

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
Civil Div. AA

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).

**ORDER GRANTING DEFENDANTS' MOTION FOR SANCTIONS AND FOR
INVOLUNTARY DISMISSAL DUE TO PLAINTIFF'S ATTEMPT TO COMMIT
FRAUD UPON THE COURT**

This matter having come before the Court on the Defendants' Motion for Sanctions and for Involuntary Dismissal due to Plaintiff's Attempt to Commit Fraud Upon the Court (the "Motion"), and the Court having considered the argument of counsel, the evidence presented by the parties, and otherwise being fully advised in the premises, does hereby make the following FINDINGS OF FACT and CONCLUSIONS OF LAW:

1 The Plaintiff, IDENTIFAC INVESTIGATE SERVICES, INC., filed a Complaint in this action on August 21, 2015 against the Defendants, LOUIS M. FERLANTI, LF-IFX, INC and others, alleging Breach of Contract (Count I), Declaratory and Injunctive Relief (Count II), Tortious Interference (Count III), Equitable Property Rights (Count IV), and Civil Conspiracy and Piracy (Count V). In the Plaintiff's Third Amended Complaint, it again seeks declaratory relief pursuant to a document titled the "South Florida Franchise Agreement", and particularly the Plaintiff seeks a declaration that, pursuant to the terms of the "South Florida Franchise Agreement" and the other documents governing the relationship between the Plaintiff and Defendant LF-IFX, INC., that Defendant LF-IFX, INC. is required to lease a parcel of property (referred to as the

“Banks Road” property by the Plaintiff) to the Plaintiff. The Plaintiff furthermore seeks to dispossess all current occupants of that parcel, and desires sole use of the parcel.

2. In response to pre-trial discovery requests served upon the Plaintiff by Defendant LOUIS M. FERLANTI, the Plaintiff produced a document titled: “Identifax Investigative Services, Inc. Inter-Office Memo” (the “Memo”). The Memo is purportedly dated February 9, 1997 and ostensibly revises certain provisions of the “South Florida Franchise Agreement”, including paragraph 17.1.6. More specifically, the Memo seeks to amend 17.1.6 to include a new provision (17.1.6.4), which states:

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 tortious 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.

3. Below this, the page is a footer or notation stating: “W: 1WPWORD/Franchis96/Policy/Policy24”.

The document also purports to have the following additional language on the back of it:

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 tortious 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.

4. Defendants claim that the Memo “is an abject fabrication manufactured by the Plaintiff to support an otherwise unsupportable claim.” They contend that the original version of

the Memo was only one page, with text only on the front page of the document and that the second page was fraudulently added after the fact for the purpose of deceiving the court.

5. In support of their claim, the Defendants have produced to this Court the original meeting minutes for the February 7, 1997 “FMR Meeting” referenced in the February 9, 1997 document. It is significant, that nowhere in the meeting minutes is there any mention made or any discussion or agreement whereby the “South Florida Franchise Agreement” was to be amended to include this new language requiring a franchisee to “draw up” a lease at “fair market value”. Moreover, none of this language was mentioned in any of the Plaintiff’s four (4) filed pleadings. Indeed, if the Memo was genuine, Count II would be superfluous as there would be no need for the Court to entertain the Plaintiff’s claim for declaratory relief, as the underlying “South Florida Franchise Agreement” would have completely addressed the lease rights to the “Banks Road” parcel.

6. Even more telling and persuasive is the Affidavit of James C. Priddy, III (president of the Plaintiff) dated October 6, 2014. The document reflects that it was executed by James C. Priddy nearly one [1] year before this action was initiated. The Affidavit was filed with the Circuit Civil Court in and for Broward County, Florida on October 6, 2014 in Case No.: CACE 13-018431, as an attachment to a document titled “Plaintiff’s Response in Opposition to Defendant’s Motion for Summary Judgment and Motion to Strike Affidavit of Louis Ferlanti.” In that Affidavit, James C. Priddy, III states the following:

“Section 17.1.6.4, the Section cited by Mr. Ferlanti when certifying that he was turning over to Plaintiff all of his company’s employment agreements, was discussed with Plaintiff’s franchisees via an Inter-Office Memo dated February 9, 1997. The entire section deals with “assignment” and provides as follows:

Assignment of Lease, Equipment, and Contracts

17.1.6.4 Assign all prior and current Investigative employment contracts to the Franchisor [Plaintiff]. Any unauthorized retention of, or refusal to assign

Investigative employment contracts to the Franchisor [Plaintiff] shall be deemed a tortious 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 award of punitive damages.”

7. Of note, the version of the Inter-Office Memo dated February 9, 1997 attached as Exhibit 3 to James C. Priddy, III's ("Priddy") October 6, 2014 Affidavit is only one (1) page, and lacks the contested verbiage found on the two (2) page "Inter-Office Memo" which the Plaintiff has now produced in this proceeding and which is the foundational point of the Defendant's Motion for Involuntary Dismissal.

8. When asked about the obvious discrepancies, Priddy disavowed his prior Affidavit and sought to lay the blame on a clerical error of an employee who had inadvertently scanned only the first page of the Memo. The court finds Priddy's explanation lacking in credibility. A simple review of the two versions of the documents establishes that the version attached to James C. Priddy, III's affidavit cannot simply be the first page of the two (2) page version produced in this action. The font, formatting of paragraphs, and even a difference in the indentation(s) found in the subject heading portion of the document, all cast doubt upon James C. Priddy, III's explanation and cannot be explained away by the type of printer or scanner being used.

9. Louis Ferlanti ("Ferlanti"), former Franchisee, testified that this newly produced two (2) page February 9, 1997 Memo is a fabrication. Ferlanti stated that the document was not genuine and was never provided to him as a Franchisee under the "South Florida Franchise Agreement". Evidence established that it was the regular and customary practice of the Plaintiff to place the file name descriptor for a given corporate document as a footer at the bottom of the final page of the document. Plaintiff failed to produce any other corporate documents, aside from the disputed Memo, where the footer appears somewhere else in the document other than

the final page. The only logical and common sense explanation is that the second page of the Memo was added during this lawsuit and after the creation of the original document.

10. The court is not persuaded by the testimony of Bianca Abrams, Priddy's step-daughter and employee, who attributed any changes in format between the documents to the kind of printer that may have been used. She had never seen the original Memo either in a paper or electronic format. Likewise, the testimony of Pamela Aicher, is equally unpersuasive. She is the cousin of Priddy and a former Franchisee, who now works for Priddy. Her testimony lacked substance and credulity.

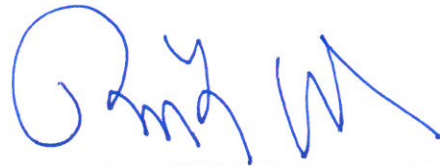
Fraud upon the court occurs where: "it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense." *Robinson v. Weiland*, 988 So. 2d 1110, 1111 n. 1, quoting *Cox v. Burke*, 706 So. 2d 43, 46 (Fla. 5th DCA 1998). 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).

The Court finds that the fabricated two (2) page February 9, 1997 "Inter-Office Memo" goes to a crucial point raised in the Plaintiff's claims asserted in Count II, and constitutes a direct attempt to introduce false evidence into this proceeding for purposes of furthering the Plaintiff's cause. It is irrelevant that this appears to be the only known instance in this case where the Plaintiff has attempted to deliberately deceive the court. This kind of conduct is egregious and

cannot be tolerated or condoned. In making this finding, the Court does not find any evidence that Reginald Stambaugh, Esq. participated in the Plaintiff's deception, and as such no sanctions are levied against Plaintiff's counsel.

Given the Plaintiff's conduct, the Court finds that the imposition of sanctions against the Plaintiff is not only appropriate, but necessary. Under the circumstances, and having fully considered all of the evidence before the Court, the Plaintiff's Third Amended Complaint is hereby DISMISSED WITH PREJUDICE as a result of the Plaintiff's attempt to defraud the Defendants and this Court. The Clerk of Court is hereby directed to close this file. The Court retains jurisdiction over the parties for any post-dismissal Motions which may be filed by the parties, including but not limited to any Motion for Costs or Attorney's fees filed by the Defendants as a result of this involuntary dismissal.

IT IS SO DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida this 17th day of January, 2017.



Richard Oftedal
Circuit Judge

Copies to Counsel of Record:

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