherwise acting deceptively and fraudulently as previously set forth herein.

SEVENTY-NINTH: The public at large, including the plaintiff, justifiably relied on the representations made by the defendants.

EIGHTIETH: As a direct and proximate result of the false and fraudulent conduct of the defendants, plaintiffs were monetarily injured, specifically including a fair opportunity to obtain a Coaches Club seat PSL at an honest and unmanipulated market price.

EIGHTY-FIRST: As a result of the false and fraudulent conduct of the defendants, the plaintiffs seek specific performance and punitive damages in addition to compensatory damages as fixed by the trier of fact.

AS AND FOR A FOURTH CAUSE OF ACTION

EIGHTY- SECOND: Repeats and re-alleges paragraphs FIRST through EIGHTY-FIRST with the same force and effect as if fully set forth herein.

EIGHTY-THIRD: The written representations of the defendants, quoted in full above, assuring that the online auction to take place between October 19, 2008 and October 27, 2008 would be the "exclusive" method of purchasing a Coaches Club seat PSL constituted a firm offer within the meaning of Section 2-205 of the Uniform Commercial Code of the State of New York.

EIGHTY-FOURTH: As a result of the express representations of the defendants, including the firm offer, the sale of the Coaches club seat PSLs was without reserve pursuant to Section 2-328 of the Uniform Commercial Code of the State of New York.

EIGHTY-FIFTH: The defendants acted improperly in withdrawing the Coaches Club seat PSLs from the aforementioned auction.

EIGHTY-SIXTH: The plaintiffs have been damaged by the defendants' bad faith conduct.

EIGHTY-SEVENTH: The amounts sought herein on the FIRST through FOURTH Causes of Action, exceeds the jurisdictional limits of all lower courts.

WHEREFORE, the plaintiffs seek damages against the defendants for compensatory and treble damages as well as attorneys fees and further seeks compensatory and punitive damages all in such amounts as are fixed by the trier of fact, together with interest, costs and disbursements.

Dated: May 11, 2009
Mineola, New York

GALLAGHER, WALKER, BIANCO
& PLASTARAS, ESQS.

By: 

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