

IN THE CIRCUIT COURT OF FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

IDENTIFAX INVESTIGATIVE SERVICES,
INC., a Florida corporation,

Case No.:502015CA009497XXXXMB(AA)
Honorable: Richard Oftedal

Plaintiff,

v.

LOUIS M. FERLANTI, LF-IFX, INC. a Florida corporation
d/b/a IDENTIFAX OF SOUTH FLORIDA, NICHOLAS
JAMES INVESTIGATIVE SERVICES, LLC, a Florida
limited liability company, NICHOLAS JAMES FERLANTI,
individually,

Defendant(s).

**DEFENDANTS, LOUIS M. FERLANTI, LF-IFX, INC.'S D/B/A IDENTIFAX OF SOUTH
FLORIDA, NICHOLAS JAMES INVESTIGATIVE SERVICES, LLC, AND NICHOLAS
JAMES FERLANTI'S MOTION FOR SANCTIONS AND FOR INVOLUNTARY
DISMISSAL DUE TO PLAINTIFF'S ATTEMPT TO COMMIT
FRAUD UPON THE COURT¹**

The aforementioned Defendants, by and through their undersigned counsel and in accordance with the applicable Florida Rules of Civil Procedure, hereby files this Motion, and in support thereof assert the following:

1. This action was apparently initiated on **August 21, 2015** when the Plaintiff's original Complaint was filed with the Clerk of this Court.
2. Therein, the Plaintiff asserted five (5) claims in five (5) delineated counts. Count IV asserted a claim for "equitable property rights", wherein the Plaintiff sought some measure of Order of the Court compelling Defendant LF-IFX, INC. to turn over

¹ By filing the instant Motion, Defendants, LOUIS M. FERLANTI and LF-IFX, INC. formerly d/b/a IDENTIFAX OF SOUTH FLORIDA, in no way waive their right to seek a stay of the claims advanced against them and referral of said claims to binding arbitration in conformance with the express terms of the Franchise Agreement sued upon by the Plaintiff. Said Defendants have merely needed to file the instant motion seeking clarification of the claims against them, so that they might appropriately exercise their right (based upon the Plaintiff's allegations) to have said claims determined via arbitration in conformance with the terms of the subject Franchise Agreement.

possession of a parcel of real property (owned in fee simple by LF-IFX, INC.) to the Plaintiff.

3. Of note, in Count IV of the original Complaint the Plaintiff did not cite any legal or factual support for its blanket allegation that “the SFFA requires Ferlanti to turn possession of the Identifax Property over to Plaintiff.”
4. By Agreed Order entered by this Court on December 7, 2015, the Plaintiff was given leave to file its First Amended Complaint, which therein substituted three (3) claims set forth in three (3) delineated counts in place of the prior Complaint’s five (5) delineated counts.
5. Now, in Count II of the Plaintiff’s Amended Complaint, it sought declaratory relief which included a declaration that the Plaintiff possessed some possessory right to the parcel of property at issue (identified by the Plaintiff as Bank’s Road), as well as the issuance of a judgment of ejectment and writ of possession dispossessing the non-parties presently in possession of the parcel.
6. In support thereof, the Plaintiff referenced paragraph 4.3 of the South Florida Franchise Agreement which states: “Prior to entering into any lease for premises from which to operate the Franchised Business, Franchisee must furnish Franchisor with a copy of the lease. In the event of termination or non-renewal of either the license to operate the Franchised Business or this Agreement, Franchisee agrees to take any reasonable action to have the premises lease assigned to Franchisor, if Franchisor requests. However, in no case is Franchisor required to assume, in any manner, or be responsible for the premises lease, except upon its sole election. In no case shall Franchisor guarantee, co-sign or in any manner, guarantee performance of Franchisee’s lease. If the Franchisee assumes the

operation of a Franchisor-owned branch office, Franchisee shall be required to assume and guaranty the obligations under the existing lease agreement or enter into a new lease with the Lessor, without cost, expense or liability to Franchisor.”

7. In addition to the foregoing, in the Plaintiff’s Amended Complaint the Plaintiff alleged that LF-IFX, INC. **owned** the parcel of property at issue. “On June 25, 2007, LF-IFX, Inc. purchased a commercial condominium unit with the street address of 1855 Banks Road in Margate, Florida (hereafter “Banks Road”)…”
8. In response, the Defendants filed a Motion to Dismiss or for Clarification, therein denoting that the Plaintiff’s claim for declaratory relief was factually and legally deficient, in that (at least in part) the South Florida Franchise Agreement did not dictate anywhere therein a restriction imposed on a Franchisee as to how the Franchisee could utilize or dispose of real property **owned** by the Franchisee. See paragraphs twenty-five through twenty-eight of the Defendant’s Motion to Dismiss.²
9. The Defendant’s Motion to Dismiss or for Clarification was set for hearing on April 25, 2016. Then, on April 22, 2016, the Plaintiff filed its Second Amended Complaint, thereby rendering the motion and the hearing thereupon moot.

² 25. Of note, **nowhere** within the SFFA does any provision dictate that at the termination of the SFFA a Franchisee thereunder must make available for lease to the Franchisor a premises that the Franchises **owns** and from which the Franchisee previously operated a Franchised Business.

26. In reality, the Plaintiff is not seeking a declaration of rights of any party under the SFFA at all, but rather the Plaintiff is seeking to have this Court re-write the SFFA to place therein the foregoing language in place of the actual language contained in paragraph 4.3.

27. Florida law does not allow for such relief.

28. “A party is bound by, and a court is powerless to rewrite, the clear and unambiguous terms of a voluntary contract. It is not the role of the courts to make an otherwise valid contract more reasonable from the standpoint of one contracting party. A declaratory judgment is not available to settle factual issues bearing on liability under a contract which is clear and unambiguous and which presents no need for its construction.” See *Med. Ctr. Health Plan v. Brick*, 572 So. 2d 548, 551 (Fla. 1st DCA 1990) (internal citations omitted).

10. Within the Plaintiff's Second Amended Complaint, the Plaintiff carried over in Count II its action for declaratory relief, again asserting that the Plaintiff possessed some manner or kind of property interest in the parcel of real property at issue. Again, the Plaintiff referenced paragraph 4.3 of the South Florida Franchise Agreement, now also with references to paragraph 17.1.6.1³ and 26.12, in support of the Plaintiff's contention that it possessed some right to immediate possession and use of property owned in fee simple by LF-IFX, INC.⁴
11. On or about May 2, 2016, the Defendants filed their Motion to Dismiss or for Clarification as to the Plaintiff's Second Amended Complaint. As with their first Motion to Dismiss or for Clarification (and as directed to the claim set forth in Count II), the Defendants pointed out that the Plaintiff was not actually seeking a declaration of rights based upon allegedly ambiguous terminology of a contract, but rather the Plaintiff was seeking the judicial re-writing of the contract to grant rights to the Plaintiff which did not in fact exist under the contract.
12. The Defendants pointed out that "The Plaintiff did not allege that LF-IFX, INC. leased the "Banks Road" premises from any party in order to operate the Franchised Business and thereafter refused to transfer said lease to the Plaintiff", but rather that "the Plaintiff alleged that LF-IFX, INC. is not a lessee of the "Banks Road" premises at all, but rather that LF-IFX, INC. **is the owner of said property**. Specifically, the Plaintiff alleges: "On June 25, 2007, LF-IFX, Inc. **purchased** a commercial condominium unit with the street

³ The Plaintiff did not identify how the provisions of 17.1.6.1 were violated, as Paragraph 17.1.6.1 of the South Florida Franchise Agreement states: "Assignment of Lease, Equipment and Telephone. At Franchisor's option Franchisee shall: Assign to Franchisee any lease for any premises of the Franchised Business."

⁴ Again, the relief sought by the Plaintiff was not in fact a declaration of rights, but rather the entry of a judgment of ejectment as to unnamed and un-served third parties in possession of the premises, the issue of a mandatory injunction and/or writ of possession, and the entry of a judgment for unspecified "damages" and attorney's fees.

address of 1855 Banks Road in Margate, Florida (hereafter “Banks Road”) for the specific and sole purpose of operating the South Florida Franchise.”

13. The Defendants again pointed out that nowhere within the SFFA does any provision dictate that at the termination of the SFFA a Franchisee thereunder must make available for lease to the Franchisor a premises that the Franchises owns and from which the Franchisee previously operated a Franchised Business, and that the Plaintiff was in reality seeking a judicial re-writing of the underlying franchise agreement which is not permitted by Florida law.
14. This Court agreed with the Defendants, and on June 29, 2016 this Court entered an Order Dismissing Counts I, II, and III of the Plaintiff’s Second Amended Complaint without prejudice and with leave to amend within twenty (20) days.
15. Shortly before the Court entered this Order of Dismissal, the Plaintiff produced documents in partial response to Defendant LOUIS M. FERLANTI’S first request for production.
16. One of these documents was fabricated by the Plaintiff for purposes of bolstering its claim asserted in Count IV of its Complaint and Count II of its Amended and Second Amended Complaint. A copy of that document, as served by the Plaintiff, is attached hereto as Exhibit “A”.
17. The document purports to be an inter-office memorandum purportedly delivered to all Franchisees by the Plaintiff, and which purports to identify agreed upon revisions to the underlying South Florida Franchise Agreement to include additional language to paragraph 17.1.6 of said agreement. Specifically, this document purports to re-write Section 17.1.6 to include a completely new provision, 17.1.6.4, which purportedly states

the following: “Assign all prior and current Investigative employment contracts to the Franchisor. Any unauthorized retention of, or refusal to assign Investigative employment contracts to the Franchisor shall be deemed a tortuous and intentional interference by the Franchisee and a violation of the Franchisee’s non solicitation and non-competition agreement specified in Section 19, and shall authorize Franchisor to pursue any and all remedies allowed by law including the award of punitive damages. Additionally, the Lease for the property or offices that the Franchised business uses must be assigned to Franchisor.. If no Lease exists for the offices of the Franchised Business, one must be drawn up, listing the Franchisor as the Lessee of the property or offices in which the Franchised business exists. This new Lease is to be at fair market value. Any unauthorized retention of, or refusal to assign or create a Lease for the property or offices of the Franchised business to the Franchisor shall be deemed a tortuous and intentional interference by the franchisee and a violation of the Franchisee’s non solicitation and noncompetition agreement specified in Section 19, and shall authorize Franchisor to pursue any and all remedies allowed by law including the award of punitive damages.”

18. This document, which was not referenced in any of the Plaintiff’s three (3) pleadings filed to date, is a fabrication manufactured by the Plaintiff during the course of this proceeding as a ‘factual basis’ for the relief it seeks in Count II.

19. Notably, when this Court dismissed Count II of the Plaintiff’s Second Amended Complaint based upon the insufficient nature of the claim pled therein, this document had not been proffered to the Court by the Plaintiff (likely as the document had not yet been fabricated when the Second Amended Complaint was filed). Also of note, the document was not produced or proffered to the Court as part of the Plaintiff’s argument in

opposition to the Defendants' Motion to Dismiss or for Clarification as to the Plaintiff's Second Amended Complaint.

20. The language of page two (2) of the document, particularly that "If no Lease exists for the offices of the Franchised Business, one must be drawn up, ..." closely mirrors a statement made by James Priddy, III during his recent deposition⁵ (testimony given shortly before this document was first produced by the Plaintiff in this litigation). Of note, this deposition was conducted on May 3, 2016, more than half a year after this action was initiated, and was the first time that any party (or the representative of any party) suggested that a Franchisee had an obligation under the South Florida Franchise Agreement to "draw up" a lease and offer it to the Franchisor for property owned by the Franchisee.
21. Of additional importance is the fact that, at the bottom of page one (1) of the document, the following is seen: "W:1WPWORD/Franchis96/Policy/Policy24."
22. As LOUIS M. FERLANTI was a Franchisee under the South Florida Franchise Agreement from 1994 through 2012, and as LOUIS M. FERLANTI was a recipient of dozens of internal memorandums addressing Organizational Meetings held by the Plaintiff, LOUIS M. FERLANTI possesses direct personal knowledge of the fact that, as a matter of corporate policy, the Plaintiff in its normal course of operations would place a footer on the final page of each corporate memorandum addressing the file name under which the memorandum was saved in the Plaintiff's corporate computer server. Attached hereto as Exhibits "B" and "C" are additional internal memos produced by the Plaintiff in discovery, dated November 15, 1996 and October 5, 2007 respectively. These documents

⁵ The deposition was suspended with right to recall Mr. Priddy, as the Defendants were not able to complete their questioning of Mr. Priddy, due in part to Mr. Priddy's counsel's asserted concerns for Mr. Priddy's health.

also contain, at the bottom of the page (since they are one page documents), similar document name / file name descriptors.

23. If Exhibit “A” were in fact a true, genuine, original, and complete document, the “W:1WPWORD/Franchis96/Policy/Policy24” file name indication would have been on page two, not on page one.
24. Furthermore, a review of Exhibits “A”, “B”, and “C”, further highlights the errors on Exhibit “A” which fully evidences its fake and fabricated nature.
25. Looking at Exhibit “B”, which is dated November 15, 1996 (less than four [4] months before Exhibit “A” was purportedly created), at the bottom of the text found on the page is the following: “W: 1-wpword/Franchis96/Policy/Policy2”.
26. This is significantly different from the file name descriptor given on Exhibit “A”.
27. Looking at Exhibit “C”, which is dated October 5, 2007 (more than ten [10] years after Exhibit “A” was purportedly created), the document has the following file name descriptor at the bottom of the page below the end of the printed text: “W: 1WPWORD/Franchise/Policy/Policy 20b”.
28. This file name descriptor is nearly identical to that found on Exhibit “A”, despite purportedly being created a *decade* after Exhibit “A” purports to have been created.
29. It is apparent that the Plaintiff, in anticipation of this litigation or even more likely during this litigation, went back and fabricated Exhibit “A” in order to create a document purporting to have existed back in 1997 and purportedly supporting the Plaintiff’s currently asserted “position” as to its “rights” in the parcel of property at issue.
30. However, the document on its face contains so many errors that it cannot in fact be a true and genuine copy of what it purports to be.

31. Furthermore, having received Exhibit “A” in June of 2016 during this litigation, LOUIS M. FERLANTI hereby attests that it is the **very first time** that he has ever seen Exhibit “A”. See Exhibit “D” attached hereto.
32. It is axiomatic that if the Plaintiff actually possessed the genuine original of Exhibit “A”, and if same was in fact created in 1997 and maintained from that date until the filing of this action in 2015 (some 18 years later), the Plaintiff would have provided a copy of Exhibit “A” to its legal counsel in advance of the filing of the Plaintiff’s original Complaint.
33. However, Exhibit “A” only materialized in June of 2016, after three (3) Complaints were filed by the Plaintiff, all of which completely fail to a) acknowledge or identify the existence of Exhibit “A”, and b) which seek relief which would have been wholly unnecessary if Exhibit “A” had in fact existed when this action was initiated in 2015 (i.e., a declaration of rights due to the “ambiguous” terms of the SFFA based upon a reading and review of paragraphs 4.3 and 19.1.1 of the SFFA). See Paragraph 14 of the Plaintiff’s Amended Complaint, which states *verbatim*: “Identifax is in doubt as to the extent of real property rights granted to it by paragraph 4.3 of the SFFA when read with the non-compete clause, 19.1.1.”
34. It has long and continually been held by the Courts of this State that “fraud upon the Court” occurs where: “it can be demonstrated, clearly and convincingly, that a party has *sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system’s ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party’s claim or*

defense.” See *E.I. DuPont De Nemours & Co., Inc., v. Sidran*, 2014 WL 1613656 (Fla. 3d DCA 2014) (emphasis added).

35. The Courts of this State have further held that: “Although a finding of fraud on the court generally has been premised on *a proven outright lie on a critical issue*, or the destruction of determinative evidence, whatever “scheme” of fraud a court finds must be supported by clear and convincing evidence that goes to “the very core issue at trial”: “To support a dismissal the court must find the “false testimony was directly related to the central issue in the case.” See *Id.*, citing *Morgan v. Campbell*, 816 So.2d 251, 253 (Fla. 2d DCA 2002) (emphasis added).⁶

36. In connection with the specific issue of Fraud upon the Court, our Courts have also held: “The integrity of the civil litigation process depends on truthful disclosure of facts. A system that depends on an adversary's ability to uncover falsehoods is doomed to failure, which is why this kind of conduct must be discouraged in the strongest possible way.”

⁶ In the Fourth District Court of Appeals’ decision of *Pino v. Bank of New York Mellon*, 57 So.3d 950 (Fla. 4th DCA 2011), the Court referenced a line of cases decisions from various other District Courts of Appeal wherein the Courts had approved of the trial Court’s dismissal of a pending action wherein the trial Court found that a Plaintiff had perpetrated a “fraud upon the court” by interjecting material, perjurious testimony pertaining to the ultimate matters at issue in the respective cases. Those cases referenced were: [Ramey v. Haverty Furn. Co., 993 So.2d 1014, 1020 \(Fla. 2d DCA 2008\)](#); [McKnight v. Evancheck, 907 So.2d 699, 700 \(Fla. 4th DCA 2005\)](#); [Morgan v. Campbell, 816 So.2d 251, 253 \(Fla. 2d DCA 2002\)](#). Upon review of the Fourth District Court of Appeals’ decision in *Pino v. Bank of New York Mellon*, the Florida Supreme Court referenced the same line of cases, and noted with greater specificity the actual issues complained of in said cases. “See, e.g., [Wenwei Sun v. Aviles, 53 So.3d 1075, 1077–78 \(Fla. 5th DCA 2010\)](#) (affirming trial court's dismissal of plaintiff's action based on fraud on the court when plaintiff and his wife and daughter “lied on virtually every discovery occasion ... making it virtually impossible for the appellees to defend against the damage claims advanced by the appellants”); [Sky Dev., Inc. v. Vistaview Dev., Inc., 41 So.3d 918, 919–20 \(Fla. 3d DCA 2010\)](#) (affirming trial court's dismissal of plaintiff's action based on fraud on the court where corporate office tampered with witness during a deposition and the trial); [Ramey v. Haverty Furniture Cos., 993 So.2d 1014, 1020 \(Fla. 2d DCA 2008\)](#) (affirming trial court's dismissal of plaintiff's action based on fraud on the court where plaintiff “provided intentionally false deposition testimony and interrogatory answers”); [Hutchinson v. Plantation Bay Apts., LLC, 931 So.2d 957, 960 \(Fla. 1st DCA 2006\)](#) (affirming trial court's dismissal of plaintiff's action based on fraud on the court where plaintiffs attempted to conceal the dog attack that caused injuries attributable to the fall at issue and attempted to conceal past symptoms); [Piunno v. R.F. Concrete Constr., Inc., 904 So.2d 658, 658 \(Fla. 4th DCA 2005\)](#) (affirming trial court's dismissal of plaintiff's action based on fraud on the court where plaintiff made a number of misrepresentations “regarding his prior injuries and litigation history, and filed a false affidavit intended to obfuscate the truth and hamper the defendant's ability to defend”).” *Pino v. Bank of New York*, 121 So.3d 23 (Fla. 2013).

See Robinson v. Weiland, 988 So.2d 1110 (Fla. 5th DCA 2008). *See Pino v. Bank of New York*, 121 So.3d 23, 39 (Fla. 2013) (“[A] court possesses the authority to protect judicial integrity in the litigation process.”) (citing *Pino v. Bank of New York Mellon*, 57 So.3d 950 (Fla. 4th DCA 2011)).

37. Here, it can clearly be seen that the Plaintiff has now attempted to manufacture and proffer in pre-trial discovery a document (Exhibit “A”) purporting to grant it some manner of legal right as to the parcel of property at issue (which has been a subject of claims in this litigation first asserted by the Plaintiff in September of 2015) which is not in fact genuine, which did not exist prior to the initiation of this proceeding, and which is in fact a fake document fabricated by the Plaintiff for the improper purpose of proffering perjurious testimony in order to advance the Plaintiff’s “claims” in this litigation.
38. Based upon the foregoing, this Court should enter a show-cause Order requiring the Plaintiff to produce its designated corporate representative with the most knowledge pertaining to Exhibit “A” and to explain to this Court how the document came into existence, where the document has purportedly been maintained since 1997, where all electronic copies of the document have been maintained (and are currently maintained and available), and where the document purportedly was immediately prior to the initiation of these proceedings in 2015.
39. Upon the Plaintiff’s inability to proffer a designated representative competent to testify to the foregoing, and upon completion of an evidentiary hearing wherein testimony will be proffered by LOUIS M. FERLANTI, the Defendants further request that this Court involuntarily dismiss this action in its entirety as a sanction against the Plaintiff for its

willful attempt to proffer perjurious testimony (via fabricated documents) and its attempt to commit fraud upon these Defendants and this Court.

WHEREFORE the Defendants respectfully request that this honorable Court enter an Order granting this Motion, that this Court grant all relief requested herein, and that this Court otherwise grant these Defendants such other and further relief as this Court deems just and proper⁷.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed with this Court utilizing the Court's e-filing system and served via e-mail through the Court's e-filing and e-service system on this this 29th day of July, 2016 to: Reginald G. Stambaugh, P.A., 500 Pacific Grove Drive, Unit 6, West Palm Beach, FL 33401 [Reg@stambaughpa.com].

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⁷ Including but not limited to an award of their incurred court costs and reasonable attorney's fees taxable against the Plaintiff.

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EXHIBIT "A"

To: FRANCHISEES
From: CORPORATE
Date: February 9, 1997
Subject: CONTROL PERSON & FRANCHISE AGREEMENT AMENDMENT



FRANCHISE AGREEMENT SECTIONS CHANGED: 17.1.6

Pursuant to Sections 20.1 of the Franchisee Agreement, the following Policy is hereby amended and included as part of the "**SYSTEM**" AND "**STANDARDS**" as defined in Section 5 and Section 6 of the Franchise Agreement. This document must be inserted into your "Operations Manual" and becomes a part of our Franchise Agreement.

At the FMR Manager's Meeting discussions of February 7, 1997 regarding "Control Persons" and current Franchise Agreements, it was agreed that one branch employee must be named to manage the franchised business in the event the Franchisee is incapacitated. The person selected must be a licensed manager and must sign the standard Identifax Employment Contract. A notarized document must be sent to the Franchisor identifying the Control Person. That person must be reassigned on an annual basis.

Pursuant to section 20.1 of the Identifax Franchise Agreement and the discussions of the FMR of February 7, 1997, the following changes and statement are approved and to be added and amended in all existing Franchise Agreements. These changes are also to be made a part and condition of all future Franchise Agreements and Identifax Employee Contracts. The purpose of the amendment and changes are to insure that the Franchisee, individually, and/or their named Control Person are prevented from using their tenure, contacts and experiences with Identifax as an aid in opening their own investigative agency, as defined under Florida Statute Chapter 493:

"17.1.6 Assignment of Lease, Equipment, Telephone and Contracts"

"17.1.6.4 Assign all prior and current Investigative employment contracts to the Franchisor. Any unauthorized retention of, or refusal to assign Investigative employment contracts to the Franchisor shall be deemed a tortuous and intentional interference by the franchisee and a violation of the Franchisee's non solicitation and non competition agreement specified in Section 19, and shall authorize Franchisor to pursue any and all remedies allowed by law including the award of punitive damages."

POLICY

POLLICY

Additionally, the Lease for the property or offices that the Franchised business uses must be assigned to the Franchisor.. If no Lease exists for the offices of the Franchised Business, one must be drawn up, listing the Franchisor as the Lessee of the property or offices in which the Franchised business exists. This new Lease is to be at fair market value. Any unauthorized retention of, or refusal to assign or create a Lease for the property or offices of the Franchised business to the Franchisor shall be deemed a tortuous and intentional interference by the franchisee and a violation of the Franchisee's non solicitation and non competition agreement specified in Section 19, and shall authorize Franchisor to pursue any and all remedies allowed by law including the award of punitive damages.

EXHIBIT "B"

Identifax Investigative Services, Inc.

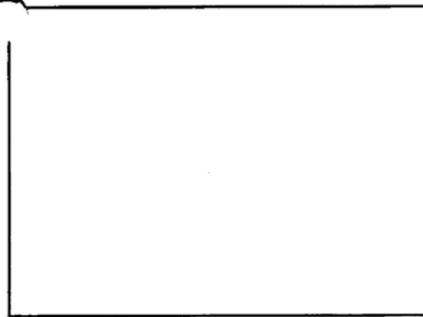
Inter-Office Memo

To: FRANCHISEES

From: CORPORATE

Date: 11/15/96

Subject: POLICY/TERRITORY CHANGE/HRS. OPERATION



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Pursuant to Section 4, 4.1 and 4.6 of the Franchise Agreement on Protected Territory, it was voted upon and agreed at the August 3, 1996 Managers Meeting, that the Florida Keys territory be given to Mr. Louis Ferlanti as an extension of his Broward and Dade territories. This document must be inserted into your "Operations Manual" and become a part of our Franchise Agreement.

It was at this meeting that Corporate's hours of operation from Monday through Friday 8:30 a.m. until 4:30 p.m., with the exception of Friday which will be open until 5:00 p.m., was established. Branches must remain will remain open 8:30-5:30 M-F.

W: 1-wpword/Franchis96/Policy/Policy2

EXHIBIT "C"



To: FRANCHISEES

From: CORPORATE

Date: 10/05/2007

Subject: POWER OF ATTORNEY- CONTROL PERSON CONTRACTS (20B -Amended)

KEY
POLICY
FOR
CORPORATE

Pursuant to Section 5 of the Franchise Agreement, the following Policy is hereby amended and included as part of the "system" as defined in Section 5 and Section 6 of the Franchise Agreement. This document must be inserted into your "Operations Manual" pursuant to section 20.1 of the Confidential Operations Manual and becomes a part of our Franchise Agreement.

At the OMR of February 7, 1997 Policy was implemented regarding Power of Attorney in the event that the Franchisee is incapacitated. Franchisees must decide whom, within their branch would be a suitable "Control Person" or replacement for themselves as specified in the Franchise Agreement in the event that they become unable to do so. This "Key Manager" must agree to this responsibility and sign to this fact. This person also needs to be a signer on all branch bank accounts.

Corporate needs a formal document from Franchisees giving this "Control Person" Power of Attorney over their branch. This document must be signed by both parties, notarized and filed at Corporate.

In addition to this original policy, pursuant to the Franchisee discussions of the OMR held on October 5, 2007 at the offices of the Franchisor (Section 13.3 of the Franchise Agreement) and Pursuant to Sections 5 and Section 20.2 of the Franchise Agreement, Franchise Policy regarding this "Control Person" is hereby refined and further stipulated that all Franchised Branch Control Person's or Key Managers of the Franchised Business are hereby required to sign an Identifax Standard Employment Contract. This Identifax Standard Employment Contract must be in a form acceptable to the Franchisor and must also include the standard Non-Compete and Non-Solicitation Clauses in the event that the manager leaves their employment with the Franchised Business.

In addition to the requirement, the Identifax Standard Employment Contract must also include a section to allow the automatic assignment of the Identifax Standard Employment Contract by the Franchisee to the Franchisor in the event that the Franchisee is Terminated for cause pursuant to Section 16.1 of the Franchise Agreement.

EXHIBIT "D"

IN THE CIRCUIT COURT OF FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

IDENTIFAX INVESTIGATIVE SERVICES,
INC., a Florida corporation,

Case No.:502015CA009497XXXXMB(AA)
Honorable: Richard Oftedal

Plaintiff,

v.

LOUIS M. FERLANTI, LF-IFX, INC. a Florida corporation
d/b/a IDENTIFAX OF SOUTH FLORIDA, NICHOLAS
JAMES INVESTIGATIVE SERVICES, LLC, a Florida
limited liability company, NICHOLAS JAMES FERLANTI,
individually,

Defendant(s).

AFFIDAVIT

STATE OF FLORIDA)
)
COUNTY OF BROWARD)

BEFORE ME, the undersigned authority, this day personally appeared, Louis M. Ferlanti,
who, after first being duly sworn, deposes and says as follows:

1. I, Louis M. Ferlanti, am a named Defendant in this action, and I am the President of Defendant LF-IFX, INC.
2. I am authorized to make this affidavit and I possess personal knowledge of the matters set forth herein.
3. Both I and LF-IFX, INC. were Franchisees under the South Florida Franchise Agreement at issue in this action between 1996¹ and 2012. In 2012, I terminated the South Florida Franchise Agreement for cause, based upon material breaches of the agreement by the Franchisor.
4. During the time that I and LF-IFX, INC. were Franchisees, I attended numerous meetings (called OMR Meetings by the Plaintiff in this action) pertaining to the operational management of the different Franchisees who operated Identifax franchises.
5. In response to a request for production of documents that I served upon the Plaintiff, I was given Exhibit "A" attached hereto.

¹ I was individually a Franchisee as far back as 1994. However, in 1996 LF-IFX, INC. and I became co-franchisees under the South Florida Franchise Agreement.

6. Exhibit "A" does not appear on its face to be a genuine document or an actual copy of a inter-office memorandum actually circulated in 1997 while I and LF-IFX, INC. were Franchisees under the South Florida Franchise Agreement.
7. First, the notation at the bottom of the first page of the document identifying the file name for the memorandum is suspect, as it was the Plaintiff's operational practice to put file name indicators or descriptors at the bottom of (or after the end of the text on) the final page of a given document. It would not have been the normal operational practice for the Plaintiff to place this notation at the end of page one (1) of a document which also had a page two (2) with additional text.
8. Second, the first time I have ever seen this document, and the language denoted on page two (2) of the document, was when the Plaintiff produced it in June of 2016 in response to discovery served in this case. The document was not provided to me, in the form it has now been provided, at any time prior to the initiation of this lawsuit.
9. Third, the text on page two (2) of the document is out of place, as it does not relate to, or refer to, the matters actually discussed and addressed at the February 7, 1997 OMR meeting. Specifically, page one (1) of the document reflects matters addressed at the February 7, 1997 OMR meeting which pertained to what were deemed "Control Persons" for franchises, and that the Franchisor required the Franchisees to designate such "Control Persons" who would be empowered to operate a franchise if an event causing death or disability of an individual Franchisee were to occur. To the best of my knowledge and recollection, there was no discussion at the February 7, 1997 of any matter involving lease(s) of premises from which franchised businesses were operated.
10. Fourth, the text on page two (2) is also suspect in that it purports to identify language that was to be inserted into (and deemed integrated into) the governing Franchise Agreements, and yet the text is not given in quotations, like the text shown on page one (1) of the document and which constituted the proposed provision 17.1.6.4.
11. Based upon all knowledge available to me, and based upon my recollection, I believe that the document attached hereto was fabricated by the Plaintiff to support its claim that it possesses some right or interest in the property that LF-IFX, INC. purchased in 2007.
12. Further supporting this belief is the fact that, to the best of my knowledge and recollection, LF-IFX, INC. was the only franchisee in the history of the Plaintiff's franchise operations that purchased a parcel of property from which it intended to operate an Identifax franchise. There were no Franchisees in 1997 that owned properties from which they operated franchised businesses. Furthermore, the Plaintiff was made aware in 2007 and 2008, after LF-IFX, INC. purchased the property from which it intended to operate its franchised business, that no lease existed between LF-IFX, INC. and itself pertaining to the parcel that is now at issue in this action. At no time thereafter did the Plaintiff ask about any such lease, nor did the Plaintiff demand that a lease be "drawn up" naming the Plaintiff as a lessee pursuant to any provision of the South Florida Franchise Agreement.

Further Affiant Sayeth Naught Sworn.

Dated: July ____, 2016.


LOUIS M. FERLANTI

SWORN TO AND SUBSCRIBED before me this 7 day of July, 2016, by Louis M. Ferlanti, who is personally known to me () who has produced a valid Driver's License for purposes of identification ().


Notary Public, State of Florida

(print or type name of notary)

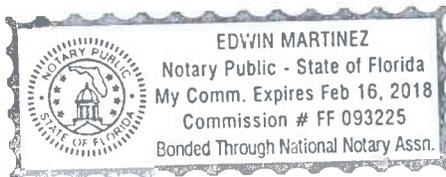


EXHIBIT "A"

Identifax Investigative Services, Inc.
Inter-Office Memo



To: FRANCHISEES
From: CORPORATE
Date: February 9, 1997
Subject: CONTROL PERSON & FRANCHISE AGREEMENT AMENDMENT

FRANCHISE AGREEMENT SECTIONS CHANGED: 17.1.6

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Pursuant to Sections 20.1 of the Franchisee Agreement, the following Policy is hereby amended and included as part of the "**SYSTEM**" AND "**STANDARDS**" as defined in Section 5 and Section 6 of the Franchise Agreement. This document must be inserted into your "Operations Manual" and becomes a part of our Franchise Agreement.

At the FMR Manager's Meeting discussions of February 7, 1997 regarding "Control Persons" and current Franchise Agreements, it was agreed that one branch employee must be named to manage the franchised business in the event the Franchisee is incapacitated. The person selected must be a licensed manager and must sign the standard Identifax Employment Contract. A notarized document must be sent to the Franchisor identifying the Control Person. That person must be reassigned on an annual basis.

Pursuant to section 20.1 of the Identifax Franchise Agreement and the discussions of the FMR of February 7, 1997, the following changes and statement are approved and to be added and amended in all existing Franchise Agreements. These changes are also to be made a part and condition of all future Franchise Agreements and Identifax Employee Contracts. The purpose of the amendment and changes are to insure that the Franchisee, individually, and/or their named Control Person are prevented from using their tenure, contacts and experiences with Identifax as an aid in opening their own investigative agency, as defined under Florida Statute Chapter 493:

"17.1.6 Assignment of Lease, Equipment, Telephone and Contracts"

"17.1.6.4 Assign all prior and current Investigative employment contracts to the Franchisor. Any unauthorized retention of, or refusal to assign Investigative employment contracts to the Franchisor shall be deemed a tortuous and intentional interference by the franchisee and a violation of the Franchisee's non solicitation and non competition agreement specified in Section 19, and shall authorize Franchisor to pursue any and all remedies allowed by law including the award of punitive damages."

PROHIBITION

Additionally, the Lease for the property or offices that the Franchised business uses must be assigned to the Franchisor.. If no Lease exists for the offices of the Franchised Business, one must be drawn up, listing the Franchisor as the Lessee of the property or offices in which the Franchised business exists. This new Lease is to be at fair market value. Any unauthorized retention of, or refusal to assign or create a Lease for the property or offices of the Franchised business to the Franchisor shall be deemed a tortuous and intentional interference by the franchisee and a violation of the Franchisee's non solicitation and non competition agreement specified in Section 19, and shall authorize Franchisor to pursue any and all remedies allowed by law including the award of punitive damages.