

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL CIRCUIT DIVISION

CHRIS GITTENS, INDIVIDUALLY

Plaintiff,

v.

KAYE BENDER REMBAUM, P.L.

SHAWN G BROWN, INDIVIDUALLY

Defendants.

_____ /

COMPLAINT

Comes now, plaintiff Chris Gittens brings this complaint and sues Defendants KAYE BENDER REMBAUM, P.L. and SHAWN G BROWN, individually, pursuant to The Florida Rules of Civil Procedure, and states as follows.

PARTIES, VENUE AND JURISDICTION

1. This court has jurisdiction over this dispute as this complaint seeks relief and damages of more than \$30,000.
2. Plaintiff Chris Gittens is a resident of the state of Florida (hereinafter GITTENS) and was the nominal plaintiff in a not-for-profit derivative action brought on behalf of Regatta Beach Club Condominium Association Inc. titled Chris Gittens v. Alan Charness, individually et al., case number 20-002259-CI filed in the sixth circuit civil court, Pinellas County, FL (hereinafter “the derivative action”) on May 8th, 2020.
3. Defendant Kaye Bender Rembaum P.L. (hereinafter KBR) is a law firm specializing in the representation of Condominium Associations in the state of Florida with principal place of business located at 1200 Park Central Blvd. South, Pompano Beach, FL. In addition to the principal address, Kaye Bender Rembaum operates branch offices in other cities within the state of Florida including Tampa FL.

4. Defendant Shawn G Brown (hereinafter BROWN) is an attorney licensed in the state of Florida bar number 569135, and Board certified in Condominium and Planned Development law. BROWN regularly engages in the practice of law in Hillsborough and Pinellas Counties within the state of Florida from his principal address located at 3825 Henderson Blvd Ste 605B Tampa, FL 33629-5039 in Hillsborough County Florida.
5. Defendants at all relevant times engaged in the practice of law within the state of Florida.
6. Defendant Shawn G Brown was an attorney employed by KBR from the inception of the derivative action filed on May 8th, 2020, up until his departure from KBR in March 2023. The actions and inactions by the Defendants in the derivative action form the basis of this complaint.
7. Pinellas County is the appropriate venue for this action where the underlying derivative action, and the alleged professional malpractice/breach of fiduciary duty subject to this complaint occurred.

CONDITIONS PRECEDENT

8. In an attempt to resolve this matter without litigation, KBR and BROWN were sent a demand letter by GITTENS inviting them to resolve this matter amicably and without litigation. BROWN and KBR failed to respond, and the demand was completely ignored. Demand letter is filed as an exhibit separately from this complaint.

FACTS COMMON TO ALL PARTIES

9. In 2019, Defendants held themselves out to the public as lawyers with experience and skill within Community Association Law.
10. Based on the Defendants representations, plaintiff GITTENS retained the Defendants to represent the plaintiff GITTENS in the underlying derivative action where plaintiff GITTENS was nominal plaintiff in a derivative action brought on behalf of Regatta Beach Club Condominium Association inc.
11. Derivative actions are lawsuits brought on behalf of a corporation, and for its benefit. The plaintiff is only nominal. The corporation is listed as a defendant but is a nominal defendant and necessary party to the action as the relief sought is for its benefit. The plaintiff in a derivative lawsuit serves in a representative capacity on behalf of the corporation.
12. In the landmark appellate case *Iezzi Family Limited P'Ship v. Edgewater Beach Owners Ass'n, Inc.*, 254 So.3d 584 (Fla. 1st DCA 2018), the appellate court ruled that damages

that are common to all members of not-for-profit corporations including Condominium Associations are derivative and relief sought must be pursued through not-for-profit derivative actions pursuant to chapter 617 Florida Statutes.

13. Pursuant to the rules of the Florida Bar, and longstanding case law, legal actions by corporations must be brought by an attorney. Because derivative actions are representative of the corporation, the plaintiff must be represented by an attorney. Representing a corporation without an attorney is considered an unauthorized practice of law. The Florida Bar provides multiple reasons for requiring corporations to be represented by counsel which includes that attorneys are subject to the discipline of the court.
14. In November of 2019, Chris Gittens and Kaye Bender Rembaum entered into an agreement to represent the plaintiff in a derivative action brought on behalf of Regatta Beach Club Condominium Association inc. Plaintiff GITTENS agreed to pay the Defendants for their services with the expectation that attorney fees and costs would be reimbursed to the plaintiff GITTENS at the conclusion of the case out of proceeds from a settlement or judgment. Plaintiff sought no personal relief other than reimbursement of attorney fees and costs, as the beneficiary to the action was the corporation, Regatta Beach Club Condominium Inc.
15. On May 8th, 2020, the derivative action was filed in Pinellas County where plaintiff GITTENS was represented by Defendants BROWN and KBR.
16. On May 12, 2021, A motion to dismiss the derivative action was denied by the court, and the parties were ordered to mediation. At this point in a derivative action, the dispute becomes one between the Corporation and the REAL Defendant. The plaintiff is only nominal and acts in a representative capacity.
17. Mediation order by the court ordered BROWN and KBR to schedule mediation within 10 days and conduct the mediation within 60 days of the order. The Defendants violated this court order and mediation was not scheduled until September 21st, 2022, representing over **16 MONTHS** after the court order.
18. After the mediation order, the nominal defendant and the Real Defendant in the derivative action were being represented by the same attorney. Dual representation of nominal defendant and real defendant in derivative actions is a conflict of interests, after the motion to dismiss has been survived.
19. Attorney BROWN and KBR failed to motion for disqualification of counsel for dual representation of real and nominal defendant after motion to dismiss had been survived.

20. After the mediation order, a request for Discovery was initiated against the nominal plaintiff GITTENS in the derivative action on July 28th, 2021.
21. BROWN and KBR failed to respond to the Discovery within 45 days.
22. BROWN AND KBR failed to object to the Discovery within 45 days.
23. BROWN AND KBR failed to file a motion for protective order within 45 days.
24. BROWN AND KBR failed to motion to strike pleadings by opposing counsel dual representation of both defendants.
25. BROWN AND KBR failed to respond to a motion to compel by opposing counsel.
26. As a result of inaction by BROWN AND KBR, all objections to Discovery aimed at nominal plaintiff GITTENS that could have been brought were waived, and the court issued an ex parte order for plaintiff to comply with the original Discovery request by December 30th, 2021.
27. BROWN provided little communication to plaintiff GITTENS regarding the case, and what was communicated conflicted with the facts shown in court orders filed on the clerk's website.
28. GITTENS attempted to mitigate the damage caused by BROWN and KBR by providing what documents he had related to the Discovery request, but the request was overly broad, intrusive, and included items which do not exist.
29. BROWN continued to cooperate with opposing counsel, without consulting his client GITTENS, and agreed that nominal plaintiff GITTENS would provide all documents requested in the original Discovery request.
30. These actions by BROWN eventually led to a motion for contempt for non-compliance of order to provide requested documents as it was impossible for GITTENS to provide that which does not exist.
31. Plaintiff GITTENS demanded that BROWN and KBR take responsibility for their mistakes and motion for protective order to prevent discovery abuse aimed at the nominal plaintiff GITTENS. BROWN eventually filed the motion for protective order, but never scheduled a hearing.

32. BROWN agreed to schedule a hearing on opposing counsel motion for contempt on August 25th, 2022.
33. BROWN informed GITTENS nothing came of the hearing on motion for contempt, but the order posted on the clerk's website directly conflicted with representations by BROWN with an "agreed contempt order" filed on September 16th, 2022, and becoming viewable on clerk's website on September 20th, 2022.
34. "Agreed contempt order" filed with cooperation from BROWN without knowledge nor consent of GITTENS represents clear misconduct and a breach of fiduciary duty by BROWN placing GITTENS in harm's way.
35. BROWN was pursuing his own interests in the form of avoiding discipline from the court for his Discovery misconduct by agreeing to hold his own client in contempt.
36. On September 21st, 2022, and exactly one day after nominal plaintiff GITTENS learned of "agreed contempt order", the parties in the derivative action finally went to mediation, approximately 16 months after the initial court order.
37. Plaintiff GITTENS incurred excessive legal fees due to the Discovery misconduct by BROWN and KBR which could have been avoided.
38. GITTENS went to mediation with an "agreed contempt order" against the nominal plaintiff, secured without his knowledge, nor consent for not producing documents which do not exist, and if they did, would be irrelevant.
39. BROWN AND KBR had waived the right to object to Discovery requests by not responding. The discovery request included social media account documents. The plaintiff GITTENS has no social media accounts.
40. Because of misconduct by BROWN And KBR, plaintiff GITTENS was in a very weak position to negotiate a fair settlement at mediation.
41. At mediation, GITTENS agreed to support a settlement which included \$0 in damages to the ASSOCIATION provided that the Defendants in the derivative action could gain approval by the court after providing written notification and opportunity for members to be heard through objection in compliance with chapter 617 Florida statues.
42. In the settlement agreement, GITTENS required written notification to members and an opportunity to be heard. This requirement was to protect standing as nominal plaintiff

should the settlement not be approved by the court, and to comply with the fiduciary duty of the nominal plaintiff in a derivative action.

43. BROWN agreed to a settlement with the opposing counsel awarding only reimbursement of attorney fees and costs to the nominal plaintiff and \$0 in damages to Regatta Beach Club Condominium Association for which the action was brought.
44. BROWN failed to implement the provisions to protect nominal plaintiff GITTENS standing in the proposed settlement drafted by all counsel. This included the requirement of notice to the membership, providing an opportunity to be heard through objection prior to final approval of the settlement.
45. GITTENS refused to sign the proposed settlement by all counsel in the derivative action. GITTENS articulated the reason for not signing proposed settlement as it would be breach of fiduciary duty of the nominal plaintiff and jeopardize standing as nominal plaintiff.
46. BROWN attempted to get plaintiff GITTENS to sign off on proposed settlement which GITTENS argued framed the dispute in a manner that would compromise nominal plaintiff GITTENS standing as representative plaintiff.
47. It was leaked that BROWN had communicated with the opposing counsel that BROWN would withdraw if the plaintiff GITTENS did not agree to the settlement.
48. BROWN cancelled the scheduled pretrial on October 27th, 2022, and trial date on November 14th, 2022, without the consent of GITTENS, further prolonging the case if a settlement was not reached.
49. Plaintiff GITTENS filed a civil remedy notice with the DFS for bad faith against the insurance company handling the case for Regatta Beach Club Condominium Association inc. on December 7th, 2022.
50. As a result of filing the civil remedy notice, counsel for the nominal defendant filed a motion to enforce settlement and, in the motion, breached mediation confidentiality.
51. Plaintiff GITTENS began looking for alternate council. No law firm would agree to take over the case citing multiple reasons including evidence of malpractice.
52. GITTENS wrote a direct email to the partners of KBR including Michael Bender, Jeffrey Rembaum, and Robert Kaye, asking for help. None of the partners ever responded to any phone calls, nor emails.

53. BROWN agreed to file a motion for sanctions against nominal defendant counsel for breach of mediation confidentiality, and to file a motion to vacate contempt order against GITTENS as the nominal plaintiff. Motions were filed on January 31st, 2023.
54. Plaintiff Gittens demanded the case be put back on track and this included a vacated “agreed contempt order” and a hearing on plaintiff’s motion for summary judgment.
55. BROWN cancelled the court date scheduled on November 14, 2022, without a settlement and without consent of GITTENS, prolonging the case.
56. Counsel for the nominal defendant threatened BROWN with a civil action for fraud related to the motion for sanctions filed against counsel for nominal defendant for breach of mediation confidentiality.
57. Counsel for the nominal defendant served notice of intention to motion for sanctions against BROWN for mistakes in pleadings, and for nominal defendant’s interpretation of relief requested.
58. BROWN contacted GITTENS requesting consent to withdraw motion for sanctions against nominal defendant counsel because BROWN was being threatened by counsel for Association with sanctions and a civil case for fraud.
59. Counsel for nominal defendant modified hearing on motion to enforce settlement into a case management hearing on March 8th, 2023, where all counsel agreed to have a hearing on motions for summary judgement on March 28th, 2023.
60. BROWN agreed and was ordered by the judge to notice the hearing on motions for summary judgement, but never did. In addition, Brown failed to address the motion to vacate the contempt order during case management hearing held on March 8th, 2023.
61. BROWN corrected a mistake in plaintiff motion for summary judgement to clarify who the “real” defendant was in the case on March 9th, 2023.
62. BROWN, without consent from Gittens, dismissed with prejudice certain parts of the relief requested that were being misinterpreted by nominal defendant counsel to make arguments that the derivative action was not beneficial to the corporation. Pleading filed on March 9th, 2023.
63. Counsel for nominal defendant claimed that Association had prevailed against GITTENS in the lawsuit due to pleadings of BROWN dismissing with prejudice relief requested in the original complaint.

64. Counsel for nominal defendant motioned for attorney fees and costs against GITTENS on March 10th, 2023, based on the claim that the Association had prevailed against GITTENS as a result of the filing of BROWN dismissing with prejudice certain items in prayer for relief in original complaint.
65. After agreeing to schedule motions for summary judgment on March 28th 2023, and filing the pleadings articulated paragraphs 61 and 62, on March 9th, 2023, BROWN and KBR filed a motion to withdraw on March 20th, 2023.
66. Plaintiff GITTENS filed complaints with the Florida Bar. Plaintiff GITTENS was aware that derivative actions must be represented by counsel as the corporation is the real entity whose being represented, and the plaintiff serves only in representative capacity.
67. The Florida Bar responded indicating they would take no action except requiring BROWN to respond to the bar complaint and suggesting KBR and GITTENS go to arbitration over any fee disputes.
68. A motion to withdraw must have a hearing unless there is written consent by the client according to the rules of the court.
69. KBR submitted a proposed order on motion to withdraw making the nominal plaintiff GITTENS pro se in a derivative action without a hearing, and the judge signed it on April 13th, 2023.
70. Nominal defendant counsel then complained to KBR that GITTENS could not be pro se in a derivative action.
71. KBR refused to take any additional action and declared they were out of the case.
72. GITTENS became aware that BROWN was no longer employed by KBR, and that the employment of BROWN at KBR had been terminated in late March 2023.
73. KBR then articulated it would agree to a modified order that would require plaintiff GITTENS to secure new counsel. Plaintiff GITTENS objected to any order or modified order regarding withdrawal without a hearing in compliance with the rules of the court.
74. Because the nominal plaintiff GITTENS was now “pro se” per court order, opposing counsel would not need permission to speak with GITTENS directly. GITTENS then reached out to counsel for the nominal defendant.

75. Counsel for the Real Defendant in the derivative action looked to exploit the withdrawal of plaintiff's counsel, by immediately scheduling a hearing on his motion for summary judgment on April 14, 2023.
76. On information and belief, opposing counsel would object to plaintiff GITTENS appearing pro se at hearing on motion for summary judgment.
77. Counsel for Real Defendant sent an email to plaintiff GITTENS demanding the Discovery referenced in the "agreed contempt order" from plaintiff GITTENS on April 24th, 2023, and if not received by May 14th, 2023, he would motion for sanctions in the form of dismissal of the case, along with attorney fees and costs.
78. Plaintiff GITTENS responded to the threats by opposing counsel by filing a motion for emergency case management conference on April 27th, 2023, to address the alleged misconduct and malpractice by the attorneys in the derivative action.
79. Opposing counsel backed off their threats, and a settlement was agreed to on May 21, 2023, and approved by the court at a hearing on January 29th, 2024, overruling multiple objections by members of the corporation. The settlement included no monetary relief for the Condominium Association for which the action was brought.
80. A fiduciary relationship in representative litigation exists between the attorney representing the class and the members of that class, see *Masztal v city of Miami (2007)*. A fiduciary relationship exists in all cases in which influence has been acquired and abused, in which confidence has been reposed and betrayed, see *Quinn et al v. Phipps*. The plaintiff GITTENS risked his own money and paid the Defendants for their legal services to pursue a benefit for the corporation Regatta Beach Club Condominium Inc., only to be betrayed and put in harm's way by BROWN and KBR through an egregious breach of trust.

COUNT 1: Breach of Fiduciary Duty – SHAWN G BROWN

81. Plaintiff Gittens incorporates and restates the foregoing facts in paragraphs 1-80 of the complaint.
82. Based on the representations of BROWN and KBR, Plaintiff GITTENS retained KBR in November, 2019, and an attorney client relationship was created with the expectation that BROWN and KBR would zealously protect GITTENS interests and advocate on behalf of the beneficiary for which the derivative action was brought.
83. GITTENS took on great risk, expense, and responsibility in addition to spending a considerable amount of time by becoming nominal plaintiff in a derivative action for the

benefit of all owners of the corporation and placed his trust in BROWN to act in the best interest of GITTENS and Regatta Beach Club Condominium inc.

84. BROWN owed GITTENS a duty of loyalty pursuant to the attorney/client relationship which includes, but not limited to proper representation, meeting deadlines, communication with the client, not taking actions to harm his client, following instructions from the client, and getting consent from the client for important actions.
85. BROWN breached his fiduciary duty to GITTENS through a betrayal of loyalty. BROWN failed to respond to improper Discovery, missed deadlines, agreed to hold his client in contempt, failed to communicate with his client, made improper agreements with opposing counsel without consent, failed to properly articulate relief sought in derivative action, made multiple errors in pleadings, dismissed prayers for relief in complaint when threatened by opposing counsel without client consent, and ultimately withdrew leaving his client in harm's way.
86. GITTENS has suffered irreparable harm as a result of breach of fiduciary duty by BROWN including diminished asset valuation, inability to sell property in order to maintain standing as a derivative plaintiff, and emotional distress over a period of approximately 3 years, enduring the misconduct of BROWN, and associated risk.

WHEREFORE, GITTENS respectfully requests a court order finding BROWN breached his fiduciary duty to GITTENS. Award GITTENS damages resulting from the breach of fiduciary duty including, but not limited to damages related to diminished value of property at Regatta Beach Club Condominium Association Inc, and emotional duress caused by BROWN's intentional and negligent misconduct. Plaintiff reserves the right to move for leave to amend complaint to include relief of punitive damages pursuant to Florida Statutes chapter 768.72. All attorney fees (if applicable) and costs incurred in this action, and any other relief the court deems appropriate.

COUNT 2: Breach of Fiduciary Duty - KAYE BENDER REMBAUM P.L.

87. Plaintiff GITTENS incorporates and restates the foregoing facts in paragraphs 1-86 in the complaint.
88. Based on the representations of KBR, Plaintiff GITTENS retained KBR and in late 2019, and an attorney client relationship was created with the expectation that KBR would zealously protect GITTENS interests and advocate on behalf of the Condominium Association for which the derivative action was brought.
89. GITTENS took on great risk, expense, and responsibility by agreeing to become nominal plaintiff in a derivative action for the benefit of all owners of the corporation, and placed his trust in KBR to act in the best interests of GITTENS and Regatta Beach Club Condominium inc.
90. KBR owed GITTENS a duty of loyalty pursuant to the attorney/client relationship which includes, but not limited to proper representation, supervising its lawyers, meeting

deadlines, communication with the client, not taking actions to harm the client, getting consent from the client for important actions, and competent representation in the underlying derivative action.

91. KBR breached their fiduciary duty by failing to protect the interests of GITTENS by failing to respond to GITTENS, despite multiple pleas for help due to the misconduct of its attorney BROWN. KBR further breached its fiduciary duty by choosing to respond to the misconduct of its lawyer BROWN by severing BROWN'S relationship with KBR and withdrawing from the underlying derivative action without a hearing as required by the rules of the court. KBR took actions with complete disregard as to the prejudice and harm such actions would have on its client GITTENS, and the Condominium Association KBR represented in the underlying derivative action.
92. KBR knew or should have known that the actions of BROWN and KBR severely prejudiced GITTENS and the beneficiary Association in the derivative action. Furthermore, KBR knew or should have known that its actions to unilaterally withdraw leaving GITTENS pro se in a derivative action which requires nominal plaintiff to be represented by counsel would harm its client, and that GITTENS would have an extremely difficult time securing new counsel due to misconduct by BROWN and KBR, in addition to incurring substantial additional costs. GITTENS suffered irreparable harm resulting from the actions of KBR.

WHEREFORE, GITTENS respectfully requests a court order finding KBR breached its fiduciary duty to GITTENS. Award GITTENS damages resulting from the breach of fiduciary duty including, but not limited to damages related to diminished value of property at Regatta Beach Club Condominium Association Inc, and emotional duress caused by KBR's intentional and negligent misconduct. Plaintiff reserves the right to move for leave to amend complaint to include relief of punitive damages pursuant to Florida Statutes chapter 768.72. All attorney fees (if applicable) and costs incurred in this action, and any other relief the court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury.

Respectfully submitted,

/s/ Chris Gittens

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