

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

BELA VISTA CONTRACTORS, Inc.
Construction Company, and HAROLD
HOISINGTON, Independent Contractor,
Plaintiff

CASE NO.: 9:15cv80863

v.

COMPLAINT

TIERRA DEL MAR CONDOMINIUM
ASSOCIATION, INC., a Florida non-profit
Corporation, BRIAN UPTON, Director, RONNIE
BARKER, Director And WILLIAM
NICHARENKO, Director
ROYALE MANAGEMENT SERVICES,
INC., a Property Management Company,

INJUNCTIVE RELIEF
TRADE LIBEL AND SLANDER
TORTIOUS BUSINESS INTERFERENCE
ANTITRUST
RICO CONSPIRACY/RICO ACT
INTENTIONAL MISREPRESENTATION

Defendants.

DEMAND FOR JURY TRIAL

COMPLAINT

Plaintiffs, BELA VISTA CONTRACTORS, INC., a Florida Corporation and HAROLD HOISINGTON, an Individual, files this Complaint against Defendants, TIERRA DEL MAR CONDOMINIUM ASSOCIATION, INC., a Florida non-profit Corporation, BRIAN UPTON, Director, RONNIE BARKER, Director, WILLIAM NICHARENKO, Director and ROYALE MANAGEMENT SERVICES, INC., a Property Management Company, alleges as follows:

INTRODUCTION

1. Bela Vista and Hoisington bring this action against Association, Directors and Management to seek Injunctive Relief, remedies both compensatory, punitive and treble damages for Injunctive Relief, Trade Libel, Slander, Tortious Business Interference, Antitrust Violations, RICO Conspiracy and Act, and Intentional Misrepresentation.

THE PARTIES

2. BELA VISTA CONTRACTORS is a Construction Company, located in Pompano Beach, and doing business in Boca Raton, Florida, licensed and insured in the state of Florida hereinafter referred to as “Contractor or Bela Vista”,
3. HAROLD HOISINGTON, an Individual, located in Pompano Beach and doing business in Boca Raton, Florida hereinafter referred to as “Hoisington”,
4. TIERRA DEL MAR CONDOMINIUM ASSOCIATION, INC., A Non-profit condominium association, located in Boca Raton, Florida hereinafter referred to as “Association,”
5. BRIAN UPTON, Director of Tierra Del Mar Condominium Association, Inc., hereinafter referred to as “Director or Upton”,
6. RONNIE BARKER, Director of Tierra Del Mar Condominium Association, Inc., hereinafter referred to as “Director or Barker”
7. WILLIAM NICHARENKO, Director of Tierra Del Mar Condominium Association, Inc., hereinafter referred to as “Director or Nichparenko” and
8. ROYAL MANAGEMENT SERVICES, a Management Company, located in Fort Lauderdale, Florida, hereinafter referred to as “Management.”
9. ASSOCIATION REGIME, refers collectively to the Association, Directors and Management.

JURISDICTION AND VENUE

10. Plaintiffs reallege the allegations contained in paragraphs 1 through 9 above.
11. This court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) because this lawsuit is a civil action for civil claims arising under the laws of the United States,
12. This Court has personal jurisdiction over Defendants because Defendants in or near this District, offer services in this District, conducts business in this District has committed acts and/or contributed to or induced acts of Trade Libel, Slander, Tortious Business Interference, Antitrust Violations, RICO

Conspiracy and RICO Act Violations by others in this District and elsewhere in Florida and the United States, Defendants regularly does business, solicits business, engages in other persistent courses of conduct, and/or derives substantial revenue from services provided to individuals in this District and in this State pursuant to 15 U.S.C. §22.

13. Venue is proper in this District under 28 U.S.C. §§ 1391-(b)(c) and 1400(b) because Defendants resides in this District and because a substantial part of the events or omissions giving rise to this claim occurred in this District.

14. This District has original jurisdiction under 28 U.S.C. §1332 as the matter in controversy in this civil action exceeds the sum or value of \$75,000, exclusive of interest and costs.

FACTUAL BACKGROUND

15. Plaintiffs reallege the allegations contained in paragraphs 10 through 14 above.

16. The aforementioned Defendants, Association, Directors and Management Companies have knowingly, intentionally, maliciously and with reckless disregard for the reputations and business of Bela Vista and Hoisington, engaged in the following pattern of conduct to gain control over all operations and members of the Tiera Del Mar Condominium Association, Inc.

17. Brian Upton, Director of Tierra Del Mar Condominium Association, Inc. hereinafter referred to as “Upton”, gained his position on the board by default when one member withdrew from the election¹. (See Exhibit 1).

18. Upton has conspired with Ronnie Barker, hereinafter referred to as “Barker” to use their positions as Directors to threaten, intimidate, and degrade members in an effort to gain submission and control of the members and other Directors of the Association.

19. Bela Vista and Hoisington, welcomed Contractors for over 15 years, have now been banned from entering the building and performing any work under the new Association regime.

¹ Exhibit 1 - Tierra Del Mar Condominium Member Letter, from Frank Speciale to Management Dated April 10, 2015 regarding questionable or “scam” election.

20. The Association regime falsely claims Bela Vista and Hoisington have performed shoddy and incomplete work, when in fact members have praised the work of Bela Vista and Hoisington for many years.

COUNT I
INJUNCTIVE RELIEF

21. Plaintiffs reallege the allegations contained in paragraphs 15 through 20 above.

22. Contractor and Hoisington will suffer immediate, irreparable injury, loss or damage if injunctive relief against the Association, Directors and Management is not issued.

23. Several contracts are currently pending, many contracts have been cancelled and some individuals refuse to enter a contract with Bela Vista and Hoisington due to the ongoing unlawful activity of the Association Regime.

24. The applicable rule, 15 U.S.C. §22, 26 gives a private party the right to injunctive relief for Antitrust violations.

25. Bela Vista and Hoisington seek injunctive relief directing Defendants from making any further disparaging remarks and to allow Plaintiffs to continue business with Members of the Association and within the Tierra Del Mar building.

COUNT II
TRADE LIBEL PER SE AND SLANDER PER SE

26. Plaintiffs reallege the allegations contained in paragraphs 21 through 25 above

27. The Association Regime has posted to all Condominium Members that Bela Vista and Hoisington are no longer allowed in the Tierra Del Mar building or to perform any work related activities.

28. Directors, specifically Ronnie Barker, have told members Hoisington has criminal convictions and exposed unrelated past family matters.

29. Management has posted signs that Bela Vista and Hoisington are not allowed in the building.

30. Association, Management and Directors knowingly asserted this falsity with the intent to use the falsity to gain an economic advantage in their favor by giving construction and maintenance contracts to friends and family members and appropriating funds from the membership to those related parties.

31. The publication by posting, electronic communications and oral statements made in Association meetings of false statements as to the services provided by Bela Vista and Hoisington was an intentional disparagement of the quality of the services of plaintiff's business and it has resulted in enormous pecuniary damages.

32. Association and Directors have denied approval of ARB's for Bela Vista and Harold Hoisington stating to members that the Contractor has engaged in "shoddy" work put apartment in jeopardy for the upcoming hurricane season.

33. When in fact, the Association Regime is demanding members prepare for the hurricane season while at the same time, putting a moratorium on all work without BOD approval.

34. Then refusing to approve when Members request work to be completed by Bela Vista and Harold Hoisington.

35. All members have been satisfied with the work of Bela Vista and Hoisington.

36. All work completed by Contractors has been up to industry standard and has never been "shoddy."

37. Hoisington never approved dissemination or release of his personal family matters to Directors to Members or the public.

38. The false statements have inevitably resulted in loss of future profits of Bela Vista and Hoisington.

39. The Association Regime has engage in trade libel per se and slander per se through verbal, written, electronic and public communications with members of the Association and the public². (See Exhibit 2).

COUNT III
ANTITRUST VIOLATIONS OF THE
SHERMAN AND CLAYTON ACTS, FLA.STAT. §542.15 et.seq.

40. Plaintiffs reallege the allegations contained in paragraphs 26 through 39 above

41. Directors, Association and Management have conspired, contracted and engaged in unlawful activities and courses of conduct to control and restrain construction of the Tierra Del Mar Condominium building.

42. The aforementioned parties have increased assessments for construction improvements, while bullying and intimidating members, and asserting only they “the Association Regime” can choose who does and does not perform services in the building.

43. The “Association Regime” in furtherance of this illegal conspiracy have taken control, power and monopolized the Condominium building and all associated business and contracts in the Building and of the Members.

44. 15 U.S.C. § 1, which prohibits “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce....”

45. The Association Regime has acted unlawfully to monopolize the Condominium building in violation of Section 2 of the Sherman Act. 15 U.S.C. §2.

46. The Association, Directors and Management have engaged in illegal restrictive dealing agreements in violation of Section 3 of Clayton Act 15 U.S.C. §14.

47. The Association Regime has used its dominant position to induce Members to contract with other Contractors than Bela Vista and Hoisington.

² Exhibit 2 - March 27th Letter to Royale Management Services from Bela Vista.

48. Directors have told members Hoisington has criminal convictions and exposing unrelated past family matters.

49. The Association Regime has in violation of the Antitrust Statutes of the State of Florida unfairly restrained and monopolized trade in the Tierra Del Mar Condominium and among its members. Fla. Stat. §542.18 and §542.19 by restricting the business of Bela Vista and Hoisington and restraining the freedom for the flow of commerce within the Tierra Del Mar building and among its members by unlawfully prohibiting Bela Vista and Hoisington from engaging in ongoing and future business.

Collective Refusal to Deal

50. There is a collective refusal to deal, also called a group boycott, is a concerted decision by Association, Directors and Management not to do business with Bela Vista and Harold Hoisington.

51. This group boycott by Association, Directors and Management is unlawful because it has the effect of restraining freedom of trade of Bela Vista, Hoisington and Members of the Association.

52. Collective refusals to deal such as this one is a per se violations of the antitrust laws, that is, even if the Association, Directors and Management do not intend to restrain competition their group boycott violates antitrust laws.

Tying

53. The Association, Directors and Management Company are engaging in Tying, by requiring members to purchase only "BOD approved" Construction company and individuals to have construction and maintenance services performed in their condominium, restraining the ability of Contractor and Hoisington to provide construction services and maintenance to the members who want to pay for their services.

54. The Association, Directors and Management have posted flyers that the Contractor and Hoisington are not allowed in the building or on the property.

55. The Association, Directors and Management have threatened to call police to the condominium unit of any owner that hires the Contractor or Hoisington.

56. The Association, Directors and Management are assessing members for selective construction improvements, and harassment of owners contracted with Bela Vista and Hoisington³. (See Exhibit 3).

57. These acts constitute an illegal tie-in per se:

- A Tying scheme must exist, in which the members or buyers are required to hire only Association/BOD service in order to obtain a particular service
- Bela Vista and Hoisington have been working in the Tierra Del Mar buildings multiple years and have contracts pending with several members.
- An active “moratorium” on any contracts without Association, Directors and Management approval that is arbitrarily and capriciously enforced has restrained Bela Vista and Hoisington⁴. (See Exhibit 4 (a-d)).
- The “moratorium” restrains the ability for several condominium unit owners to use Bela Vista and Hoisington services.

Exclusive Dealing

58. The exclusive dealing of Association, Directors and Management by not allowing members to enter into contracts for construction services and repair is having the effect of lessening and barring competition.

59. The members are entitled to be able to hire Bela Vista and Hoisington for construction and other maintenance related services for their condominium without interference from the Association, Directors and Management.

³ Exhibit 3 - March 6th, 2015 Flyer stating Bela Vista and Hoisington not allowed on property and authorities will be called if they are seen.

⁴ Exhibit 4 (a-c) - March 5, 2015 E-mail Correspondence from RMS Management explain public posting, moratorium BOD approved installer, falsely stating removal of Tile put balcony in jeopardy in furtherance of Association, Director and Management Conspiracy and that Bela Vista is not approved.

Exhibit 4d - May 7, 2015 Management Letter stating they coordinate vendors/work on the property.

COUNT IV
INTENTIONAL INTERFERENCE
WITH THE ADVANTAGEOUS BUSINESS RELATIONSHIP

60. Plaintiffs reallege the allegations contained in paragraphs 40 through 59 above

61. Bela Vista and Harold Hoisington have an existing business relationship with the Members and the Association of the Tierra Del Mar Condominium Building for over the past 10 years.

62. The Association, Directors and Management have intentionally interfered, unjustifiably with this ongoing business relationship to control and monopolize the funds and construction of the Tierra Del Mar Building.

63. The Association, Directors and Management have denied approval of bids with malicious intent.

64. Directors such as William Nichparenko⁵ have personally harassed members to cancel contracts with Bela Vista and Hoisington. (See Exhibit 5).

65. Bela Vista and Hoisington have suffered damages in excess of \$100,000⁶, in lost business, and cancelled contracts.

66. There is an existing contractual or business relationship coupled with legal rights and damages.

67. The Association Regime has intentionally and maliciously interfered with Contractors business relationships with its customers and this interference proximately caused damages to Contractors and Hoisington in the compensatory amount of over \$250,000 for lost profits on existing contracts, and \$1.5 mil for the “loss of the value of Contractors business, including goodwill’ as Bela Vista and Hoisington

⁵ Exhibit 5 - Tierra Del Mar Condominium Member Letter, from Frank Speciale to Management Dated April 10, 2015 regarding Nichparenko harassing clients of Bela Vista for using their services.

⁶ The following elements to state a valid tortious interference with advantageous business relations claim:

- 1) The existence of a business relationship under which the plaintiff has legal rights;
- 2) An intentional and unjustified interference with the relationship and
- 3) Damage to the plaintiff as a result of the tortious interference with that relationship

Ad-Vantage Telephone Directory Consultants, Inc. v. GTE Directories Corp., 849 F.2d 1336, 1348-49 (11th Cir.1987) (citations omitted); see also Tamiami Trail Tours, Inc. v. Cotton, 463 So.2d 1126, 1127 (Fla.1985).

provide contractor services to several Tierra Del Mar buildings, in the City of Boca Raton and throughout the South Florida area.

68. The Association Regime has not “fairly and truthfully” represented to Contractor’s customers the reason for the termination of the relationship.

COUNT V
CONSPIRACY TO VIOLATE THE RACKETEER INFLUENCE AND CORRUPT
ORGANIZATIONS ACT (RICO); AND

69. Plaintiffs reallege the allegations contained in paragraphs 60 through 68 above

70. The Association Regime is using and controlling the income of the Association and its Members from a pattern of racketeering activity to acquire an interest in or establish an enterprise engaged in or affecting commerce of the Tierra Del Mar building and construction in violation of 18 U.S.C. §§1961-1968.

71. Bela Vista and Hoisington are being injured in their business and members are being injured in their property by reason of a violation of section 1962 and therefore have the right to sue and recover treble damages sustained and the cost of the suit, including a reasonable attorney’s fee. §1964(c)⁷.

72. The Association Regime has acted in a conspiratorial concerted effort to post disparaging flyers, e-mailing false statements to members, yelling and insulting members if they attempt to speak up for Plaintiffs.

73. Directors such as Barker, Upton, Nichparenko actively defame Plaintiffs and harass members with insults and threats of “calling authorities,” by engaging lawyers to send members threatening letters if they use Bela Vista and Hoisington or speak up for the Plaintiffs.

74. The Association Regime plans, cooperates and engages in activities in concert to carry out the activities of their conspiratorial goals including but not limited to corresponding with owners to enforce Association illegal activities.

⁷ See Sedima v.Imrex Company, Inc., 473 U.S.479, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985).(stating defrauder will be held accountable.)

75. Defendants take action to threaten and call authorities to have Bela Vista and Hoisington prevented from entering or conducting any business on the property.

76. The Defendants actively agreed to participate in the racketeering acts mentioned below, they knew the status of the conspiracy and knew the conspiracy extended beyond their individual role⁸.

COUNT VI
VIOLATIONS OF RICO

77. Plaintiffs reallege the allegations contained in paragraphs 69 through 76 above.

78. The Association, Directors and Management have unlawfully used the money derived from harassing unit owners and manipulating the election to hire lawyers and implement assessments to acquire control of all the business enterprise of the Tierra Del Mar Condominium building and business through this pattern of racketeering activity⁹.

79. The collective actions of Association, Management and Directors have created an Enterprise, this enterprise is affecting commerce and Defendants are employed and associated with the aforementioned events as they occurred, Defendants have engaged in this pattern of racketeering activity and the Defendants have conducted and participated in the conduct of the enterprise through that pattern of racketeering activity through the commission of at least two acts of racketeering activity¹⁰.

80. The first two acts were the Association and Management disparaging and prohibiting Bela Vista and Hoisington in flyers from conducting business in the building or entering in the building.

81. The third act was Association, Management and Directors prohibiting Members of the Association from hiring Bela Vista and Hoisington from engaging in contracts and business.

⁸ United States v. Rastelli, 870 F.2d 822, 828 (2d Cir.), cert. denied, 493 U.S. 982, 110 S.Ct. 515, 107 L.Ed. 2d 516 (1989).

⁹ Id. A violation of § 1962(c), the section on which Sedima relies, requires (1) conduct (2) of an enterprise (3) through a pattern¹⁴ (4) of racketeering activity. The plaintiff must, of course, allege each of these elements to state a claim.

¹⁰ United States v. Phillips, 664 F.2d 971, 1011(5th Cir. Unit B Dec. 1981), cert. denied, 457 U.S. 1136, 102 S. Ct. 1265, 73 L.Ed. 2d 1354 (1982).

82. The fourth act by Defendants was to actively disparage and prohibit Bela Vista and Hoisington in e-mails to members wanting to use Bela Vista and Hoisington for construction and maintenance services.

83. The fifth act by Defendants was to actively harass and disparage Members at meetings who spoke out or asked questions about the actions restricting Bela Vista and Hoisington.

84. The sixth act by Defendants, specifically Nichparenko and other Directors visiting Members homes and calling city code for violations against Members.

85. The Defendants actively agreed to participate in the racketeering acts mentioned below, they knew the status of the conspiracy and knew the conspiracy extended beyond their individual role.

86. These acts of past conduct by their nature project into the future with a threat of repetition and are a repeated conduct during a period of eliminating services by Bela Vista and Hoisington.

87. RICO was designed to deter the unlawful acts of the Association Regime.

COUNT VII
INTENTIONAL MISREPRESENTATION OF GOODWILL

88. Plaintiffs reallege the allegations contained in paragraphs 77 through 87 above.

89. The goodwill of Contractor and Hoisington is an intangible business value which reflects the basic human tendency to do business with a Contractor who offers a result of the type and quality which the customer desires and expects. Service to the customer and a willingness to stand behind the product which is sold by the Contractor are all factors. Contractor has suffered destruction of its goodwill by the reckless disregard for the truth by Defendants. Association and Management company intentionally misrepresented the quality and care of services provided by Plaintiffs by publication, electronic mail, and in person at Member meetings.

90. The standard for Intentional Misrepresentation is best described by the case on point, Nehme v. Smithkline Beecham Clinical Laboratories, Inc., 863 So.2d 201 (Fla. 2003), in that it need not be deliberate it may also be shown by carelessness or recklessness as to the truth of the matter asserted.

91. Additionally, a great indifference to the rights of others would support an award of punitive damages because the claim for intentional misrepresentation is one based on pure tort law rather than negligence, the impact rule is inapplicable. See Thomas v. Hosp. Bd. Of Dirs. Of Lee Cnty., 41 So.3d 246 (Fla. App., 2010). (noting intentional torts have been deemed exclusions from the impact rule)

92. Defendants have completely ignored any and all rights Contractor and Hoisington were entitled to as a matter of law to freely engage in business unencumbered by the Association and Management reckless disregard for Plaintiffs business and reputation.

93. This intentional misrepresentation by Defendants has resulted in a direct economic injury to Contractor.

DEMAND FOR JURY TRIAL

94. Pursuant to rule 38(b) of the Federal Rules of Civil Procedure Plaintiffs demand a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, Bela Vista Contractors and Harold Hoisington, respectfully requests this most Honorable Court grant the following relief:

- A. That Defendants be declared to have violated the Antitrust laws,
- B. That the Association Regime be declared to have violated RICO,
- C. That the Association Regime have engaged in Trade Libel Per Se and Slander Per Se,
- D. That the Association Regime be enjoined from any activity in furtherance of the conspiracy and impairing the rights of members and Plaintiffs.
- E. That Defendants and its directors, officers, agents, servants, employees, and all those persons acting or attempting to act in privity or active concert or in participation with them or acting on their

behalf and their subsidiaries, divisions, successors and assigns, be immediately, preliminarily and permanently enjoined from further contributory, or inducement of further acts of violation of Antitrust laws and RICO;

F. That Defendants be ordered to account for and pay to Bela Vista and Hoisington all damages caused by reason of Defendant's conspiratorial acts pursuant to 18 U.S.C. §§1961-1968 and 15 U.S.C. §§1-3 and that such damages be trebled in view of the willful and deliberate nature of the violations;

G. That Plaintiffs be granted all damages adequate to compensate it for Defendant's violations including all pre-judgment and post-judgment interest at the maximum rate permitted by law;

H. Defendants have Intentionally Misrepresented Bela Vista and Hoisington's quality and services to gain an economic advantage for themselves.

I. Defendants have tortuously and intentionally interfered with the business relationships of Bela Vista and Hoisington.

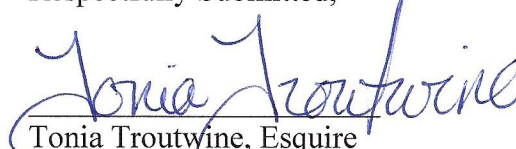
J. Judgment be entered that Defendant's unlawful acts are malicious, willful and deliberate, and, therefore, that this is a case entitling Plaintiffs' to an award of its attorneys' fees for bringing and prosecuting this action, together with interest, and costs of the action; and

K. Find Defendants liable for Counts I through VII and award all damages Plaintiffs are entitled to by law compensatory, pecuniary, punitive, including costs and attorney's fees, and treble damages.

L. Grant such other and additional relief as the court deems just and proper.

Dated: June 18, 2015

Respectfully Submitted,



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