

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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J. JOSEPH BAINTON,

Plaintiff,

-- against --

VERIFIED COMPLAINT

AHMED ZAYAT, a/k/a
EPHRAIM ZAYAT,

and

JURY DEMAND

Defendant.

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Plaintiff J. Joseph Bainton, by his attorneys BaintonLynch LLP, for his verified complaint against Defendant Ahmed Zayat, a/k/a Ephraim Zayat, respectfully avers:

Jurisdiction and Venue

1. Plaintiff is a natural person and a citizen of the State of New York.
2. Defendant is a natural person and a citizen and resident of the State of New Jersey.
3. The amount in controversy in this action exceeds \$75,000, exclusive of interest and costs.
4. This Court therefore has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1332.

5. This Court has jurisdiction over the person of Defendant and venue is proper in this District because Defendant maintains his principal residence within it.

Nature of the Action

6. This is an action in which the Plaintiff seeks recovery of general and punitive damages from Defendant for libel per se.

The Plaintiff

7. Since 1974 Plaintiff has been a member in good standing of the bar of the State of New York.
8. For more than the last 35 years Plaintiff has been a member of the bar of the United States Supreme Court; the United States Courts of Appeal for the First, Second, Third, Seventh, Ninth, Eleventh and Federal Circuit; the United States District Courts for the Northern, Southern, Eastern and Western Districts of New York, the Districts of Connecticut and New Jersey, and the Northern District of Indiana (to whose bar he was admitted in only 2002).
9. Plaintiff has had had the privilege of being admitted *pro haec vice* on one or more occasions to the bars of the United States District Courts for the Districts of Massachusetts, Maine, North Dakota, Northern, Central and Southern California, Arizona, District of Columbia, Northern

District of Illinois, Southern District of Texas, and Northern, Middle and Southern Districts of Florida.

10. For more than the last 30 years Plaintiff has received an “av” rating from Martindale Hubbell and in 2011 was elected a Fellow of the Litigation Counsel of America.
11. In each year since 2010 until now Plaintiff has been recognized as a “Super Lawyer” in the area of Litigation in the New York Metropolitan area.

The Defendant

12. By his own account Defendant is one of the most successful living Americans of Egyptian heritage. Following a successful financial career after completing his formal education, in 1997 with other investors Defendant purchased Al Ahram Beverages Company, an Egyptian beer and spirits distributor, which was subsequently sold to Heineken in 2002 for approximately \$280 Million.
13. Plaintiff was then engaged by Heineken to continue to manage the company until in or about 2007.
14. In or about 2005, Plaintiff formed Zayat Stables, which has over time has become one of the United States largest and most successful stables.

According to the website of Zayat Stables, found at www.zayatstables.com, it is currently “North America’s #1 Owner.”

Background of This Action

Plaintiff’s Role as Counsel in Filing a Breach of Contract Action against Defendant in This Court

15. In the late summer/early fall of 2014 Plaintiff was contacted by one Howard Rubinsky (“Rubinsky”) to discuss the topic of representing Rubinsky in an action against Defendant to collect the sum of \$1,650,000 that Defendant owed Rubinsky pursuant to a “promise” embodied in a text exchange between Rubinsky and Defendant that occurred on Sunday, April 6, 2008. A copy of the transcription of that text message exchange is attached hereto as Exhibit A.
16. That “promise” was to make weekly payments to an address to be furnished by Rubinsky.
17. Rubinsky told Plaintiff, and subsequently testified under oath, that he had maintained possession of two cell phones that he had used during 2008 and they reflected text messages to and from telephone number 201-803-0957, which Rubinsky stated was the cell phone number of Defendant.
18. Plaintiff corroborated Rubinsky’s statement by dialing 201-803-0957. When the call was answered, Plaintiff stated: “Mr. Zayat?”

19. The person who answered the call stated: "Yes, who is this?"
20. Plaintiff then disconnected the call.
21. Based upon this exchange Plaintiff formed the belief that telephone number 201-803-0957 was in fact the telephone number of Defendant.
22. Subsequently Defendant stated under oath that 201-803-0957 had been his cell phone number for a long time, but he could not remember when he first acquired the number.
23. Rubinsky informed Plaintiff, and subsequently testified under oath, that Defendant made two \$25,000 payments in accordance with his promise, but that Rubinsky only had written evidence of one of them.
24. That written evidence consisted of a canceled check for \$25,000 payable to the order of Rubinsky's sister drawn on an account of the Zayat Foundation, which was at the time the check was a 501(c)(3) organization in good standing as such with the Internal Revenue Service. A copy of that canceled check is attached hereto as Exhibit B.
25. When in 2014 Defendant was asked to produce records of the Zayat Foundation, of which he was president, relating to this check he was unable to do so.
26. Similarly when asked to produce the last known address of Linda Becker, who served as his personal secretary in the United States both

during his tenure as CEO of Al Ahram Beverages Company and then as head of Zayat Stables, he was unable to do so.

27. Rubinsky has testified under oath that Ms. Becker had personal knowledge about Defendant's promise to pay him the \$1,650,000 and the periodic payments that Defendant actually made in partial fulfillment of that promise.
28. Rubinsky has also testified that Ms. Becker has personal knowledge of many facts that would corroborate his claims against Defendant.
29. Efforts on behalf of Rubinsky to find Ms. Becker so that she could be deposed under oath have been unsuccessful to date.
30. On March 11, 2014, Plaintiff filed in the United States District Court for the District of New Jersey on behalf of Rubinsky a complaint seeking to recover the sum of \$1,650,000 from Defendant (the "Breach of Contract Action"). A copy of that complaint is attached hereto as Exhibit C.
31. Based upon (a) the existence of the text exchanges creating the promise by Defendant to pay Rubinsky on a weekly basis (Exhibit A); (b) the existence of a canceled check representing partial performance of that promise (Exhibit B); (c) a credible explanation by Rubinsky as to how the debt arose; (d) actual confirmation that the cell phone number that

appeared in the text messages belonged to Defendant; and (e) the fact that the action was being commenced within six years of Defendant's breach of his promise, which was within the governing New Jersey statute of limitations, Plaintiff concluded that he had fulfilled all of his obligations pursuant to Federal Rule of Civil Procedure 11 before filing the complaint and therefore that the Breach of Contract Action had merit.

32. The fact that the text message also contained a purported denial of liability by Zayat was of absolutely no consequence to Plaintiff because in over 30 years of practicing law he had never seen so much as one agreement compromising a claim that did **not** contain a provision by the settling party denying liability.

33. This routine practice of the settling party denying liability while agreeing to make restitution to the aggrieved party or otherwise provide relief sought in the complaint was the topic of national attention during the last year as the result of United States District Judge Jed S. Rakoff's refusal to approve the settlement in SEC v. Citigroup Global Markets, Inc., 827 F. Supp2d 328 (SDNY 2011). In his opinion, Judge Rakoff observed the existence of "the SEC's long-standing policy – hallowed by history, but not by reason – of allowing defendants to enter into

Consent judgments without admitting or denying the underlying allegations.”

34. This practice Judge Rakoff went on to find in the circumstances of that case deprived “the Court of even the most minimal assurance that the substantial injunctive relief it is being asked to impose has any basis in fact.” *Id* at 332.
35. Both the SEC and Citigroup successfully appealed from Judge Rakoff’s decision. United States v. Citigroup Global Mkts., 752 F.3d 285 (2014).
36. While the appeal was pending there was support for the rationale of Judge Rakoff’s ruling only in respect of the settlement of cases that affected the public interest and a general view that his holding should not be applied to disputes between two private parties.
37. Accordingly, if Citigroup can lawfully settle a claim accusing it of creating a billion dollar fund containing what it knew to be mortgage-backed securities of dubious value and then sell interests in the fund to unwitting investors as attractive investments in blatant violation of the securities laws causing the investors to lose \$700 Million while enabling Citigroup to make \$160 Million while denying any liability, the thought of Defendant agreeing to settle a \$1.65 Million gambling based

obligation by making weekly payments without admitting liability seems rather insignificant by comparison.

38. When drafting the complaint, Plaintiff intentionally did not use the word “gambling” once. He made a conscious effort to meet only the minimum standards of Rule 8 of the Federal Rules of Civil Procedure for the express reason of avoiding attracting any attention to the case by the press.

39. A simple Google™ search at the time revealed that Defendant had been the subject of uncomplimentary press about the topic of gambling that necessarily negatively impacted his reputation in the thoroughbred horse racing community, which is a highly regulated industry in which the topic of gambling is a sensitive one.

40. Both Plaintiff and Rubinsky therefore did not wish this simple Breach of Contract Action to possibly cause Defendant to suffer further reputational harm.

41. For the same reason, no press release of any nature accompanied the filing of the Breach of Contract Action.

42. The filing of the complaint in the Breach of Contract Action therefore garnered no attention from the press whatsoever with the limited exception of a brief note on the Justicia.com website that stated simply

the name of the case, the court in which it had been filed and its docket number. Upon information and belief, this website posts the filing of all federal cases providing with respect to every case exactly the same minimal information as was provided in respect of the Breach of Contract Action.

43. The posting of the filing of the Breach of Contract Action against Defendant on the Justicia website garnered no press attention during all of 2014 and the first quarter of 2015.
44. At the first pre-trial conference held before United States Magistrate Judge Mark Falk on August 8, 2014, Defendant's counsel expressed concern about the press and requested that some form of protective order be entered.
45. Plaintiff responded by immediately indicating agreement to any reasonable form of protective order that Defendant's counsel might propose and made plain (as he had previously told Attorney Joseph Vann) that neither he nor his client had any interest whatsoever in trying the case in the press and indeed for that reason had drafted the complaint using such vague language and specifically not using the word "gambling."
46. No form of protective order was ever proffered by Defendant's counsel.

47. Pre-trial discovery proceeded in accordance with the Court's schedule.
48. Both Defendant and Rubinsky were deposed.
49. The text messages were transcribed by a court reporter in a cooperative and cordial fashion by counsel for Defendant and Plaintiff.

Defendant's Motion for Summary Judgment in the Breach of Contract Case

50. In accordance with the Court's rules, counsel for Defendant wrote to Magistrate Judge Falk and sought permission to move for summary judgment before the completion of pre-trial discovery.
51. On behalf of Rubinsky Plaintiff supported that request.
52. Subsequently counsel for Defendant and Plaintiff met with Judge Falk in his Chambers on December 17, 2014, and making congruent arguments convinced him that it was in the interests of all parties and the Court for the Court to determine sooner rather than later whether the arguments that Defendant was making entitled him to summary judgment dismissing the Breach of Contract Action.
53. Accordingly on March 31, 2015, counsel for Defendant filed papers in support of Defendant's motion for summary judgment. Those papers immediately became available to all members of the general public

(including without exception reporters) via a website maintained by the United States at www.pacer.gov.

54. As a matter of obvious necessity, the papers filed on behalf of Defendant by his able counsel discussed the allegations of Rubinsky and used the word “gambling” many times.

55. Defendant’s counsel could have sought permission from the Court to file those papers under seal so that their contents would not have been available on www.pacer.com.

56. Had they done so, on Rubinsky’s behalf, Plaintiff would have immediately consented just as he had consented to their earlier request for a protective order that they ultimately chose not to pursue.

57. On May 2, 2015, during the period of time during which Plaintiff was preparing papers to be submitted to the Court on behalf of Rubinsky in opposition to Defendant’s motion for summary judgment, a horse owned by Defendant, American Pharoah [sic], won the Kentucky Derby, the first leg of the “Triple Crown.”

58. Two days later, on May 4, 2015, on Rubinsky’s behalf, Plaintiff filed papers in opposition to Defendant’s motion for summary judgment. These papers immediately became available to the general public via www.pacer.gov.

59. Defendant's counsel then filed reply papers in support of Defendant's motion for summary judgment on May 11, 2015. These papers too became available to the general public via www.pacer.com.

The Success of American Pharoah [sic] Brings Intense Attention to Defendant

60. Five days after Defendant's motion to dismiss the Breach of Contract Action was fully briefed on May 16, 2015, American Pharoah [sic] won the Preakness, the second leg of the Triple Crown.

61. American Pharoah [sic] thus became poised to become the first Triple Crown winner since Affirmed in 1978.

62. The remarkable success of his horse brought intense focus from the press on Defendant.

63. Upon information and belief, one or more members of the press did a simple Google™ search of Defendant's name in the course of preparing an article about him in the context of writing about the possibility of a Triple Crown winner in 2015.

64. Upon information and belief, those searches brought up the Justicia.com reference to the filing of the Breach of Contract Action in March 2014.

65. Upon information and belief, after visiting the Justicia website and learning of the existence of the Breach of Contract Action, the court in

which it was pending, and its docket number, members of the press then visited the www.pacer.gov website and accessed all of the papers that had been filed in the Breach of Contract Action relating to Defendant's motion for summary judgment.

66. Based upon what members of the press read in court papers that Defendant knew were matters of public record – and had made no effort whatsoever to seal – a great many articles appeared both in the written press and online reporting about the allegations of the Breach of Contract Action.

67. On balance, those articles were uncomplimentary toward Defendant.

**AS AND FOR A FIRST CLAIM
(Libel per se)**

68. Plaintiff respectfully repeats and reavers the averments of paragraphs 1 through 67 hereof.

69. On or about May 22, 2015, Defendant stated to a reporter for *The Daily News*, a prominent newspaper of general circulation in the New York City area, in respect of the Breach of Contract Action that “It’s a fictitious story from **people** who are trying to **extort** me. It’s laughable. When we asked for any documentation, they have nothing. **No documents, no proof**, no receipts. Not a single word of truth. It’s **insanity.**” (Emphasis added.)

70. These declarations by Defendant were then published by *The New York Daily News* to its subscribers in print and, in addition, appeared and appear today on that paper's website.
71. Extortion is a crime in every state in which every United States District Court of whose bar Plaintiff is a member is located and, moreover, it is a crime in every state in which every United States District Court in which Plaintiff is presently, ever has been or reasonably expects to be admitted pro haec vice is located.
72. Filing a lawsuit with no proof of its merit is a violation of Rule 11 of the Federal Rules of Civil Procedure that are applicable in every United States District Court in the country.
73. Defendant's aforesaid declarations accuse Plaintiff of having engaged in conduct incompatible with his profession.
74. Defendant made the aforesaid declarations maliciously and knowing them to be false or, alternatively, with reckless disregard of the truth because he knew (a) of the existence of the text exchange on April 6, 2008 in which he promised to pay Rubinsky weekly payments (Exhibit A hereto); (b) the existence of the canceled check drawn on the account of the Zayat Foundation made in partial performance of that promise (Exhibit B hereto); and (c) the existence of Rubinsky's sworn testimony

which as a matter of law in every state of the United States constitutes “proof.” In addition, Defendant had no reasonable basis to claim that either Rubinsky or Plaintiff was “insane.” Accordingly, Defendant’s declarations were demonstrably false and he knew them to be so.

75. The declarations by Defendant that Plaintiff had (a) committed a crime; (b) filed a lawsuit without any supporting evidence; and (c) was insane all constitute libel per se and entitle Plaintiff to recover general damages and punitive damages particularly given the malicious nature of Defendant’s conduct and the fact that at best he so recklessly disregarded the truth.

**AS AND FOR A SECOND CLAIM
(Libel per se)**

76. Plaintiff respectfully repeats and reavers the averments of paragraphs 1 through 75 hereof.

77. On or about May 21, 2015, Defendant made the following declarations to the Associated Press by telephone regarding the Breach of Contract action: “It’s a fraud. It’s a scam from A to Z. It’s total fiction. It’s a total lie. It is a case of blackmail by a criminal.”

78. Those declarations were subsequently republished widely, including in the *Daily Mail*, a newspaper of general circulation based London

enjoying wide circulation both in print and electronically throughout England, Wales, Scotland, Ireland and elsewhere.

79. Over the years Plaintiff has had the good fortune of being engaged to represent British, Irish and Scottish companies headquartered within the principal area of the circulation of the *Daily Mail*, e.g. CDC Group PLC v. Cogentrix Energy, Inc., 354 F. Supp2d 387 (SDNY 2005).
80. Fraud and blackmail are crimes in every state in which every United States District Court of whose bar Plaintiff is a member is located and, moreover, it is a crime in every state in which every United States District Court in which Plaintiff is presently, ever has been or reasonably expects to be admitted pro haec vice is located.
81. Filing an action that is a “total fiction” violates Rule 11 of the Federal Rules of Civil Procedure applicable in every United States District Court in the country.
82. Defendant’s aforesaid declarations accuse Plaintiff of having engaged in conduct incompatible with his profession.
83. Defendant knew that these accusations were false.
84. Accordingly, the aforesaid declarations made by Defendant to the Associated Press and widely republished, including without limitation in the *Daily Mail*, all constitute libel per se and entitle Plaintiff to recover

general damages and punitive damages particularly given the malicious nature of Defendant's conduct and the fact that at best he so recklessly disregarded the truth.

**AS AND FOR A THIRD CLAIM
(Libel per se)**

85. Plaintiff respectfully repeats and reavers the averments of paragraphs 1 through 84.

86. In an interview with Ken Kurson of the Observer.com, which was published on May 23, 2015, Defendant stated referring to the Breach of Contract Action: "It is worth noting that the suit suddenly appeared just after American Pharoah [sic] had won the Kentucky Derby and Preakness and will try for the first Triple Crown in 37 years at the Belmont Stakes next month."

87. The Observer article then stated: "Mr. Zayat pointed to the timing of the lawsuit as an effort by a dubious felon to capitalize on the sudden high profile of a long time breeder."

88. Zayat also stated to Mr. Kurson: "These [accusations] are fraud. I'm a victim of it. ...it's an insanity."

89. Defendant knew that the Breach of Contract action did not "suddenly appear" after the success of American Pharoah [sic], but it fact had been

filed in March 2014 long before most people (including Rubinsky and Plaintiff) had ever heard of his horse.

90. This blatant and knowing lie was made to lend credence to his knowingly false claim that the Breach of Contract Action was a fraud and the product of insanity.
91. This blatant and knowing lie was made to suggest that the Breach of Contract Action was filed as a result of the publicity that Defendant enjoyed as the result of the success of his horse, when in fact the Breach of Contract Action and the uncomplimentary information about Defendant that it reveals obtained such widespread notoriety only because his lawyers failed to seek permission to file the summary judgment motion papers under seal – a proposition to which Plaintiff and Mr. Rubinsky would have readily agreed as they had agreed to Defendant's abandoned request for a protective order.
92. In short, all of Defendant's libelous declarations represent a childish temper tantrum caused by the fact that he and his lawyers simply forgot to attempt to keep from the public what are in fact public records.
93. It is worthy of note that it is far from certain that the assigned District Judge would have granted an unopposed motion by Defendant to seal public records from the public and, furthermore, it is equally uncertain

whether a motion by the press to unseal such records given Defendant's stature as a public figure would not have been successful had the records been sealed in the first instance notwithstanding the lack of any opposition by Rubinsky or Plaintiff to their sealing.

94. Fraud is a crime in every state in which every United States District Court of whose bar Plaintiff is a member is located and, moreover, it is a crime in every state in which every United States District Court in which Plaintiff is presently, ever has been or reasonably expects to be admitted pro haec vice is located.
95. Defendant's aforesaid declarations accuse Plaintiff of having engaged in conduct incompatible with his profession.
96. Accordingly, Defendant's aforesaid declarations all constitute libel per se and entitle Plaintiff to recover general damages and punitive damages given the malicious nature of Defendant's conduct and the fact that at best he so reckless disregarded the truth.

WHEREFORE Plaintiff demands judgment on all three claims awarding him general and punitive damages in such sum as the Court determines fair and just, but in no event in an aggregate amount of less than \$10,000,000, together with the costs of this action and such other, further or different relief as to the Court may seem just and proper.

Dated: New York, New York
June 2, 2015

BAINTONLYNCH LLP

By: 

J. Joseph Bainton (JB-5934)
Attorneys for Plaintiff
767 Third Avenue
New York, NY 10017
Telephone: (212) 201-5705
email-bainton@baintonlynch.com

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38 Plaintiff demand a trial by jury of all issues triable by right by a jury.

Dated: New York, New York
June 2, 2015

BAINTONLYNCH LLP

By: 

J. Joseph Bainton (JB-5934)

Attorneys for Plaintiff

767 Third Avenue

New York, NY 10017

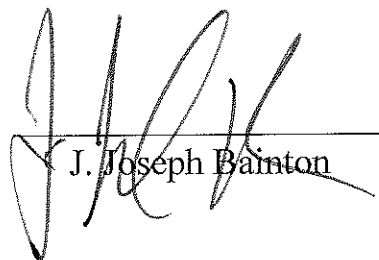
Telephone: (212) 201-5705

email-bainton@baintonlynch.com

Verification

J. Joseph Bainton hereby states under penalty of perjury that (a) he is the Plaintiff in the above-entitled action and (b) he has read the averments of the foregoing Verified Complaint and knows them to be true of his own personal knowledge except those averments stated upon information and belief and as to those averments he has a good faith belief based upon a good faith investigation that those averments are also true.

Dated: New York, New York
June 2, 2015



J. Joseph Bainton

Exhibit A

Text from Rubinsky:

Fry, it's **Sunday** morning about **8:30 a.m.** Congratulations on JBK. I have been sticking around, I was planning to go to Boston to visit a friend, then to Canada on some business deals. But I might not be able to go. I have feeling weak and lethargic. I had my blood pressure taken and it was very dangerously high. I have an appointment with a top cardiologist in the city on Monday afternoon. The stress, weight and pressure are killing me. Can you please find the time when you are not busy and feeling well to meet my friend Mark and his partner who used to be an ATT .. For Ladbrook to discuss Mexico and other potential BUS. I don't even have to there is say so. Also Jose Santos has strong ties with a horse owners and breeders in S. America Brazarg and especially Chille as he was born there.

I was also going to ask you if it is okay if you help me with **some of the balance that you promised** cause I don't know where I will be, plus I am just trying to pay all these bills. Also the doctor on Monday I have to pay up front. I know you are trying to help by budgeting this, **maybe you can give me postdated checks**, I just hate bothering you with this. Thanks for everything. I just want you to know that I am not a one-way street. I am trying really hard to find good deals. Thanks for everything.

TTr. 24:11-25:15. (Emphasis added.)

Among the messages from Zayat to Rubinsky, all of which show both the date and time at which they were received by Rubinsky, there is one – and only one – message that makes reference to the topic of postdated checks. It was sent on **Sunday, April 6, 2008 at 9:30 A.M.** It is therefore fair to infer that it was replying to Rubinsky's text sent approximately one hour earlier on the same Sunday. In his text Zayat stated:

Good morning Howie, feel better, take care of yourself I will meet your friends, give me their number and I will coordinate directly with them as my constantly changes my trip to celveland was not good, they got me more confused, one fucker hinks I have a rare form of cancer and they are all wrong **I will mail you checks every Friday, just give me an address, I will not postdate check, why??** No reasons, I am not obliged to pay anything is just helping you out, don't own a soul anythings, God knows how much I helped everone, I am not responible if your friends are crooks and robbed Y. Our money, I did my part and YOU KNOW that , , , I am more than generous, I love you and help you as a friend and a good decent Yiddish boy, good luck, so text me your friends contacts and I will call them sometime this week, and **give me address every Thursday to Fed Exp a [c]heck for you and I promised to.**

Tr. 13:20-15:4. (Emphasis and matter in brackets added.)

The transcript references are to the transcript of all text messages filed with Rubinsky's opposition to Zayat's motion for summary judgment as Exhibit C to the Bainton Declaration to which also was attached the complete deposition transcripts of Zayat and Rubinsky (Exhibits A and B).

Exhibit B

ZAYAT FOUNDATION
598 WARWICK AVENUE
TEANECK, NJ 07666-2927

65-72657212

Date: April 14, 2008

Pay to the
Order of

Donna Rubinsky

\$ 25,000

Twenty five thousand

~~XX~~ Dollars ~~100~~

SMITH BARNEY
SELECT CLIENT FMA ACCOUNT
800-873-7248
Cobank FSB Englewood Cliffs, NJ

[Signature]
1230 #0002500000

For

⑆021272655⑆ 1019125836⑆

5

⑆063107513⑆
WACHOVIA NA SERVICE CENTER
DALLAS TX 75266-0000

[Handwritten notes]
101 00 49 1928 29
Donna Rubinsky

Item Amount	Item Serial	Item R/T	Item Account	Item Sequence	Item Group	Item Type
25.000 00	00000000001230	002127265	000000001019125836	0003231779602		Transit

Wachovia Bank, N.A. certifies that the above image is a true and exact copy of the original item issued by the named customer, and was produced from original data stored in the archives of Wachovia Bank, N.A. or its predecessors

Exhibit C

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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HOWARD RUBINSKY,

Plaintiff,

-- against --

COMPLAINT

AHMED ZAYAT, a/k/a
EPHRAIM ZAYAT,

Defendant.

----- x

Plaintiff Howard Rubinsky, by his attorneys BaintonLynch LLP, for his complaint against Defendant Ahmed Zayat, a/k/a Ephraim Zayat, respectfully avers:

Jurisdiction and Venue

1. Plaintiff is a natural person and a citizen and resident of the State of Florida.
2. Defendant is a natural person and a citizen and resident of the State of New Jersey.
3. The amount in controversy in this action exceeds \$75,000, exclusive of interest and costs.
4. This Court therefore has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1332.
5. This Court has jurisdiction over the person of Defendant and venue is proper in this District because Defendant maintains his principal residence within it.

Statement of Facts

6. Beginning in or about 2003 Plaintiff and Defendant entered into a personal services contract pursuant to which Defendant was from time to time required to advance his own funds on behalf of Defendant and from time to time required to collect funds on behalf of Defendant.

7. For many years, Defendant timely reimbursed Plaintiff for cash he advanced on behalf of Defendant.
8. As of the end of 2005, Defendant owed Plaintiff \$2 Million.
9. Defendant made partial payments against that indebtedness.
10. The last partial payment in the amount of \$25,000 was made on April 14, 2008.
11. Defendant still owes Plaintiff \$1,650,000, together with interest accrued thereon.
12. Beginning in or about 2008 Defendant and his principal business Zayat Stables, LLC (“Stables”) began to experience financial difficulties.
13. In 2010 Stables filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Jersey.
14. At that time there was a heated dispute between Plaintiff and Stables on the one hand and Fifth Third Bank (the “Bank”) on the other hand regarding repayment of in excess of \$34 Million that the Bank had loaned Plaintiff and Stables.
15. The Bank had filed litigation in Ohio and an adversary proceeding in the United States Bankruptcy Court for the District of New Jersey.
16. On February 27, 2010, the *New York Times* published an article entitled *As Derby Favorite Soars, His Owner Stumbles* questioning whether Defendant was linked to illegal gambling in general and with two convicted felons, the so-called Jelinsky Brothers, in particular.
17. After he made his last payment on account, Defendant continued to promise Plaintiff that he would repay his indebtedness to him, but asked that Plaintiff, as a friend, be patient in light of the pressure Plaintiff was under due to the events described above.

18. Plaintiff and Stables have resolved their dispute with the Bank pursuant to a settlement agreement that demands stiff payments to reduce and ultimately pay off their indebtedness to the Bank through 2014.
19. Upon information and belief, nothing adverse has happened to Plaintiff based upon public speculation about illegal gambling.
20. But notwithstanding have duly made demands for payment, Defendant has made no further payments on account of his indebtedness to Plaintiff, much less paid his debt in full, since his last payment on April 14, 2008.
21. Given the fact that the end of the applicable period of limitations is fast approaching, Plaintiff has been left with no other alternative but to commence this action.

**AS AND FOR A FIRST CLAIM
(Breach of Contract)**

22. The averments of paragraphs 1 through 21 are respectfully repeated and reaverred as if fully set forth herein.
23. By reason of the foregoing, Defendant has breached his contract with Plaintiff by failing to reimburse him the remaining \$1,650,000 of the original \$2 Million that Plaintiff advanced on Defendant's behalf.
24. Plaintiff has therefore been damaged in the sum of \$1,650,000, together with interest thereon.

**AS AND FOR A SECOND CLAIM
(Unjust Enrichment)**

25. The averments of paragraphs 1 through 24 are respectfully repeated and reaverred as if fully set forth herein.

26. By reason of the foregoing, Defendant has been unjustly enriched in the sum of \$1,650,000, together with interest thereon.

WHEREFORE Plaintiff demands judgment as follows:

- (a) On his first claim in the sum of \$1,650,000, together with interest thereon;
- (b) On his second claim in the sum of \$1,650,000, together with interest thereon; and
- (c) Awarding him the costs of this action, together with such other, further or different relief as to the Court may seem just and proper.

Dated: New York, New York
March 11, 2014

BAINTON LYNCH LLP

By 

J. Joseph Bainton (JB-5934)

Attorneys for Plaintiff

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New York, NY 10017

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