

AO 440 (Rev. 10/93) Summons in a Civil Action

United States District Court

District Of

ARIZONA

HARRY TAHILIANI,

SUMMONS IN A CIVIL CASE

Plaintiff

CASE NUMBER:

V.

LLOYD J. BOONE, individually,

CIV 00 1392 PHX ENC

TO: LLOYD J. BOONE
15111-1 Palace Pier Court
Toronto, ON M8V 3W9

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

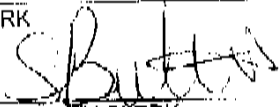
Edwin B. Wainscott
Kevin D. Quigley
STREICH LANG
Renaissance One
Two North Central Avenue
Phoenix, Arizona 85004

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

RICHARD H. WEARE

JUL 20 2000

CLERK



DATE

(BY) DEPUTY CLERK

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STREICH LANG
A PROFESSIONAL ASSOCIATION
Firm State Bar No. 00126000
RENAISSANCE ONE
TWO NORTH CENTRAL AVENUE
PHOENIX, ARIZONA 85004-2391
TELEPHONE (602)220-8200

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CLERK U S DISTRICT COURT
DISTRICT OF ARIZONA
BY _____ D. DEPUTY

Edwin B. Wainscott (#009881)
Kevin D. Quigley (#015972)

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

HARRY TAHILIANI,
Plaintiff,
vs.
LLOYD J. BOONE, individually,
Defendant.

CIV '00 1392 PHX EHC
No.
COMPLAINT
JURY TRIAL DEMANDED

Plaintiff, HARRY TAHILIANI, ("Plaintiff" or "Tahiliani"), by and through his undersigned counsel, and for his causes of action in this matter, state and allege as follows:

1. This is an action for money damages against Lloyd J. Boone ("Defendant" or "Boone"). The Defendant perpetrated a number of violations upon Plaintiff, including, but not limited to, the following:

a. Defamed Plaintiff by way of making, publishing and disseminating known false and outrageous information including falsely stating Tahiliani was a criminal who must be imprisoned. Furthermore, the Defendant commenced said defamation with a negligent, reckless and/or intentional disregard that the information published was and remains untrue;

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b. Invaded Plaintiff's right to privacy by publishing alleged facts which placed him in a false light; and

c. Negligently and intentionally inflicted severe emotional distress on Plaintiff.

2. Defendant has attempted to conceal his true identity and true motives while maliciously and intentionally disseminating false statements about Plaintiff.

3. Defendant intentionally disseminated malicious, false and libelous per se defamatory statements concerning Plaintiff, falsely stating that Tahiliani was a criminal who must be imprisoned.

4. Plaintiff is a private individual and the false, libelous per se defamatory statements are regarding private matters.

PARTIES

5. Plaintiff was at all times alleged herein a United States citizen and resident of Maricopa County, Arizona.

6. Defendant was at all times alleged herein a citizen of Canada and a resident of Toronto, Ontario.

7. Defendant caused actions and events to occur throughout the United States, including in this judicial district.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §1332(a) as there is complete diversity of citizenship between the parties and the amount in controversy is in excess of \$75,000.00 exclusive of interest and costs.

9. Venue is appropriate in this Court pursuant to 28 U.S.C. §§1391(a) and 1391(d) because a substantial part of the events giving rise to the claims asserted by Plaintiff herein occurred in this judicial district.

STREICH LANG
A PROFESSIONAL ASSOCIATION
RENAISSANCE CNE
TWO NORTH CENTRAL AVENUE
PHOENIX, ARIZONA 85004-2391
TELEPHONE (602) 229-5200

FACTUAL BACKGROUND

10. Defendant is a former Bigsmat Independent Member who submitted an Independent Member application over the Internet to become an Independent Bigsmat Mall owner, which application was accepted by Bigsmat. In that application the Defendant agreed to "accept all of the following terms and conditions contained in this Agreement and you acknowledge that you have reviewed all of Bigsmat.com's Policies and Procedures...and agree to be bound by the terms and conditions contained therein."

11. Bigsmat's Policies and Procedures in pertinent part state:

4.3. Non-Disparagement.

Members shall not disparage other Members, Company products or services, the Compensation Plan, or the Company's employees.

8.4. Governing Law, Jurisdiction and Venue.

Sole and exclusive jurisdiction and venue of any matter shall be, Maricopa County, State of Arizona, except to the extent invoking the jurisdiction of another court is necessary to enforce any judgment or order entered by its arbitrator or court located in Maricopa County, Arizona.

12. On May 9, 2000 Defendant sent an unsolicited e-mail to Plaintiff's outside counsel in Phoenix, Arizona, which in pertinent part stated:

Soon, I would suspect you [sic] client will be behind bars where he belongs...for a very long time, I hope!...and you know something else, in my opinion there is only one thing worse than these scammers and frauds, and the is the scum lawyers who try and defend them.

13. Defendant's malicious attacks did not stop with his unsolicited e-mail sent to Plaintiff's counsel in Phoenix, Arizona. He also began posting false and malicious statements regarding the Plaintiff on Internet message boards.

STREICH LANG
A PROFESSIONAL ASSOCIATION
RENAISSANCE ONE
TWO NORTH CENTRAL AVENUE
PHOENIX, ARIZONA 85004-2391
TELEPHONE (602) 229-6206

STREICH LANG
PROFESSIONAL ASSOCIATION
RENAISSANCE ONE
TWO NORTH CENTRAL AVENUE
PHOENIX, ARIZONA 85004-2381
TELEPHONE (602) 228-5200

1 14. A message board is a Website that is operated and maintained as a public forum
2 for the discussion of a particular company or topic, where members of the public can post their
3 own messages for public review and discourse.

4 15. An unauthorized message board about Bigsmart, labeled "BIGSMART: SCHEME
5 OR SCAM?" or "BIGSMART MESSAGE BOARD" (collectively referred to as "Bigsmart
6 Message Board"), is located at <http://pnews.org/boards/bigsmart>. Another unauthorized
7 message board about Bigsmart, labeled "Facts About Bigsmart.com LLC" is located at
8 <http://members.boardhost.com/bigsmartfacts> ("Facts About Bigsmart Message Board"). The
9 Bigsmart Message Board and the Facts About Bigsmart Message Board shall hereinafter be
10 collectively referred to as the "Unauthorized Message Boards".

11 16. Persons who wish to post on the Unauthorized Message Boards are allowed to do
12 so by the Board's sponsor using anonymous names.

13 17. Defendant posted the following messages concerning Plaintiff using the
14 anonymous name of "Lloyd" on the Unauthorized Message Boards:

15 a. On June 6, 2000, Defendant posted message number 1811 on the Bigsmart
16 Message Board, which indicated that Tahiliani should be in jail. The message provides, in part,
17 as follows: "I too will not stop until ... the Tahiliani's are behind bars".

18 b. On July 7, 2000, Defendant posted message numbers 155 and 156 on the
19 Facts About Bigsmart Message Board, which stated that Tahiliani has committed "terrible
20 crimes". Defendant states in these postings, in part, the following:

21 The Tahiliani's...dare not expose themselves to what such a law
22 suit would do to them...unless of course they are tired of their
23 freedom, and wish to spend a considerable amount of time in jail
for the terrible crimes they have committed against society.

24 c. On July 10, 2000, Defendant posted message number 3873 on the Bigsmart
25 Message Board, which stated that Tahiliani has committed "tremendous crimes" and that the
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STREICE LANG
A PROFESSIONAL ASSOCIATION
RENAISSANCE ONE
700 NORTH CENTRAL AVENUE
PHOENIX, ARIZONA 85004-2391
TELEPHONE (502) 229-5200

1 Defendant will not stop his "crusade until the last of the Tahiliani family is behind bars".

2 Defendant states in the posting, in part, the following:

3
4 I for one will continue this crusade until the last of the
5 Tahiliani family is behind bars. These people are evil. They
6 must be stopped.

7 Do not be intimidated by their threats of legal action or the
8 like. They will do nothing. Those cowards dare not, for
9 that would simply be a guarantee that they would go to jail
10 for their tremendous crimes against society.

11 d. On July 10, 2000, Defendant posted message numbers 3883 and 3884 on
12 the Bigsmart Message Board, which stated that Plaintiff should be "behind bars". Message
13 number 3883 is entitled "Message To The Tahiliani's" and message number 3884 is entitled
14 "To The Tahiliani's: We Are Coming To Get You!". Defendant states in these two postings,
15 in part, the following:

16 It will give me great pleasure to see the day when
17 you, and scum like you are behind bars. You are the
18 lowest form of life on this planet. You are raping
19 society of its values and its money.

20 e. On July 10, 2000, Defendant posted messages on the Bigsmart Message
21 Board and on the Facts About Bigsmart Message Board, which stated that the Tahilianis "will
22 soon find themselves in jail". These two messages are entitled "Notice To The Tahilianis: We
23 Are Coming For You!". Defendant states in these postings, in part, the following:

24 Big Smart's Days are over!
25 It's Owners and supporters will soon find themselves
26 in jail.
Copy of news clips, claims, threats, etc. are being
forwards to AG's and other Legal Authorities around
North America and the World.

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There is no place to hide you bastards...we will find you...and destroy you!

f. On July 12, 2000, Defendant posted a message on the Bigsmart Message Board, which stated that the Tahilianis were "frauds" who will be in "prison" very soon. Defendant states in this posting, in part, the following:

And hopefully very soon, Mark, Harry...and other frauds will be trading in those offices for prison cells.

18. The statements communicated, published and disseminated on the Unauthorized Message Boards by Defendant concerning Plaintiff as provided in Paragraph 19(a) through 19(f) herein, are false and defamatory.

19. Defendant communicated, published and disseminated these false and defamatory statements in writing on the Internet via the Unauthorized Message Boards, which are accessible to millions of third parties worldwide, including in this judicial district.

20. On information and belief, Defendant was aware third parties would, and in fact encouraged them, to disseminate the defamatory postings to Plaintiff and Bigsmart in this judicial district, and numerous parties have forwarded the defamatory postings to Plaintiff and Bigsmart in this judicial district and/or e-mailed inquiries to Plaintiff and Bigsmart in this judicial district regarding the defamatory postings.

21. On information and belief, Defendant has disseminated the defamatory postings to the Arizona State Attorney Generals Office and other Arizona legal authorities, as Defendant stated in the messages that "Copy of news clips, claims, threats, etc. are being forwards to AG's and other Legal Authorities around North America and the World".

22. Defendant has exposed Plaintiff to extreme mental cruelty and torture. Defendant has exposed Plaintiff to tremendous unnecessary and unprovoked humiliation, degradation, embarrassment and harassment.

STREICH LANG
A PROFESSIONAL ASSOCIATION
RENAISSANCE ONE
TWO NORTH CENTRAL AVENUE
PHOENIX, ARIZONA 85004-2391
TELEPHONE (602) 228-6200

STREICH LANG
A PROFESSIONAL ASSOCIATION
RENAISSANCE ONE
TWO NORTH CENTRAL AVENUE
PHOENIX, ARIZONA 85004-2381
TELEPHONE (602) 229-5200

1 23. The defamatory postings were made maliciously and intentionally and are false,
2 libelous, and defamatory per se. Defendant intended for Plaintiff to be injured and damaged by
3 the statements, and intended to cause severe emotional distress, mental anguish, and humiliation
4 to Plaintiff. The false statements were made with the intent to damage the personal and
5 professional reputation of Plaintiff.

6 24. As a result of the communication, publication and dissemination of such false and
7 defamatory statements, Plaintiff's reputation, both personally and professionally, has been
8 damaged.

9 25. Defendant communicated, published and disseminated such false and defamatory
10 statements negligently, carelessly, recklessly, maliciously, intentionally, unlawfully,
11 unconstitutionally and in a willful and wanton disregard for the civil rights and legal rights of
12 Plaintiff as described in this Complaint.

13 26. Plaintiff has been and continues to be severely injured by the defamatory postings.
14 Plaintiff has suffered extreme embarrassment, humiliation, severe outrage, emotional anguish
15 and emotional distress directly caused by the defamatory postings and their publications.

16 **FIRST CLAIM FOR RELIEF**

17 **(Defamation)**

18 27. Plaintiff re-alleges and incorporates paragraphs 1 through 28 of this Complaint
19 as if fully set forth.

20 28. Defendant communicated, published and disseminated or caused to be
21 communicated, published and disseminated, false, misleading, malicious and outrageous
22 statements by written publication to countless third parties which Defendant knew, or should
23 have known, were false, misleading, malicious and outrageous. The defamatory statements
24 were the direct and proximate cause of damage and harm to Plaintiff's personal and
25 professional reputation, emotional and physical well-being and ability to live and work in his
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STREICH LANG
A PROFESSIONAL ASSOCIATION
RENAISSANCE ONE
TWO NORTH CENTRAL AVENUE
PHOENIX, ARIZONA 85004-2381
TELEPHONE (602) 229-5200

1 community. The defamatory statements damaged Plaintiff by making him the object of public
2 scorn, ridicule, contempt, disgrace and hatred.

3 29. Such false and defamatory statements constitute a written publication because they
4 were posted on the Internet via the Unauthorized Message Boards.

5 30. These messages were posted by Defendant in a public forum such that a
6 reasonable person posting such messages would foresee that third parties reading such messages
7 would gain a negative perception of Plaintiff.

8 31. Defendant's defamatory statements were likely to be understood by the readers
9 of such statements and all other participants in the electronic informational forum that Plaintiff
10 had committed numerous crimes for which he should be imprisoned.

11 32. Defendant communicated, published and disseminated such written false and
12 defamatory statements with actual malice, either with the knowledge that such statements were
13 false or with reckless disregard of whether such statements were false.

14 33. Said written false and defamatory statements were neither privileged nor
15 consented to by Plaintiff.

16 34. The libelous communications pertaining to Plaintiff that appear on the
17 Unauthorized Message Boards are defamatory by virtue of the manner to which they ascribe to
18 Plaintiff certain conduct, character or conditions that falsely portray him as being of low moral
19 character, such that would adversely affect the readers' view of Plaintiff as an individual and
20 as a member of his community and profession.

21 35. The defamatory statements made by Defendant imputed the commission of
22 numerous crimes and, accordingly, constituted defamation per se. The defamatory statements
23 made by Defendant were accomplished with actual malice.

24 36. Plaintiff is a private figure involved in business matters of private concern.
25 Defendant's libelous per se statements are therefore presumed false and Plaintiff is therefore
26 entitled to recover presumed damages as well as compensatory and special damages.

1 44. The actions by Defendant as alleged herein amounted to extreme and outrageous
2 conduct. In so acting, Defendant intended to cause Plaintiff to suffer severe emotional distress.

3 45. This breach of duty and intentional infliction of emotional distress upon Plaintiff
4 proximately and directly caused damage to Plaintiff, including, but not limited to, severe
5 emotional distress associated with being labeled as morally corrupt in a public forum.

6 **FOURTH CLAIM FOR RELIEF**

7 **(Negligent Infliction of Emotional Distress)**

8
9 46. Plaintiff re-alleges and incorporates paragraphs 1 through 28 of this Complaint
10 as if fully set forth.

11 47. Defendant owed Plaintiff a duty of truthfulness, accuracy and veracity in
12 Defendant's allegations and statements.

13 48. Defendant breached this duty to Plaintiff through Defendant's actions as described
14 in paragraphs 1 through 26, and the conduct on the part of such Defendant negligently, as well
15 as in a grossly negligent manner, caused Plaintiff to suffer severe and permanent emotional
16 distress.

17 49. This breach of duty directly and proximately resulted in damage to Plaintiff,
18 including, but not limited to, severe emotional distress associated with the unreasonable risk of
19 physical harm and ostracism at the hands of Plaintiff's community and industry.

20 **DAMAGES**

21 50. Defendant directly and proximately caused Plaintiff to suffer extreme and lasting
22 physical injury, as well as pain and suffering. These damages include, but are not limited to,
23 severe anxiety, sleeplessness, inability to concentrate, nausea, headaches and related ailments,
24 fear for the physical safety of his family members, all as will be shown at the time of trial, and
25 all of which have impaired Plaintiff's bodily functions and abilities to perform within a normal
26 context on everyday tasks.

STREICH LANG
A PROFESSIONAL ASSOCIATION
RENAISSANCE ONE
TWO NORTH CENTRAL AVENUE
PHOENIX, ARIZONA 85004-2391
TELEPHONE (602) 229-5200

STREICH LANG
A PROFESSIONAL ASSOCIATION
RENA ISSANICE ONE
TWO NORTH CENTRAL AVENUE
PHOENIX, ARIZONA 85004-2391
TELEPHONE (602) 229-5200

1 51. Defendant directly and proximately caused Plaintiff to suffer extreme and
2 permanent damage to their reputations and standing in their community as well as their
3 professions.

4 52. Plaintiff will be stigmatized for the remainder of his life due to the conduct
5 described in this Complaint on the part of Defendant.

6 53. Plaintiff will suffer discrimination, humiliation, and other harm, in his ability to
7 seek employment, apply for credit, or otherwise function within society.

8 54. Damage to Plaintiff's personal and professional reputation is not only severe, but
9 mostly irreparable, and is cause for pecuniary damages, as well as great physical, emotional and
10 mental pain and suffering. Such destruction of Plaintiff's reputation has substantially impaired
11 Plaintiff's enjoyment of his life.

12 55. Defendant has caused Plaintiff to suffer severe and permanent impairment to their
13 individual and joint future earning capacities, all damages in an amount to be proven at the time
14 of trial in this matter.

15 56. Defendant's heinous, outrageous and wrongful acts as described in this Complaint
16 were performed with an evil hand guided by an evil mind, and were intended to brutalize,
17 victimize and injure Plaintiff, and were otherwise willful, reckless and intentional, and of such
18 an egregious nature as to shock the conscience and serve as a basis for the imposition of
19 punitive damages.

20 WHEREFORE, Plaintiff prays for judgment against Defendant, as follows:

21 A. For special damages in an amount to be proven at the time of trial in this
22 matter, but in no event less than the jurisdictional limit of this Court.

23 B. For actual and general compensatory damages in an amount to be proven
24 at the time of trial in this matter, but in no event less than the jurisdictional limit of this Court.

25 C. For presumed damages that naturally flow from libelous per se statements
26 regarding a private figure.

