

**IN THE COUNTY COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION**

JOHN HAMEL and JIQIAN XU-HAMEL,
his wife.
Plaintiffs,

V

Case No.: 09 12203

STEVEN RICHARD LOEWENTHAL,
Individually and as Trustee and Shareholder
of STEVEN RICHARD LOEWENTHAL, P.A.
an Administratively Dissolved Corporation,
Defendants.

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW, the Plaintiff, JOHN HAMEL AND JIQIAN XU-HAMEL, (Hereinafter
refen-ed to as "HAMEL" and "XU-HAMEL") by and through her undersigned counsel and
files this Complaint against STEVEN RICHARD LOEWENTHAL, Individually and as
TI'IIStee and Shareholder of STEVEN RICHARD LOEWENTHAL, P.A. an
Administratively Dissolved Corporation, pursuant to the applicable rules of procedure and
as grounds therefore states:

GENERAL ALLEGATIONS

1. This is an action for damages in an amount greater then Five 'Thousand Dollars (\$5,000.00)
but less then Fifteen Thousand Dollars (\$15,000) exclusive of Court
costs, interest and, attorney fees.
2. At all times relevant hereto, Plaintiffs, John Hamel and Jiqian Xu-Hamel were residents of
Tampa, Hillsborough County, Florida.
3. At all times relevant hereto, Defendant, STEVEN R. LOEWENTHAL

(hereinafter "LOEWENTHAL"), was a resident of Hillsborough County, Florida and is an attorney in good standing with the Florida Bar.

4. At all times relevant hereto, Defendant, STEVEN R. LOEWENTHAL, P.A. was an Administratively Dissolved Florida Professional Corporation in which LOEWENTHAL maintained the practice of law.

5. All matters and incidents set forth in this Complaint occurred in Tampa, Hillsborough County, Florida

6. On or about March 10, 2008 HAMEL and XU-HAMEL met with and retained LOEWENTHAL at the Starbucks Cafe on south Howard Avenue to retain LOEWENTHAL file an emergency injunction to take down the defamatory hate websites posted on the internet along with a complaint for damages for defamation, infliction of emotional distress and other Complaints against William Ambrose Trudelle III, MaxFinance.com, Inc. aka USHomeLoan.com, inc., a Florida corporation. TerraNet. Inc., a California corporation and, other potential defendants (hereinafter all collectively referred to as "Trudelle").

7. Trudelle's defamatory hate websites also defame The Florida Bar, The Florida Board of Bar Examiners. South Texas College of Law as well as other Florida attorneys and Judges including, but not limited to; Anthony Woodward, State Attorney Mark Ober, Michael Echevarria, Judge Gaston Fernandez, Judge Ronald Ficcarotta, Judge Wayne Timmerman and Judge Cliff Barnes.

8. In order to induce HAMEL and XU-HAMEL to retain LOEWENTHAL in the case LOEWENTHAL represented that he was close to some of the Judges and other attorneys victimized by Trudelle and could and would "sign them up" as co-plaintiffs in the litigation after obtaining the emergency injunction order.

9. In making this representation, LOEWENTHAL was very specific as to how he could approach Judge Fernandez and "sit down with him in his chambers" and obtain his retention as a co-plaintiff.

10. In order to induce HAMEL and XU-HAMEL to retain LOEWENTHAL in the case LOEWENTHAL represented that he is well experienced in the filing of emergency injunction petitions, handling tort claims and, defamation cases.

II. In order to induce HAMEL and XU-HAMEL to retain LOEWENTHAL in the case LOEWENTHAL represented that he was in the final phase of treatment at Healthcare Correction of Tampa (HCC), clean and sober and in remission with the disease of addiction to pain killer medications with the permission to engage in the private practice of law from Timothy J. Sweeney, .JD, CAP of the attorney rehabilitation program at HCC.

12. In order to induce HAMEL and XU-HAMEL to retain LOEWENTHAL in the case LOEWENTHAL falsely represented that he was in Good Standing with the Florida Bar with no pending Florida Bar Complaints against him.

13. In order to induce HAMEL and XU-HAMEL to retain LOEWENTHAL for the case LOEWENTHAL represented that he maintains an office at 209 South Howard Avenue, Tampa, }Florida and had the facilities and ability to litigate with Trudelle II well known litigious individual, his company, the web hosting company, as well as other potential Defendants against which HAMEL and XU-HAMEL may have claim(s).

14. LOEWENTHAL agreed that he would immediately obtain the emergency injunction ordering Trudelle to take down the defamatory websites and would file all

pleadings and instruments necessary therefore on or before Thursday, March 13, 2008.

IS. Based on LOEWENTHAL'S representations, HAMEL and XU-HAMEL retained LOEWENTHAL without a retainer agreement but with a check in the amount of \$2,500. (A redacted copy of the check is attached hereto as Exhibit "I").

16. HAMEL and XU-HAMEL agreed with LOEWENTHAL that the check was an initial retainer for filing the emergency injunction petition, the filing fee, service of process costs and against LOEWENTHAL'S hourly rate of \$200 per hour.

17. LOEWENTHAL cashed the check at the drawee financial institution two days later in due course with his finger print, endorsement and a Florida Identification Card.

18. At the time LOEWENTHAL accepted and cashed the check he had no intent nor ability to file the appropriate pleadings and instruments for the emergency injunction or the Complaint, obtain the retainer of the co-plaintiff professionals or, do the agreed work for which LOEWENTHAL received the check and proceeds from cashing same.

19. LOEWENTHAL'S intent was to take advantage of HAMEL and XU-HAMEL'S emotional distress and outrage at the discovery of Trudelle's defamatory hate websites and convert the \$2,500 received from HAMEL and XU-HAMEL to his own use.

20. LOEWENTHAL did not do any of the work for which he was retained and refused phone calls from and avoided HAMEL and XU-HAMEL

21. Only on investigation after the fact did HAMEL and XU-HAMEL discover that LOEWENTHAL'S cell telephone number provided was frequently disconnected, he had no office, his telephone, e-mail and facsimile lines were no longer in service, his mail was forwarded to another address and his Professional Association had been Administratively Dissolved by the Florida Division of Corporations.

22. On Thursday morning March 20, 2008, one week after he had agreed to file the pleadings and instruments for the emergency injunction petition HAMEL finally reached LOEWENTHAL on his cell phone number 813.361.0303 and LOEWENTHAL stated "I will call you right back" but LOEWENTHAL did not do so.

23. At about 9:45 AM March 21, 2008 HAMEL facsimiled a termination letter to LOEWENTHAL terminating LOEWENTHAL'S employment by HAMEL and XU-HAMEL and demanding the return of the \$2,500.

24. LOEWENTHAL spent the next hour drafting a form petition against Trudelle inappropriately leaving out XU-HAMEL as a party plaintiff as well as Trudelle's company as II party Defendant, containing other errors and e-mailed same to HAMEL at 10:44 AM, March 21, 2008 and revealing hi", new e-mail address for the first time.

25. LOEWENTHAL'S form petition against Trudelle was drafted after the termination but drafted in order to create some attempt at an arguable pretext for LOEWENTHAL to keep the \$2,500 received from HAMEL and XU-HAMEL.

26. LOEWENTHAL did not supply the form affidavits nor the Motion For Emergency Injunction nor other pleadings required for emergency injunctive relief.

27. To date LOEWENTHAL has failed to provide any accounting for the

funds received from HAMEL and XU-HAMEL.

28. HAMEL was, at all times material hereto, an Attorney in Good Standing in the State of Florida, regularly bills at the rate of \$220 per hour and LOEWENTHAL'S actions alleged in this complaint as to HAMEL and XU-HAMEL has made it necessary for Plaintiffs to proceed with this litigation and HAMEL is entitled to reasonable Attorney fees for the time incurred in this cause.

COUNT I - HOME SOLICITATION SALE RULE VIOLATION

29. This is an action for damages for Defendants' violation of Florida's Home Solicitation Sale Rule, Fla. Stat. §501.025, et seq.. in the amount of \$2,500 exclusive of Court of Court costs, interest and, attorney fees.

30. Plaintiffs, HAMEL and XU-HAMEL, repeat and re-allege paragraphs 2 - 28 of the general allegations as if reinstated herein in full.

31. LOEWENTHAL consulted with and was retained by HAMEL and XU-HAMEL at a location other than that which LOEWENTHAL maintained an office.

32. HAMEL and XU-HAMEL's retention of LOEWENTHAL was in regard to a personal matter and was, in part, a consumer credit transaction as to HAMEL and XU-HAMEL.

33. LOEWENTHAL failed to provide HAMEL and XU-HAMEL with a Notice of Right to Cancel the retainer agreement within three (3) days in violation of Fla. Stat. §§50J.025 and .021(1)(a) and (b) to the extent that the transaction constituted a consumer credit transaction.

34. LOEWENTHAL'S failure to provide HAMEL and XU-HAMEL with the

statutory Notice of Right to Cancel the retainer agreement tolled HAMEL and XU-HAMEL'S time period within which to cancel the retainer agreement until such time as it was actually canceled by HAMEL and XU-HAMEL.

35. LOEWENTHAL therefore has a statutory duty to refund HAMEL and XU-HAMEL the \$2,500 in accordance with the Home Solicitation Sale Rule.

36. LOEWENTHAL refused to refund HAMEL and XU-HAMEL the \$2,500 received by him Or any part thereof after demand for which was made therefore by HAMEL and XU-HAMEL.

37. HAMEL and XU-HAMEL have been damaged by LOEWENTHAL'S violation of the Home Solicitation Sale Rule by refusing to refund the \$2,500 Or the extent to which he was required to do so by Statute.

38. Pursuant to Fla. Stat. §501.621(4) HAMEL and XU-HAMEL are entitled to their attorney fees and costs incurred in their prosecution of LOEWENTHAL for refund of the retainer following LOEWENTHAL's refusal to refund the retainer paid, any part of the retainer paid or, his failure to even account for the retainer he received from HAMEL and XU-HAMEL.

WHEREFORE, Plaintiffs, JOHN HAMEL and XU-HAMEL, demand a Trial by Jury and pray for a Judgment of this Honorable Court Granting this Count of the Complaint and awarding HAMEL and XU-HAMEL the amount of \$2,500 or such amount as Plaintiffs are reasonably entitled, attorney fees incurred in this cause, along with taxable litigation costs for all of which let execution issue and, for such other and further relief for Plaintiffs in the interest of justice.

COUNT II - FRAUD IN THE INDUCEMENT

39. This is an action for damages for Defendants' tortuous fraud in the inducement in violation of the common law in an amount greater than \$5,000 but less than \$15,000 exclusive of Court costs, attorney fees and, interest.

40. Plaintiffs, HAMEL and XU-HAMEL, repeat and reallege paragraphs 2-28 of the general allegations as if reinstated herein in full.

41. Defendant LOEWENTHAL made the previously alleged false statements of material facts.

42. Defendant LOEWENTHAL had actual knowledge or should have known that the previously alleged falsified material factual misrepresentations were false.

43. Defendant LOEWENTHAL willfully, wantonly and intentionally made the previously alleged misrepresentations to induce HAMEL and XU-HAMEL to retain him for the case against Trudelle and to pay Defendant the \$2,500 initial payment.

44. HAMEL and XU-HAMEL relied on LOEWENTHAL'S false material factual misrepresentations in paying LOEWENTHAL \$2,500 for filing the emergency injunction and Complaint for damages against Trudelle.

45. HAMEL and XU-HAMEL suffered damages as a result of LOEWENTHAL'S fraud including the \$2,500 paid to LOEWENTHAL, economic damages resulting from the continued posting of the Trudelle hate websites and, other damages including but not limited to emotional distress and other non-economic damages resulting from the continued posting of the Trudelle hate websites.

WHEREFORE, Plaintiffs, JOHN HAMEL and JIQIAN XU-HAMEL, demand a Trial by Jury and pray for a Judgment of this Honorable Court Granting this Count of the

Complaint and awarding HAMEL and XU-HAMEL an amount greater than \$5,000 but less than \$15,000 or such amount as Plaintiffs are reasonably entitled, attorney fees incurred in this cause, along with taxable litigation costs for all of which let execution issue and, for such other and further relief for Plaintiffs in the interest of justice.

COUNT III- PROFESSIONAL MALPRACTICE

46. This is an action for damages for Defendants' professional malpractice in violation of the common law in an amount greater than Five Thousand Dollars (\$5,000) but less than Fifteen Thousand Dollars (\$15,000) exclusive of Court costs, attorney fees and, interest.

47. Plaintiffs, HAMEL and XU-HAMEL, repeat and reallege paragraphs 2-28 of the general allegations as reinstated herein in full.

48. LOEWENTHAL neglected his duty to HAMEL and XU-HAMEL to timely file a Petition and Complaint along with such other pleadings and instruments against Trudelle in order to seek an emergency injunction and for damages and to prosecute the case as well as his duties of as an attorney including, but not limited to, loyalty, communication and honesty to .

49. LOEWENTHAL's negligence was the proximate cause of HAMEL and XU-HAMEL's damages to wit: the continued posting of the Trudelle hate websites and, other damages including but not limited to emotional distress and other non-economic damages resulting from the continued posting of the Trudelle hate websites.

50. If LOEWENTHAL would have timely fulfilled his duties to HAMEL and XU-HAMEL, a judgment for damages against Trudelle would have been obtained and an injunction against Trudelle ordering the hate websites taken down from the internet

would have been granted.

51. HAMEL and XU-HAMEL were and are, at all times material hereto, ready willing and able to litigate against Trudelle and to fulfill their duty to pay LOEWENTHAL reasonable attorney fees, litigation and other reasonable costs associated with fighting Trudelle in the litigation to its conclusion.

52. HAMEL and XU-HAMEL suffered damages as a result of LOEWENTHAL'S professional negligence including the \$2,500 paid to LOEWENTHAL, economic damages resulting from the continued posting of the Trudelle hate websites and, other damages including but not limited to emotional distress and other non-economic damages resulting from the continued posting of the Trudelle hate websites.

WHEREFORE, Plaintiffs, JOHN HAMEL and LIQIAN XU-HAMEL, demand a Trial by Jury and pray for a Judgment of this Honorable Court Granting this Count of the Complaint and awarding HAMEL and XU-HAMEL an amount greater than \$5,000 but less than \$15,000 or such amount as Plaintiffs are reasonably entitled, attorney fees incurred in this cause, along with taxable litigation costs for all of which let execution issue and, for such other and further relief for Plaintiffs in the interest of justice.

COUNT IV - CONVERSION

53. This is an action for damages for Defendants' Conversion in violation of the common law in an amount less than Five Thousand Dollars (\$5,000) exclusive of Court costs, attorney fees and, interest.

54. Plaintiffs, HAMEL and XU-HAMEL, repeat and reallege paragraphs 2-28 of the general allegations as reinstated herein in full.

55, Plaintiffs, HAMEL and XU-HAMEL had exclusive ownership, control and possession of the subject \$2,500 in their subject demand credit union account.

56. Defendant, LOEWENTHAL, took the check from Plaintiff's and received \$2,500 cash upon presentment of same at the drawee credit union completely devoid of any intent to do any work and with the intent to do no work on behalf of Plaintiffs for said \$2,500.

57, HAMEL and XU-HAMEL suffered damages as a result of LOEWENTHAL'S conversion including the \$2,500 paid to LOEWENTHAL, economic damages resulting from the continued posting of the Trudelle hate websites and, other damages including but not limited to emotional distress and other non-economic damages resulting from the continued posting of the Trudelle hate websites.

WHEREFORE, Plaintiffs, JOHN HAMEL and QIAN XU-HAMEL, demand a Trial by Jury and awarding of a Judgment of this Honorable Court Granting this Count of the Complaint and awarding HAMEL and XU-HAMEL an amount greater than \$5,000 but less than \$15,000 or such amount as Plaintiffs are reasonably entitled, attorney fees incurred in this cause, along with taxable litigation costs for all of which let execution issue and, for such other such further relief for Plaintiffs in the interest of justice.

COUNT V - CIVIL THEFT

58. This is an action for damages for Defendants' violation of the Florida Civil Remedies For Criminal Practices Act, Fla. Stat. §772.101, et seq. in an amount greater than Five Thousand Dollars (\$5,000) but less than Fifteen Thousand Dollars (\$15,000) exclusive of Court costs, attorney fees and, interest.

59. Plaintiffs, HAMEL and XU-HAMEL, repeat and re-allege paragraphs 2-28

of the general allegations and paragraphs 55 - 57 of this Complaint as if reinstated herein in full.

60. At least thirty (30) days prior to the Trial on this Counterclaim Complaint, CPI served LEWIS with its Notice of Civil Theft as required by Fla. Stat. §772.1 1.

61. Pursuant to by Fla. Stat. §772.11, HAMEL and XU-HAMEL are entitled to three fold damages against LOEWENTHAL upon prevailing on this civil theft claim.

62. Pursuant to Fla. Stat. Ch. 7'12, HAMEL and XU-HAMEL are entitled to reasonable attorney fees upon prevailing on this civil theft claim against LOEWENTHAL.

WHEREFORE, Plaintiffs, JOHN HAMEL and QIAN XU-HAMEL, demand a Trial by Jury and pray for a Judgment of this Honorable Court Granting this Count of the Complaint and awarding HAMEL and XU-HAMEL an amount greater then \$5,000 but less then \$15,000 or such amount as Plaintiffs are reasonably entitled, attorney fees incurred in this cause, along with taxable litigation costs for all of which let execution issue and, for such other and further relief for Plaintiffs in the interest of justice.

COUNT VI - VIOLATION OF FLORIDA UNFAIR AND DECEPTIVE TRADE PRACTICES ACT

63. This is an action for damages for Defendants' violation of the Florida Unfair and Deceptive Trade Practices Act, Fla. Stat. §501, Part II ("FDUTPA") in an amount greater then Five Thousand Dollars (\$5,000) but less then Fifteen Thousand Dollars \$15,000) exclusive of Court costs, attorney fees and, interest.

64. Plaintiffs, HAMEL and XU-HAMEL, repeat and re-allege paragraphs 2.28 of the general allegations as if reinstated herein in full.

65. Fla. Stat. §501.204(1) of FDUTPA makes "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in conduct of any trade or commerce" unlawful.

66. Fla. Stat. §501.211 grants a private right of action to persons like HAMEL and XU-HAMEL who have been injured or damaged a result of violations of FDUTPA.

67. FDUTPA expresses a primary policy "[t]o protect the consuming public...from those who engage in unfair methods of competition, or unconscionable, deceptive or, unfair acts or practices in the conduct of trade or commerce" and that as a rule of construction, FDUTPA "shall be construed liberally to promote [such] policies...."

68. At all times material hereto, LOEWENTIW." engaged in "trade or commerce" within to State of Florida as defined in Fla. Stat. §501.203(8).

69. LOEWENTHAL is subject to the provisions of FDUTPA.

70. At all times material hereto, LOEWENTHAL engaged in unfair and deceptive acts or practices in the conduct of his/its trade or commerce in violation of Fla. Stat. §501.204(1) as specifically alleged in this Complaint.

71. All of the acts and practices engaged in by LOEWENTHAL as specifically alleged in this Complaint are and were unfair and deceptive to HAMEL and XU-HAMEL in violation of the Florida Unfair and Deceptive Trade Practices Act.

72. HAMEL and XU-HAMEL suffered damages as a result of LOEWENTHAL'S violation of the Florida Unfair and Deceptive Trade Practices Act including the \$2,500 paid to LOEWENTHAL, economic damages resulting from the

continued posting of the Trudelle hate websites and, other damages including but not limited to emotional distress and other non-economic damages resulting from the continued posting of the Trudelle hate websites.

WHEREFORE, Plaintiffs, JOHN HAMEL and JIQIAN XU-HAMEL, demand a Trial by Jury and pray for a Judgment of this Honorable Court Granting this Count of the Complaint and awarding HAMEL and XU-HAMEL an amount greater than \$5,000 but less than \$15,000 or such amount as Plaintiffs are reasonably entitled, attorney fees incurred in this cause, along with taxable litigation costs for all of which let execution issue and, for such other and further relief for Plaintiffs in the interest of justice.

COUNT VII BREACH OF CONTRACT

73. This is an action for damages for Defendants' Breach of Contract in violation of the common law in an amount less than Five Thousand Dollars (\$5,000) exclusive of Court costs, attorney fees and, interest.

74. Plaintiffs, HAMEL and XU-HAMEL, repeat and re-allege paragraphs 2-28 of the general allegations as if reinstated herein in full.

75. The check given to LOEWENTHAL and endorsed, presented and cashed by Defendant constitutes a contract for providing HAMEL and XU-HAMEL the legal services alleged in this in this Complaint.

76. LOEWENTHAL thereby assumed the contractual duty to HAMEL and XU-HAMEL to timely file a Petition and Complaint along with such other pleadings and instruments against Trudelle in order to seek an emergency injunction and for damages and to prosecute the case as well as his duties as an attorney, including but limited to, loyalty, communication and honesty.

77. LOEWENTHAL breached his duty to HAMEL and XU-HAMEL to timely file a Petition and Complaint along with such other pleadings and instruments against Trudelle in order to seek an emergency injunction and for damages and to prosecute the case as well as his duties as an attorney, including but not limited to, loyalty, communication and honesty.

78. HAMEL and XU-HAMEL suffered damages as a result of LOEWENTHAL's breach of his contractual duties including the \$2,500 paid to LOEWENTHAL, economic damages resulting from continued posting of the Trudelle hate websites and, other damages including but not limited to emotional distress and other non-economic damages resulting from continued posting of the Trudelle hate websites.

WHEREFORE, Plaintiff's John Hamel and JIQUAN XU-HAMEL, demand a Trial by Jury and pray for a Judgment of this Honorable Court Granting this Count of the Complaint and awarding HAMEL and XU-HAMEL and amount less than \$5,000 or such and amount as Plaintiffs are reasonable entitled, attorney fees incurred in this cause, along with taxable litigation costs for all of which let execution issue and, for such other and further relief for Plaintiffs in the interest of justice.

Respectfully Submitted,

By _____

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