

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

R.F. TECHNOLOGIES, INC. an Illinois
Corporation, and BOB NOORIAN, Individually)
)

Plaintiffs,)
)

vs.)

Case No.)
)

LECLAIR RYAN, P.C., a Virginia professional)
Corporation, and THOMAS O'LEARY,)
Individually and GREENBERG TRAURIG, LLP)
an Illinois limited liability partnership,)

Defendants.)
)

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CIRCUIT COURT OF COOK COUNTY
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COMPLAINT

Plaintiffs, R.F. TECHNOLOGIES, INC., an Illinois corporation, and BOB NOORIAN, by and through their attorneys KONICEK & DILLON, P.C., and for their Complaint against Defendants LECLAIR RYAN, P.C. and THOMAS O'LEARY and GREENBERG TRAURIG, LLP (collectively "Defendants"), states the following:

NATURE OF THE ACTION

This is a legal malpractice action. It is based upon the Defendants' negligence in the defense of a trademark and trade dress case filed in the Southern District of California. LECLAIR RYAN, P.C. was Plaintiffs' litigation counsel in California and GREENBERG TRAURIG, LLP also represented Plaintiffs during the discovery process in Illinois.

Plaintiffs allege that the Defendants were negligent, without limitation, in their defense of the California action, in failing to prevent the entry of a preliminary injunction, in failing to advise Plaintiffs on compliance with the preliminary injunction, in advising Plaintiffs on requirements

to comply with the preliminary injunction or attempting to obtain clarification of the preliminary injunction, in preventing the entry of an order finding defendants in violation of the preliminary injunction and an award of substantial damages and attorneys' fees and generally in their course of conduct during the discovery phase of the litigation such that Plaintiffs were subjected to repeated motions to compel, motions for sanctions, a sanctions motion that resulted in monetary fines and attorneys' fees, and a motion that exposed Plaintiffs to issue sanctions and an adverse inference instruction. The alleged negligence by the Defendants ultimately resulted in Plaintiffs paying a multi-million dollar settlement in a case that was defensible but for the Defendants' acts and omissions.

PARTIES

1. Plaintiff, R.F. Technologies, Inc., is an Illinois corporation with its principal place of business in Buffalo Grove, Illinois.
2. Plaintiff, Bob Noorian, currently resides in Illinois, and is the sole shareholder and chief executive officer of R.F. Technologies, Inc.
3. Defendant, Greenberg Traurig, LLP is an Illinois limited liability partnership with its principal place of business in Chicago, Illinois.
4. Defendant, LeClair Ryan is a Virginia professional corporation, with its principal place of business in Richmond, Virginia.
5. Defendant, Thomas O'Leary, was at all relevant times an attorney practicing at LeClair Ryan.

FACTS COMMON TO ALL COUNTS

6. Plaintiff R.F. Technologies, Inc. ("RFT") is in the business of marketing, selling, and providing replacement parts and repair for drive-thru headset products for the quick service restaurant industry. RFT also sells new and refurbished radio technology products.

7. On December 4, 2012, HM Electronics, Inc. filed an action against RFT in the Southern District of California captioned *HM Electronics, Inc. v. R.F. Technologies, Inc.*, No. 12-CV-2884 (hereinafter "the *HM Electronics* litigation"), wherein HM Electronics alleged *inter alia*, federal trademark infringement; unfair competition; trade dress infringement; violation of the California Business & Professionals Code; trade libel; and intentional interference with prospective economic advantage.

8. Defendant LeClair Ryan ("LR Defendants") represented the Plaintiffs in the defense of the HM Electronic matter in the Southern District of California.

9. The LR Defendants entered into a retainer agreement with Plaintiffs.

10. The LR Defendants met with Plaintiffs on numerous occasions in Illinois to discuss the *HM Electronics* litigation.

11. The LR Defendants knew that RF Technologies was an Illinois Corporation and that Bob Noorian resided in Illinois. On August 7, 2013, HM Electronics, Inc. filed its motion for preliminary injunction in the *HM Electronics* litigation.

12. On October 3, 2013, after briefing and argument on the issue, the Federal Court for the Southern District of California entered a preliminary injunction against RFT, setting forth the following terms:

1. Defendant [R.F. Technologies] shall not use Plaintiff's "HME" trademark or any similar mark likely to confuse or mislead consumers.
2. Defendant shall not represent that it is affiliated with or endorsed by Plaintiff in any way, including an authorized HME distributor, certified HME repair facility, or an "HME Nationwide Repair Facility."
3. Defendant shall label all HME products sold by Defendant as re-sold, used, and/or refurbished as the case may be. Defendant shall also provide a written disclosure accompanying each HME product that the HME products sold by Defendant are not covered by the HME manufacturer's warranty.
4. Defendant shall not pass off or palm off HME drive-thru products as Defendant's products. Accordingly, when Defendant's service or repair of an HME product does not alter external parts, including but not limited to headset casings, overlay, or buttons, Defendant shall not re-label the HME product with Defendant's logo. Instead, Defendant shall return the product to the customer with the HME name, HME model name and number, HME serial number and HME FCC Identification number displayed on the product in substantially the same location and in substantially the same manner as before the repair.
5. However, when, in the course of servicing or repairing an HME product, Defendant determines that a headset casing, overlay, buttons or other external parts require replacement and Defendant elects to use its own replacement part, Defendant shall remove from the product anything that identifies the product with HME, including the HME name, HME model name and number, HME serial number and HME FCC Identification number. Defendant shall thereafter be responsible for the operation of the product and for compliance with all FCC regulations or requirements applicable to the product.

13. On or around February of 2014, Defendant Greenberg Traurig was retained in Illinois as additional counsel and represented Plaintiffs in the *HM Electronics* litigation for the purposes of overseeing and managing the litigation including the discovery process.

14. Throughout the course of the *HM Electronics* litigation, Plaintiffs were subject to numerous motions to compel and for sanctions based upon the conduct as explained below.

15. At no time, did the LR Defendants or the Greenburg Traurig Defendants give a comprehensive explanation regarding the preliminary injunction or restrictions on the plaintiffs as a result of the preliminary injunction.

16. On April 18, 2014, the Southern District of California entered a finding of contempt and a sanctions order against Plaintiff for violating the terms of the preliminary injunction entered on October 3, 2013, and levying the following sanctions:

- (a) a daily fine of \$2,500 for each day R.F. Technologies failed to comply with the preliminary injunction;
- (b) awarding attorney's fees to the HM Electronics plaintiff; and
- (c) ordering the disgorgement of profits made by R.F. Technologies as a result of noncompliance with the preliminary injunction.

17. Plaintiffs were represented by both the LC Defendants and Greenburg Traurig during the time the alleged violations of the Preliminary Injunction occurred and during the time the Court entered the sanctions Order on April 18, 2014.

18. The LC Defendants and Greenburg Traurig, unknown to Plaintiffs, committed additional discovery violations by, inter alia, failing to produce documents and failing to review the discovery produced to ensure it was in compliance with the requests and prior court Orders.

19. The LR Defendants continued to allow plaintiffs to engage in discovery violations by failing to produce documentation, seek leave to extend time or review the discovery produced to ensure compliance.

20. On December 16, 2014, the Court granted HM Electronics' motion for attorneys' fees and motion to disgorge profits and awarded compensatory damages of \$151,744.50 and \$669,241.00.

21. On January 6, 2015, HM Electronics filed its motion to issue sanctions and evidentiary sanctions against Plaintiffs exposing RFT to issue sanctions and adverse instructions to the jury.

22. On July 24, 2015, the Court scheduled a hearing on its own motion for sanctions and on the HM Electronics' motion for issue sanctions and evidentiary sanctions, adverse inference instructions, a finding of contempt against Plaintiffs and for an award of expenses.

23. The result the LR Defendants and the Greenburg Traurig Defendant's actions leading up to HM Electronics' motion for issue sanctions, evidentiary sanctions and adverse inference instructions and the Court's scheduling of a hearing on the eve of trial on this motion was that Plaintiffs paid a multi-million dollar settlement in the *HM Electronics* litigation.

24. As a result, on August 7, 2015, the Southern District of California entered an order levying additional sanctions against R.F. Technologies that included monetary sanctions; an issue sanction; and an adverse inference instruction based on continued failures to abide by the court's orders and discovery procedures.

25. These sanctions were imposed in part, on the basis that R.F. Technologies' attorneys, LeClair Ryan and Greenburg Traurig, did not craft and/or implement a litigation hold or otherwise communicate to R.F. Technologies the importance of preserving relevant documents; improperly certified discovery responses as true without reasonable investigation; failed to properly oversee the discovery vendors retained on behalf of R.F. Technologies to

conduct the discovery search and ESI production that resulted in the unjustified use of confidential privilege to withhold documents; and failed to produce over 375,000 pages of information before the close of discovery.

26. As a result of LeClair Ryan and Greenberg Traurig, LLP's conduct and likelihood of additional sanctions being entered, the Plaintiffs were forced to settle the *HM Electronics* litigation and paid \$9,000,000 to do so.

COUNT I
Legal Malpractice
(LeClair Ryan and Thomas O'Leary)

27. Plaintiffs restate and re-allege paragraphs 1 through 26 as though fully set forth herein.

28. At all times relevant, an attorney-client relationship existed between Plaintiffs and the LR Defendants.

29. The LR Defendants owed a duty of care to Plaintiffs to represent the plaintiffs in a reasonably careful manner.

30. The duty included representing the Plaintiffs' interests in the *HM Electronics* litigation including the motion for a preliminary injunction, answering discovery, responding to motions and advising the Plaintiffs how to comply with discovery and court orders.

31. The LR Defendants' failure to identify and argue the appropriate defenses in response to the preliminary injunction resulted in the court entering a preliminary injunction against RFT, damaging it economically.

32. The LR Defendants failed to advise Plaintiffs as to the effect and means of compliance with the preliminary injunction and were negligent in their representation of

Plaintiffs on the motion for contempt and damages such that Plaintiff was subsequently subject to a daily fine of \$2,500.00 for noncompliance, attorneys' fees in the enforcement of the injunction, and the disgorgement of profits obtained in violation of the preliminary injunction.

33. Further, the LR Defendants' failure to properly respond to and manage the discovery process during the course the *HM Electronics* litigation resulted in numerous motions to compel and for sanctions that damaged Plaintiffs by levying monetary sanctions and attorney's fees, as well as exposure to issue and adverse inference sanctions on the basis that Plaintiff failed to produce hundreds of thousands of pages of ESI that should have timely been produced.

34. The LR Defendants breached their duty of care in one or more of the following ways:

- (a) Failed to properly identify and argue the appropriate defenses in response to the preliminary injunction motion brought by HM Electronics;
- (b) Failed to properly identify and argue the appropriate defenses in response to the motion for contempt of the preliminary injunction and the motions for expenses and disgorgement of profits;
- (c) Failed to adequately advise Plaintiff regarding the defense of the *HM Electronics* litigation, potential settlement opportunities and the implementation of a litigation hold or to otherwise communicate to RFT the importance of preserving relevant documents;
- (d) Improperly certifying discovery responses as true without conducting a reasonably inquiry;

- (e) Failing to properly monitor the third-party discovery vendor and allowing it to use search terms that improperly categorized 150,000 pages of ESI as confidential when it was not;
- (f) Improperly withholding 150,000 pages of ESI that was not confidential nor identified in any privilege log;
- (g) Failing to timely produce over 375,000 pages of ESI until after the close of discovery because of a failure to perform quality checks or properly supervise the ESI vendor; and
- (h) Were otherwise negligent in its representation of Plaintiffs.

35. Because of the failure on the part of LR Defendants to properly defend the preliminary injunction and contempt and to properly manage and respond to the discovery process, Plaintiffs were damaged by the imposition of the preliminary injunction, its subsequent enforcement, an award of expenses and disgorgement of profit and Plaintiffs were further exposed to additional monetary and issue sanctions as a result of the Defendant's breaches related to the discovery process.

36. Because of the failure on the part of the LR Defendants, the Plaintiffs paid a settlement amount that was far in excess of their insurance policy limits and a settlement amount that would not have been paid 'but for' the LR Defendants' professional negligence.

37. Further, because of exposure to the potential of a sanctions order such as the August 7, 2015, sanctions order that stemmed from the LR Defendants' conduct, Plaintiffs were ultimately forced to settle the underlying litigation at materially disadvantageous terms.

38. As a direct and proximate result of the LR Defendants' breaches, Plaintiffs were damaged in the following ways:

- (a) Plaintiffs incurred additional unnecessary legal bills in defending the *HM Electronics* litigation;
- (b) Plaintiffs were subject to a preliminary injunction enforcement proceeding that required the disgorgement of profits and levied monetary fines;
- (c) Plaintiffs were subject to a potential sanctions order that could have imposed monetary sanctions including attorneys' fees, an issue sanction, and an adverse inference sanction; and
- (d) Plaintiffs were forced to settle the *HM Electronics* litigation for far more than the value of the case.

WHEREFORE, Plaintiffs, R.F. TECHNOLOGIES, INC. and BOB NOORIAN, pray for a judgment in its favor and against Defendant LECLAIR RYAN, P.C. and THOMAS O'LEARY in the amount in excess of \$50,000.00, plus court costs.

COUNT II
Legal Malpractice
(Greenberg Traurig, LLP)

39. Plaintiffs restate and re-allege paragraphs 1 through 26 as though fully set forth herein.

40. An attorney-client relationship existed between Defendant Greenberg Traurig and Plaintiff, R.F. Technologies.

41. Defendant Greenberg Traurig owed an affirmative duty of care to Plaintiffs as a result of their attorney-client relationship.

42. As a part of their representation of Plaintiffs, Defendant Greenberg Traurig was responsible for the defense of Plaintiff's interests, including responding to and managing the discovery process in the *HM Electronics* litigation.

43. Defendant Greenberg Traurig breached its duty of in one or more of the following ways:

- (a) Failing to give appropriate advice regarding the terms and effect of the preliminary injunction entered;
- (b) Improperly monitoring the third-party discovery vendor and allowing it to use search terms that improperly categorized 150,000 pages of ESI as confidential when it was not;
- (c) Improperly withholding 150,000 pages of ESI that was not confidential nor identified in any privilege log;
- (d) Failing to timely produce over 375,000 pages of ESI until after the close of discovery because of a failure to perform quality checks or properly supervise the ESI vendor; and
- (e) Charging unnecessary and excessive fees;
- (f) Was other negligent in its representation of Plaintiffs.

44. Defendant Greenberg Traurig's failure to properly respond to and manage the discovery process during the course the *HM Electronics* litigation resulted in numerous motions to compel and ultimately exposure to a sanctions order that could have damaged Plaintiff by levying monetary sanctions; issue sanction; and an adverse inference instruction.

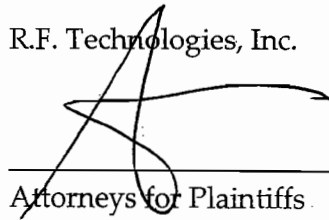
45. Further, because exposure to a sanctions order such as the sanctions order entered on August 7, 2015, which stemmed from Defendant Greenberg Traurig's conduct, Plaintiffs were ultimately forced to settle the underlying litigation at materially disadvantageous terms.

46. As a direct and proximate result of the Defendant's breaches, Plaintiff was damaged in the following ways:

- (a) Plaintiff incurred additional unnecessary legal bills in defending the *HM Electronics* litigation;
- (b) Plaintiff was subject to a sanctions order that would have imposed monetary sanctions including attorneys' fees, an issue sanction, and an adverse inference sanction; and
- (c) Plaintiffs were forced to settle the *HM Electronics* litigation for far more than the value of the case.

WHEREFORE, Plaintiffs, R.F. TECHNOLOGIES, INC. and BOB NOORIAN, pray for a judgment in their favor and against Defendant GREENBERG TRAURIG, LLP, in the amount in excess of \$50,000.00, plus court costs.

R.F. Technologies, Inc.



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