

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT—LAW DIVISION

2017L001160
CALENDAR/ROOM Y
TIME 00:00
Breach of Contract

BOW & TRUSS LLC, an Illinois)
limited liability company)

Plaintiff,)

v.)

MARCUS LEMONIS and ML FOOD)
GROUP, LLC, a Delaware limited)
liability company,)

Defendants.)

Case no.

2017 FEB -1 PM 2:38
DEPARTMENT OF PROBATION
CLERK OF CIRCUIT COURT
LAW DIVISION

COMPLAINT

The plaintiff, Bow & Truss LLC, an Illinois limited liability company, complains of the defendant, Marcus Lemonis and ML Food Group, LLC, as follows;

COUNT I
BREACH OF LETTER OF INTENT
(Against ML)

1. The plaintiff, Bow & Truss LLC, is an Illinois limited liability company. It is in the business of selling coffee and related products and services on a retail and wholesale basis. Bow Truss’s principal place of business is in Chicago, Illinois. It has several retail stores in Chicago.

2. The defendant, Marcus Lemonis (“Lemonis”) is a well-known Chicago businessman. He currently stars in the business investment show “The Profit” on CBNC and will be starring in “The Partner” to premiere in March 2017 on CBNC. Lemonis,

through various entities that he owns or controls, is in the business of purchasing and investing in various business ventures,

3. The defendant, ML Food Group, LLC (“ML”), is a Delaware limited liability company. Lemonis or entities that he owns or controls, is a member or manager of ML.

4. As shown below, in the latter part of 2016 and early 2017, the defendants devised a fraudulent scheme to attempt to purchase the plaintiff at a rock bottom bargain basement giveaway price and failing to accomplish that to destroy the plaintiff.

5. On or about December 15, 2016, the plaintiff, as seller and ML, as buyer, entered into a letter of intent (LOI”). A copy of the letter of intent (“LOI”) is attached here as **Exhibit 1**.

6. Prior to entering into the LOI, the defendants performed certain amount of due diligence on the plaintiff, including without limitation, sending in secret shoppers and interviewing plaintiff’s employees. Much of this due diligence was done without the knowledge or consent of the plaintiff.

7. On or about December 15, 2016, the defendants publicly announced through twitter that they had purchased the plaintiff and now owned it. The defendants thereafter repeated that statement. The defendants also announced to the press and/or in social media that Lemonis was now the CEO of the plaintiff.

8. The aforesaid statements were false. The LOI contained certain binding obligations. However, there was no binding obligation on the part of the plaintiff or ML to consummate the purchase and sale of the plaintiff. Lemonis never was and never became the CEO or held any other position with the plaintiff.

9. The defendants' public announcement that they had purchased the plaintiff was made without the prior knowledge or consent of the plaintiff.

10. On or about January 4, 2017, the defendants then scheduled a meeting with plaintiff's employees for January 5, 2017. In scheduling this meeting, the defendants held themselves out as the new owners of the plaintiff.

11. The scheduling of the aforesaid meeting with the plaintiff's employees was done without plaintiff's prior knowledge or consent.

12. The defendants also contacted plaintiff's landlords and informed them that they (the defendants) were going to be taking over the leases.

13. At the time the parties entered into the LOI, the defendants knew that the plaintiff was having cash flow issues and needed an immediate infusion of funds prior to closing.

14. At the time the parties entered into the LOI, the defendants knew the approximate amount of liabilities of the plaintiff. The purchase price in the LOI was to be used for the most part to pay off all the liabilities and make the plaintiff debt free.

15. On or about December 22, 2016, Bow Truss America, LLC, a Delaware limited liability company advanced approximately \$97,000 to the plaintiff and plaintiff's creditors. Bow Truss America, LLC, is owned or controlled by the defendants.

16. On or about December 22, 2016, the defendants also agreed that Bow Truss America, LLC would advance more funds in advance of a sale being consummated.

17. In reliance on the promise set forth above, the plaintiff used its funds that it would normally have used to fund payroll and pay health insurance for its employees to pay other, less critical creditors.

18. On or about December 29, 2016, the plaintiff requested that the defendant fund an additional approximately \$180,000

19. On or about January 6, 2016, within approximately two hours of when the defendants had said that they were going to wire the funds, the defendants said that they were not going to wire the funds, unless:

- a. the plaintiff agreed to a significantly lower purchase price of the plaintiff;
- b. the sole member of the plaintiff pledge its membership interest in the plaintiff as collateral for the funds advanced and being advanced.

20. The plaintiff refused to accept the new terms offered by the defendants in the preceding paragraph.

21. Accordingly, the defendants did not advance further funds to the plaintiff. Consequently, the plaintiff was unable to make payroll on a timely basis.

22. The defendants then started disparaging the plaintiff in social media and to the press.

23. On or about January 6, 2017, the defendants reported on social media and/or to the press that the defendants were no longer certain that they would purchase the plaintiff.

24. Also on or about January 6, 2017, the defendants reported on social media and/or to the press that

- a. the defendants questioned the integrity of the plaintiff's owner;
- b. the plaintiffs had failed to disclose certain liabilities to the defendants;
- c. the defendants had uncovered financial irregularities and mismanagement with the business particularly on the financial side;

d. it was difficult to do an accurate accounting of the plaintiff because the accounting was a “weird maze,” and a “giant labyrinth” and “impossible” to trace the monies between the plaintiff and related entities.

25. Further, on the same day, January 6, 2017, the defendants disclosed various liabilities of the plaintiff to the press and/ or in social media.

26. On or about January 8 and 9, 2017, the social media and press reported defendants’ statements described in paragraphs 23 through 26 to the public.

27. In fact, the total amount of liabilities that the plaintiff had previously disclosed to the defendants at the time of the execution of the LOI were equal to or greater than the actual liabilities of the plaintiff.

28. Furthermore, the defendants did not have access to the information that would allow them to provide the comments described above to the press and/or social media.

29. The statements made in paragraphs 24 were false, misleading and held out the plaintiff in a false light.

30. The defendants made the comments to the press and/ or in social media described in paragraph 23 through 25 to embarrass and harm the plaintiff and to depress the purchase price of the plaintiff.

31. On or about January 12, 2017, the defendants disclosed to the press and/ or in social media that they would not be partners with the owners of the plaintiff.

32. In or about the second week of January 2017, the defendants spoke to plaintiff’s employees. The defendants encouraged plaintiff’s employees to walk out while the stores were still owned by the plaintiff.

33. On January 12, 2017, the employees did in fact walk out. The retail stores of Bow Truss were closed for approximately one week.

34. One or more employees stated that they would not come back to work until the defendants acquire the plaintiff.

35. The defendants informed plaintiff's employees that he had a "plan" to acquire the plaintiff and that they should not "tolerate" plaintiff's existing owner.

36. The defendants also contacted plaintiff's landlords about filing an involuntary bankruptcy against the plaintiff.

37. The defendants engaged in the conduct above, including but not limited to:

- a. Falsely announcing to the press and social media that they are the new owners of the plaintiff;
 - b. interacting with plaintiff's employees as though the defendants are the owners of the plaintiff;
 - c. promising and then withdrawing at the last second funds needed by the plaintiff;
 - d. disclosing sensitive financial information to the press and social media;
 - e. stating to plaintiff's employees that they have a plan to acquire the plaintiff and that the employees to walk out on the plaintiff; and
 - f. disparaging the plaintiff and its owner to the press and social media;
- for the purpose of putting the plaintiff out of business and being able to acquire the business for little or no money.

38. By falsely announcing that they had purchased the plaintiff, then contacting

plaintiff's creditors and employees directly, the defendants made it more difficult to negotiate with creditors and to manage its employees. The public announcement created inflated expectations by the creditors and employees.

39. On or about January 23, 2017, the defendants announced through social media that the defendants were bringing their Los Angeles, California coffee business to Chicago and will have jobs available. He attached to this announcement that Bow Truss was behind in its payroll.

40. Paragraph 2 g of the LOI provided that ML was obligated to pay a break-up fee of \$162,000 to the plaintiff in the event the ML discontinued good faith discussions with the plaintiff.

41. As set forth above, the defendants discontinued good faith discussions with the plaintiff for the purchase of the plaintiff. The defendants' bad faith is reflected in part in (a) defendants' abrupt departure from the terms of the LOI on the eve of providing critical funding for the plaintiff, and even though the plaintiff had previously disclosed the total amount of its liabilities and (b) the defendants' subsequent public campaign to embarrass and disparage the plaintiff.

42. Accordingly, the plaintiff is entitled to the break-up fee set forth in the LOI.

43. The plaintiff performed all conditions precedent required to be entitled to the break-up fee.

WHEREFORE, the plaintiff, Bow & Truss LLC, prays for judgment in its favor and against the defendant, ML Food Group, LLC, in the amount of \$162,500, plus prejudgment interest and costs of suit.

COUNT II
COMMON LAW FRAUD
(Against ML and Lemonis)

44. The plaintiff re-alleges paragraphs 1 through 39.

45. In or about December 2016, the defendants represented orally and in writing that they were interested in purchasing the plaintiff for the terms set forth in the LOI. The oral representations were made by Lemonis to Phil Tadros, CEO of Bow Truss. The written representation is set forth in paragraph 1 of the LOI.

46. At the time the defendants made these representations they were false and known to be false by the defendants. The defendants never intended to purchase the plaintiff on the terms set forth in the LOI.

47. The defendants made the representations and executed the LOI to obtain plaintiff's confidential and sensitive financial information and to gain access to the plaintiff's employees for the purpose of undermining or destroying the plaintiff.

48. By undermining or destroying the plaintiff, that defendants could either purchase the plaintiff at a very cheap price or eliminate the plaintiff as a competitor of the defendants' coffee business.

49. The defendants' representations set forth in paragraph 45 were part of a fraudulent scheme to undermine or destroy the plaintiff.

50. At all times relevant, the plaintiff reasonably relied on the representations set forth in paragraph 45. In fact, the plaintiff ceased negotiations with other potential partners or purchases once it entered into the LOI. The plaintiff also provided the defendants with access to confidential and sensitive financial information of the plaintiff.

51. As a result of defendants' wrongful conduct, the plaintiff lost sales and customers, and had to close most of its stores.

52. As a direct and proximate consequence of the defendants' wrongful conduct, plaintiff has been damaged in an amount not yet determined but believed to be in excess of \$6,000,000, which includes loss to reputation, loss of value of the store, and lost sales.

53. At all times relevant, the defendants acted willfully and maliciously in an effort to harm the plaintiff. Accordingly, the plaintiff is entitled to punitive damages.

WHEREFORE, the plaintiff, Bow & Truss LLC, prays for judgment in its favor and against the defendants, Marcus Lemonis and ML Food Group, LLC, as follows:

- a. Compensatory damages in the amount of its actual damages, believed to be at least \$6,000,000
- b. Punitive damages in the amount of \$20,000,000
- c. Costs of suit.

**COUNT III
CONSUMER FRAUD
(Against ML and Lemonis)**

54. The plaintiff re-alleges paragraphs 1 through 39.

55. The plaintiff re-alleges paragraphs 45 through 51.

56. The defendants' misrepresentations are actionable under the Consumer Fraud and Deceptive Business Practices Act ("Consumer Fraud Act") (815 ILCS 505/1 *et seq.*) Section 2 of the Consumer Fraud Act states:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with

intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act”, approved August 5, 1965,¹ in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act

57. The defendants’ public announcement that they had purchased the plaintiff and that Lemonis was CEO of the plaintiff misled consumers, including the plaintiff’s customers, as well as plaintiff’s employees and creditors.

58. Defendants’ misrepresentations caused significant harm to the plaintiff when the defendants backed out of the deal and then started to disparage the plaintiff to the press and in social media.

59. Accordingly, the defendants violated the Consumer Fraud Act.

60. As a result of defendants’ wrongful conduct, the plaintiff lost sales and customers, and had to close most of its stores.

61. As a direct and proximate consequence of the defendants’ wrongful conduct, plaintiff has been damaged in an amount not yet determined but believed to be in excess of \$6,000,000, which includes loss to reputation, loss of value of the store, and lost sales.

62. At all times relevant, the defendants acted willfully and maliciously in an effort to harm the plaintiff. Accordingly, the plaintiff is entitled to punitive damages.

63. Plaintiff is also entitled to reasonable attorneys’ fees for defendants’ violation of the Consumer Fraud Act.

WHEREFORE, the plaintiff, Bow & Truss LLC, prays for judgment in its favor and against the defendants, Marcus Lemonis and ML Food Group, LLC, as follows:

- a. Compensatory damages in the amount of its actual damages, believed to be at least \$6,000,000
- b. Punitive damages in the amount of \$20,000,000
- c. Attorneys' fees and costs of suit.

**COUNT IV
TORTIOUS INTERFERENCE
(Against ML and Lemonis)**

64. The plaintiff re-alleges paragraphs 1 through 39.

65. The plaintiff re-alleges paragraphs 45 through 49.

66. At all times relevant the plaintiff had business relationships with its creditors, customers and employees.

67. At all times relevant, the defendants were aware of these business relationships.

68. The defendants intentionally interfered with plaintiff's business relationships with its creditors, customers and employees by engaging in the wrongful conduct described above in paragraphs including, but not limited to making the public communications to the press and on social media as well as having private communications with customers, creditors and employees.

69. As a result of defendants' wrongful conduct, creditors, employees and customers terminated their business relationship with the plaintiff.

70. As a direct and proximate consequence of the defendants' wrongful conduct, plaintiff has been damaged in an amount not yet determined but believed to be in excess of \$6,000,000, which includes loss to reputation, loss of value of the store, and lost sales.

71. At all times relevant, the defendants acted willfully and maliciously in an effort to

harm the plaintiff. Accordingly, the plaintiff is entitled to punitive damages.

WHEREFORE, the plaintiff, Bow & Truss LLC, prays for judgment in its favor and against the defendants, Marcus Lemonis and ML Food Group, LLC, as follows:

- a. Compensatory damages in the amount of its actual damages, believed to be at least \$6,000,000
- b. Punitive damages in the amount of \$20,000,000
- c. Costs of suit.

**COUNT V
BREACH OF FIDUCIARY DUTY
(Against Lemonis)**

72. The plaintiff re-alleges paragraphs 1 through 39.

73. The plaintiff re-alleges paragraphs 45 through 49.

74. By holding himself out as an owner and CEO of the plaintiff, Lemonis owed fiduciary duties to the plaintiff, including the duty of honesty, good faith and to act in the best interest of the plaintiff

75. Lemonis breached his fiduciary duty by engaging in the conduct described above.

76. As a direct and proximate consequence of this breach, the plaintiff has been damaged in an amount not yet determined but believed to be in excess of \$6,000,000, which includes loss to reputation, loss of value of the store, and lost sales.

77. At all times relevant, Lemonis acted willfully and maliciously in an effort to harm the plaintiff. Accordingly, the plaintiff is entitled to punitive damages.

WHEREFORE, the plaintiff, Bow & Truss LLC, prays for judgment in its favor and against the defendant, Marcus Lemonis, as follows:

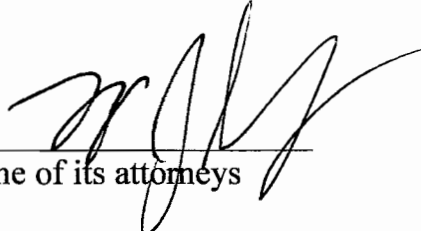
- a. Compensatory damages in the amount of its actual damages, believed to be at least \$6,000,000
- b. Punitive damages in the amount of \$20,000,000
- c. Attorneys' fees and costs of suit.

PLAINTIFF DEMANDS TRIAL BY JURY

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Bow & Truss LLC

By



One of its attorneys