

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

MARC CASTALDI,

Plaintiffs,

-against-

GOETZ FITZPATRICK LLP, HELENE BYRNES and
MATTHEW BYRNES

Defendant.

Index No. :

Date Filed :

VERIFIED COMPLAINT

FILED
JUL - 2 2009
TIMOTHY C. IDONLE
COUNTY CLERK
COUNTY OF WESTCHESTER

Plaintiff, by his attorneys THE LAW OFFICES OF DAVID S. KLAUSNER PLLC,
complaining of the defendants herein, respectfully shows to the Court, and alleges as follows:

THE PARTIES, JURISDICTION & VENUE

1. Plaintiff, MARC CASTALDI ("Castaldi") was and is at all times mentioned herein a resident of the State of New York, County of Westchester.
2. Castaldi makes his living by acquiring, redeveloping and then either renting or selling residential and commercial property in and around the County of Westchester.
3. Defendant GOETZ FITZPATRICK LLP ("Goetz Fitzpatrick") is a New York State Limited Liability Partnership established and existing by virtue of the laws of the State of New York.
4. Goetz Fitzpatrick is a law firm actively engaged in the practice of law with offices located at One Penn Plaza, New York, New York and 1 North Broadway, White Plains, New York.
5. Plaintiff HELENE BYRNES is a resident of the State of New York, County of Westchester.

6. Plaintiff MATTHEW BYRNES is a resident of the State of New York, County of Westchester.

7. Venue is proper in the County of Westchester under CPLR 503(a) based on the residence of plaintiff.

STATEMENT OF FACTS

8. Goetz Fitzpatrick is the counsel of record for plaintiffs Matthew and Helene Byrnes in connection with a matter titled Helene & Matthew Byrnes v. Marc Castaldi et al. venued in Supreme Court, Westchester County and bearing Index #09820/08 (hereinafter "Byrnes Matter"). This matter is ongoing and has been assigned to Justice Mary H. Smith.

9. The Byrnes Matter seeks recovery of monetary damages against Castaldi and several of his corporations and corporate holdings related to the construction of a single family residence. Shortly after commencing the Byrnes Matter, John Simoni, Jr., a partner with Goetz Fitzpatrick, told Stephen Slater, an attorney with Hodges Walsh & Slater, counsel for Castaldi in connection with the Byrnes Matter, that "he intended to put Marc Castaldi out of business."

10. In connection with the Byrnes Matter, defense counsel made a motion to compel arbitration. In papers submitted to the Court, Mr. John Simoni of Goetz Fitzpatrick made disparaging personal attacks on Mr. Castaldi and was reprimanded for such behavior in the Court's Decision and Order dated December 2, 2008. Specifically, the Court stated that: "Regrettably, the Court cautions counsel not to personalize this action and the involved parties; ad hominem attacks and expressions of personal animus are not condoned and shall be addressed with sanctions, if warranted. (12/2/08 Decision and order annexed hereto as Exhibit "A")."

11. At the time, Goetz Fitzpatrick failed to notify the Court that they were already pursuing a personal attack on Mr. Castaldi and his business.

12. On June 1, 2009, Castaldi was in the process of negotiating with a prospective client to provide residential renovation services. Upon information and belief, this individual utilized the internet search engine Google to find out additional information about Castaldi and was led to a website titled "legallawcomplaints.com."

13. This prospective client notified Castaldi about the site and as a result Castaldi nearly lost the business.

14. The website has a heading which states "This website is a depository for publically filed complaints." It has links to sixteen (16) documents all concerning or related to legal actions involving Castaldi and/or his corporate entities. (A copy of the Website as it existed on June 3, 2009 with the full text of the links is annexed hereto as Exhibit "B").

15. The website does not identify the purpose of the site and only contains a selection of documents which contain damaging allegations against Castaldi and/or his corporate entities. In fact, this website does not contain—contrary to its title—legal law complaints against anyone other than Castaldi and offers the general public only specifically chosen selections designed to alter the perception of Castaldi and discourage third-parties from doing business with him.

16. The website does not identify the sponsor of the site nor does it contain any other identifiable information.

17. A search through the company Network Solutions revealed that Legallawcomplaints.com is registered to Goetz Fitzpatrick through the web hosting site Godaddy.com. Upon information and belief, the website was created on May 14, 2008 and remains active to the present day and lists Jon Kowalski of Goetz Fitzpatrick as the technical contact. (The Network Solutions results are annexed hereto as Exhibit "C").

18. The first result of a search for “Marc Castaldi” using the Google internet search engine is Legallawcomplaints.com. (A Google search result for “Marc Castaldi” on June 1, 2009 is annexed hereto as Exhibit “D”).

19. The website has no legitimate business purpose and was established for the sole purpose of causing harm to Castaldi and interfering with his ability to conduct business in and around the County of Westchester.

20. Upon information and belief, the website Legallawcomplaints.com was created by Goetz Fitzpatrick at the request or with the knowledge and consent of plaintiffs HELENE and MATTHEW BYRNES and all costs associated with the creation, posting and maintenance of the website have been paid directly or indirectly by plaintiffs HELENE and MATTHEW BYRNES.

21. The overall effect of the website is to inaccurately portray Castaldi and to impugn his honesty, integrity, ethics and competence. This carefully chosen collection of documents—viewed in its totality—does not provide true and accurate reports of the matters at issue and impugns the honesty, integrity and competence of Marc Castaldi.

22. The creating and posting of this website by Goetz Fitzpatrick, under the authority, direction or consent of HELEN and MATTHEW BYRNES, which is contemporaneously prosecuting a case against Castaldi and his corporate entities, further constitutes a clear attempt to prejudice the general public and interfere with the fair and impartial administration of civil justice in violation of DR-102(A)(5).

AS AND FOR A FIRST CAUSE OF ACTION

(DEFAMATION PER SE AGAINST GOETZ FITZPATRICK)

23. Plaintiff repeats and realleges the allegations contained in paragraphs numbered "1" to "22" as if fully set forth herein.
24. Goetz Fitzpatrick created a website called "Legallawcomplaints.com" with the sole purpose of causing harm to the business and personal reputation of Castaldi.
25. The website Legallawcomplaints.com does not contain any documents that do not directly concern or relate to Castaldi.
26. The website states that "This website is a depository for publically filed complaints." (See Exhibit B). However, most of the documents contained therein are not complaints but are instead motion papers, affidavits and selected exhibits carefully chosen by Goetz Fitzpatrick to portray Castaldi as unethical, dishonest and incompetent in his chosen profession.
27. Goetz Fitzpatrick also made certain that any search of "Marc Castaldi" through the major search engines (including the Google search engine) would lead a third-party directly to the Legallawcomplaints.com website. (See Exhibit C).
28. Goetz Fitzpatrick intentionally selected documents to be posted on its website which make unfavorable allegations against Castaldi. The collection of documents, republished on the website, are not a fair and true representation of the legal proceedings from which they were originally created and the overall effect of the website is to create a different effect on the reader's mind than the actual truth.
29. The collection of documents personally selected by Goetz Fitzpatrick to be posted on their Legallawcomplaints.com website are *per se* defamatory in that they ascribe to Castaldi conduct suggesting unprofessional, fraudulent, and unethical conduct and therefore injure plaintiff

in his trade, business or profession, and tend to expose Castaldi to public contempt, ridicule, aversion, or disgrace and/or to induce evil opinion of Castaldi in the minds of right-thinking persons, and deprive Castaldi of their friendly intercourse in society.

30. The defamatory statements were intentionally published to third-parties (and more particularly the general public) without authorization or privilege and have been viewed by third-parties.

31. Goetz Fitzpatrick published the defamatory statements with malice and with the intent to cause harm to Castaldi.

32. The defamatory statements adversely affect Castaldi's reputation and Castaldi has been damaged by their publication.

33. As a result of Goetz Fitzpatrick's actions, Castaldi is suffering lost business and irreparable harm to his good will and business name.

34. Greater injury will result from the denial of the injunction than from the grant of the injunction.

35. An injunction is appropriate because Castaldi has no adequate remedy at law and, unless he obtains equitable relief, he will continue to suffer irreparable harm.

36. An injunction is appropriate in that it cannot be determined with specificity the damages that it has sustained and will continue to sustain as a result of Goetz Fitzpatrick's creation, posting and maintenance of the website Legallawcomplaints.com. Because Castaldi's goodwill and reputation are intangible in nature, any damage thereto cannot be adequately measured.

37. Unless Castaldi obtains immediate equitable relief, he will continue to suffer irreparable harm.

AS AND FOR A SECOND CAUSE OF ACTION

**(TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE
AGAINST GOETZ FITZPATRICK)**

38. Plaintiff repeats and realleges the allegations contained in paragraphs numbered "1" to "37" as if fully set forth herein.

39. Goetz Fitzpatrick knowingly and willfully interfered with Castaldi's prospective business relations in and around the County of Westchester by creating, posting and managing the website Legallawcomplaints.com.

40. Goetz Fitzpatrick's actions were motivated solely by a desire to cause harm to Castaldi and to interfere with his ability to transact business.

41. The website Legallawcomplaints.com solely contains a selection of legal documents (including affidavits and motion papers) designed to portray Castaldi as dishonest, unethical and incompetent and serves no legitimate business purpose.

42. At all times, Goetz Fitzpatrick acted with the sole intent of causing economic harm to Castaldi by interfering with his prospective economic opportunities.

43. Goetz Fitzpatrick has further attempted to deceive the general public by failing to disclose its role in the creation, posting and management of the website Legallawcomplaints.com.

44. The website Legallawcomplaints.com has been active for more than one (1) year and but for Goetz Fitzpatrick's actions, Castaldi would have obtained additional business opportunities and has been damaged in an amount to be determined at trial.

45. Given the breadth and anonymity of the internet there is no way to quantify the impact of Goetz Fitzpatrick's actions but the impact of their intentional conduct is believed to be extensive and permanent. It is further believed that but for Goetz Fitzpatrick's material

misrepresentations of Marc Castaldi and his companies, individuals and/or corporate entities would have conducted business with plaintiff.

46. Goetz Fitzpatrick's actions were intentional, willful, outrageous and malicious and justify the imposition of punitive damages.

47. As a result of Goetz Fitzpatrick's actions, Castaldi is suffering lost business and irreparable harm to his good will and business name.

48. Greater injury will result from the denial of the injunction than from the grant of the injunction.

49. An injunction is appropriate because Castaldi has no adequate remedy at law and, unless he obtains equitable relief, he will continue to suffer irreparable harm.

50. An injunction is appropriate because Castaldi cannot determine with specificity the damages that it has sustained and will continue to sustain as a result of Goetz Fitzpatrick's creation, posting and maintenance of the website Legallawcomplaints.com. Because Castaldi's goodwill and reputation are intangible in nature, any damage thereto cannot be adequately measured.

51. Unless it obtains immediate equitable relief, it will continue to suffer irreparable harm.

AS AND FOR A THIRD CAUSE OF ACTION

(ATTORNEY MISCONDUCT PURSUANT TO JUDICIARY LAW §487 AGAINST GOETZ FITZPATRICK)

52. Plaintiff repeats and realleges the allegations set forth in paragraphs numbered "1" through "51" as if fully set forth herein.

53. Goetz Fitzpatrick has engaged in a course of action designed to deceive the Court as to its personal and extra-judicial attacks against Marc Castaldi.

54. On December 2, 2008, Goetz Fitzpatrick was warned by the Honorable Justice Mary H. Smith to refrain from personalizing the action (the Byrnes Matter) and that “ad hominem attacks and expressions of personal animus are not condoned and shall be addressed with sanctions, if warranted.” (Exhibit).

55. Subsequent to the Court’s decision and order, Goetz Fitzpatrick continued to maintain its Legallawcomplaints.com website and has periodically updated the site by adding additional documents for the sole purpose of causing damage to Marc Castaldi’s personal and professional reputation.

56. At all times, Goetz Fitzpatrick deliberately attempted to conceal its involvement in the Legallawcomplaints.com website from the Court in the Byrnes Matter.

57. The acts of Goetz Fitzpatrick constitute attorney misconduct under §487 of the Judiciary Law.

58. As a result of Goetz Fitzpatrick’s misconduct, plaintiff is entitled to an award of treble damages.

AS AND FOR A FOURTH CAUSE OF ACTION

(DEFAMATION *PER SE* AGAINST HELENE and MATTHEW BYRNES)

59. Plaintiff repeats and realleges the allegations contained in paragraphs numbered “1” through “58” as if fully set forth herein.

60. HELENE and MATTHEW BYRNES caused to be created a website called “Legallawcomplaints.com” with the sole purpose of causing harm to the business and personal reputation of Castaldi.

61. The website Legallawcomplaints.com does not contain any documents that do not directly concern or relate to Castaldi.

62. The website states that "This website is a depository for publically filed complaints." (See Exhibit A). However, most of the documents contained therein are not complaints but are instead motion papers, affidavits and selected exhibits carefully chosen by Goetz Fitzpatrick at the request and with the knowledge and consent of HELENE and MATTHEW BYRNES to portray Castaldi as unethical, dishonest and incompetent in his chosen profession.

63. HELENE and MATTHEW BYRNES also directed their attorneys Goetz Fitzpatrick to make certain that any search of "Marc Castaldi" through the Google search engine would directly lead a third-party directly to the Legallawcomplaints.com website. (See Exhibit B).

64. HELENE and MATTHEW BYRNES directed Goetz Fitzpatrick to intentionally select documents to be posted on its website which make unfavorable allegations against Castaldi. The collection of documents, republished on the website, are not a fair and true representation of the legal proceedings from which they were originally created and the overall effect of the website is to create a different effect on the reader's mind than the actual truth.

65. The collection of documents personally selected by Goetz Fitzpatrick at the request and with the knowledge and consent of HELENE and MATTHEW BYRNES to be posted on their Legallawcomplaints.com website are *per se* defamatory in that they ascribe to Castaldi conduct suggesting unprofessional, fraudulent, and unethical conduct and therefore injure plaintiff in his trade, business or profession, and tend to expose Castaldi to public contempt, ridicule, aversion, or disgrace and/or to induce evil opinion of Castaldi in the minds of right-thinking persons, and deprive Castaldi of their friendly intercourse in society.

66. The defamatory statements were intentionally published to third-parties (and more particularly the general public) without authorization or privilege and have been viewed by third-parties.

67. HELENE and MATTHEW BYRNES directed Goetz Fitzpatrick to publish the defamatory statements with malice and with the intent to cause harm to Castaldi.

68. The defamatory statements adversely affect Castaldi's reputation and Castaldi has been damaged by their publication.

69. As a result of HELENE and MATTHEW BYRNES' actions, Castaldi is suffering lost business and irreparable harm to his good will and business name.

70. Greater injury will result from the denial of the injunction than from the grant of the injunction.

71. An injunction is appropriate because Castaldi has no adequate remedy at law and, unless he obtains equitable relief, he will continue to suffer irreparable harm.

72. An injunction is appropriate in that it cannot be determined with specificity the damages that it has sustained and will continue to sustain as a result of HELENE and MATTHEW BYRNES creation, posting and maintenance of the website Legallawcomplaints.com. Because Castaldi's goodwill and reputation are intangible in nature, any damage thereto cannot be adequately measured.

73. Unless Castaldi obtains immediate equitable relief, he will continue to suffer irreparable harm.

AS AND FOR A FIFTH CAUSE OF ACTION

**(TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE
AGAINST HELENE and MATTHEW BYRNES)**

74. Plaintiff repeats and realleges the allegations contained in paragraphs numbered "1" to "73" as if fully set forth herein.

75. HELENE and MATTHEW BYRNES knowingly and willfully interfered with Castaldi's prospective business relations in and around the County of Westchester by directing their attorneys Goetz Fitzpatrick to create, post and manage the website Legallawcomplaints.com.

76. HELENE and MATTHEW BYRNES' actions were motivated solely by a desire to cause harm to Castaldi and to interfere with his ability to transact business.

77. The website Legallawcomplaints.com solely contains a selection of legal documents (including affidavits and motion papers) designed to portray Castaldi as dishonest, unethical and incompetent and serves no legitimate business purpose.

78. At all times, HELENE and MATTHEW BYRNES through their attorneys Goetz Fitzpatrick acted with the sole intent of causing economic harm to Castaldi by interfering with his prospective economic opportunities.

79. HELENE and MATTHEW BYRNES through their attorneys Goetz Fitzpatrick have further attempted to deceive the general public by failing to disclose its role in the creation, posting and management of the website Legallawcomplaints.com.

80. The website Legallawcomplaints.com has been active for more than one (1) year and but for the actions of HELENE and MATTHEW BYRNES through their attorneys Goetz Fitzpatrick, Castaldi would have obtained additional business opportunities and has been damaged in an amount to be determined at trial. It is further believed that but for these defendants' material misrepresentations of Marc Castaldi and his companies, individuals and/or corporate entities would have conducted business with plaintiff.

81. Given the breadth and anonymity of the internet there is no way to quantify the impact of HELENE and MATTHEW BYRNES' actions but the impact of their intentional conduct is believed to be extensive and permanent.

82. HELENE and MATTHEW BYRNES' actions, through their attorneys Goetz Fitzpatrick, were intentional, willful, outrageous and malicious and justify the imposition of punitive damages.

83. As a result of HELENE and MATTHEW BYRNES' actions, through their attorneys Goetz Fitzpatrick's actions, Castaldi is suffering lost business and irreparable harm to his good will and business name.

84. Greater injury will result from the denial of the injunction than from the grant of the injunction.

85. An injunction is appropriate because Castaldi has no adequate remedy at law and, unless he obtains equitable relief, he will continue to suffer irreparable harm.

86. An injunction is appropriate because Castaldi cannot determine with specificity the damages that it has sustained and will continue to sustain as a result of HELENE and MATTHEW BYRNES' actions, through their attorneys Goetz Fitzpatrick's creation, posting and maintenance of the website Legallawcomplaints.com. Because Castaldi's goodwill and reputation are intangible in nature, any damage thereto cannot be adequately measured.

87. Unless it obtains immediate equitable relief, it will continue to suffer irreparable harm.

WHEREFORE, plaintiff respectfully requests that:

- A. This Court issue an injunction temporarily until a preliminary hearing, and perpetually thereafter, directing and ordering defendants to immediately remove, take down and otherwise stop posting its Legallawcomplaints.com website or republishing the content of that website in any other form; and

- B. Awarding judgment to plaintiff on the first cause of action in an amount to be determined at trial;
- C. Awarding judgment to plaintiff on the second cause of action in an amount to be determined at trial;
- D. Awarding judgment to plaintiff on the third cause of action in an amount to be determined at trial;
- E. Awarding judgment to the plaintiff on the fourth cause of action in an amount to be determined at trial;
- F. Awarding judgment to the plaintiff on the fifth cause of action in an amount to be determined at trial;
- G. Awarding plaintiff punitive damages on the first, second, fourth and fifth causes of action in an amount to be determined at trial;
- H. Awarding plaintiff treble damages on the third cause of action;
- I. Awarding plaintiff attorney's fees and costs;
- J. For such other and further relief as this Court may deem just and proper.

Dated: White Plains, New York
July 2, 2009

Yours, etc.,



David S. Klausner
THE LAW OFFICE OF DAVID S. KLAUSNER, PLLC
Attorneys for Plaintiff
199 Main Street – 5th Floor
White Plains, New York 10601
Tel: (914) 288-8706
Fax: (914) 288-8708