

See comment regarding question.

IN THE CIRCUIT COURT OF COUNTY, MISSISSIPPI

PLAINTIFF

VS.

CIVIL ACTION NO.

DEFENDANT

COMPLAINT

COMES NOW , Plaintiff in the above styled cause, by and through counsel, and files this civil action against , Defendant, and in support thereof would show the following:

PARTIES

1.

Plaintiff, (hereinafter " "), is a Mississippi business corporation with its principal place of business at , County, Mississippi.

2.

Defendant, (hereinafter " ") is an adult resident of County, Mississippi, who may be served with process at his/her residence , , Mississippi.

FACTUAL BACKGROUND

3.

On or about , , (hereinafter " ") began doing business as a sole proprietor under the name . At the outset, was engaged primarily in the business of providing forklift batteries and related products to various products throughout and Mississippi. As his/her customer base grew, saw the opportunity to expand his/her business to include forklift maintenance and repair.

4.

After securing commitments from numerous customers that they would allow to

provide maintenance and repair to their forklifts, sought to hire a forklift technician/mechanic. One of the persons responding to 's efforts to locate a forklift technician/mechanic was . Ultimately, decided to hire on an at-will basis and agreed to pay him/her an hourly wage for work performed.

5.

As the business grew and expanded, constantly requested that allow him/her to "own a piece of the rock" and repeatedly offered to buy a portion of the business. In , , was in need of additional capital and discussed with the possibility of purchasing an ownership interest in the business. and ultimately agreed that would loan the sum of \$ , evidenced by a Promissory Note. and further agreed that the business would be incorporated effective , , with and his/her husband/wife receiving % of the stock in the corporation, in exchange for all of the assets and liabilities of the sole proprietorship, and with to receive % of the stock in exchange for cancellation of 's \$ Promissory Note.

6.

was formed as a Mississippi corporation effective , , with receiving shares, 's husband/wife, , receiving shares, received shares of in exchange for cancellation of the \$ Promissory Note. The corporation was further organized with , his/her husband/wife, and being named the Board of Directors, and with being elected President, being elected Vice-President, and being elected Secretary-Treasurer.

7.

In addition to serving in his/her capacity as an officer and director of the corporation, was also hired as service manager for .

8.

In , , in his/her capacity as president of , terminated 's employment as service manager due to 's mismanagement of the service department,

disruptive personnel practices and customer dissatisfaction.

9.

Immediately upon termination and in total disregard for his/her duties as an officer, director and shareholder of \_\_\_\_\_, \_\_\_\_\_ tortiously and intentionally enticed \_\_\_\_\_ of \_\_\_\_\_'s forklift technicians/mechanics to terminate their employment with \_\_\_\_\_ and to come to work for \_\_\_\_\_ in competition with \_\_\_\_\_. At the same time, \_\_\_\_\_ contacted various customers of \_\_\_\_\_ in an attempt to convince such customers not to do business with \_\_\_\_\_ but instead, to do business with \_\_\_\_\_. \_\_\_\_\_ also intentionally and tortiously made untrue and derogatory comments regarding \_\_\_\_\_ and otherwise attempted to undermine and destroy the relationships which \_\_\_\_\_ had with its customers and to otherwise injure \_\_\_\_\_'s business reputation.

10.

As a result of \_\_\_\_\_'s actions in enticing three of \_\_\_\_\_'s employees to cease their employment, in enticing or attempting to entice \_\_\_\_\_'s customers to cease doing business with \_\_\_\_\_ and otherwise disparaging \_\_\_\_\_'s name, \_\_\_\_\_ has suffered financial losses, as well as loss of business reputation.

11.

Approximately \_\_\_\_\_ after \_\_\_\_\_ was terminated, \_\_\_\_\_'s husband/wife contacted \_\_\_\_\_ in his/her capacity as President of \_\_\_\_\_ and requested that \_\_\_\_\_ give \_\_\_\_\_ a second chance. Reluctantly, \_\_\_\_\_ agreed and \_\_\_\_\_ was rehired as service manager for beginning \_\_\_\_\_, \_\_\_\_\_.

12.

In \_\_\_\_\_, \_\_\_\_\_, in his/her capacity as President of \_\_\_\_\_, discovered that \_\_\_\_\_ was or had been engaging in conduct adverse to the best interest of \_\_\_\_\_. In particular, it was discovered that \_\_\_\_\_ had tortiously and intentionally enticed or attempted to entice various employees of \_\_\_\_\_ to leave employment, had tortiously and intentionally enticed or attempted to entice customers not to do business with \_\_\_\_\_ or to allow \_\_\_\_\_ to perform repairs at night and on weekends for his/her own benefit, and otherwise engaged in conduct which did or was

intended to damage the economic viability of .

13.

In , it was also discovered that broke into 's locked office and locked filing cabinet and removed therefrom confidential and proprietary information pertaining to 's customers, contracts and other business records.

14.

At all relevant times, had an obligation as an officer, director and service manager of to conduct himself/herself in a manner, at all times, consistent with the best interest of .

#### COUNT ONE

#### BREACH OF FIDUCIARY DUTY

15.

The allegations and enfranchise of Paragraphs 1 through 15 set forth above are realleged in full and incorporated herein by reference.

16.

has a fiduciary duty and is required to deal with using utmost good faith, undivided loyalty and with inherent fairness. has breached his/her fiduciary duty to and has engaged in conduct contrary to the best interest of .

#### COUNT TWO

#### MISAPPROPRIATION OF TRADE SECRETS AND PROPRIETARY DATA

17.

The allegations and enfranchise of Paragraphs 1 through 15 set forth above are realleged in full and incorporated herein by reference.

18.

has misappropriated, misused and otherwise, for his/her own illegal use, the trade

secrets and proprietary data of .

COUNT THREE

UNJUST ENRICHMENT

19.

The allegations and enfranchise of Paragraphs 1 through 15 set forth above are realleged in full and incorporated herein by reference.

20.

has been unjustly enriched by the diversion of materials and/or supplies and other benefits to himself/herself at the expense of , and should be required to pay the amount diverted from it or the value of such materials, supplies and benefits.

COUNT FOUR

PUNITIVE DAMAGES

21.

The allegations and enfranchise of Paragraphs 1 through 15 set forth above are realleged in full and incorporated herein by reference.

22.

The actions of in breaching his/her fiduciary duty, in intentionally and tortiously interfering with 's employment contracts and in intentionally and tortiously interfering with 's customer relations, were done knowingly, willfully and intentionally or with reckless disregard for the rights of , evidencing bad faith on the part of and entitling to punitive damages. sues for punitive damages in the amount of \$ in order to punish for his/her actions and to deter such activities by him/her in the future.

COUNT FIVE

INTENTIONAL INTERFERENCE WITH BUSINESS

23.

The allegations and enfranchise of Paragraphs 1 through 15 set forth above are realleged

in full and incorporated herein by reference.

24.

At all relevant times hereto, \_\_\_\_\_ knew that \_\_\_\_\_ was engaged in the business of selling forklift batteries, accessories and other products, and providing forklift maintenance and repair services. \_\_\_\_\_ was aware that any contacts, persuasion, influence, inducement or coercion exerted upon \_\_\_\_\_'s customers would result in a loss of termination of business to \_\_\_\_\_, thereby causing \_\_\_\_\_ injury. The actions of \_\_\_\_\_ were intentional in nature, were calculated to cause damage to the business of \_\_\_\_\_, were reformed with the unlawful purpose of causing such damage and loss without any right or justifiable cause on the part of \_\_\_\_\_, and resulted in actual damages to \_\_\_\_\_, thereby constituting an intentional interference with business relations and pursuits of \_\_\_\_\_. These actions were performed and exercised by \_\_\_\_\_ during a time in which he/she was certain or substantially certain that his/her actions would result in such interference with the business relations and pursuits of \_\_\_\_\_.

25.

As a direct and proximate result of the tortious actions undertaken and performed by \_\_\_\_\_, \_\_\_\_\_ has suffered damages and injury to its business and is entitled to recover from \_\_\_\_\_ to the extent of the damages suffered by it.

#### COUNT SIX

#### INTENTIONAL INTERFERENCE WITH EMPLOYMENT RELATIONS

26.

The allegations and enfranchise of Paragraphs 1 through 15 set forth above are realleged in full and incorporated herein by reference.

27.

\_\_\_\_\_ was aware that any contacts, persuasion, influence, inducement or coercion exerted upon \_\_\_\_\_'s key employees to terminate or otherwise cease their employment with \_\_\_\_\_. These employees were needed for \_\_\_\_\_ to provide adequate and competent services to \_\_\_\_\_.

its customers and to otherwise maintain its customer relations, thereby causing injury. The actions of were intentional in nature, were calculated to cause damage to the business of , were reformed with the unlawful purpose of causing such damage and loss without any right or justifiable cause on the part of , and resulted in actual damages to , thereby constituting an intentional interference with employee relations and pursuits of . These actions were performed and exercised by during a time in which he/she was certain or substantially certain that his actions would result in such interference with the employee relations and pursuits of .

28.

As a direct and proximate result of the tortious actions undertaken and performed by , has suffered damages and injury to its business and is entitled to recover from to the extent of the damages suffered by it.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, prays that summons is issued against the Defendant, , that the Defendant be cited to appear and answer herein, that on a final hearing hereof, Plaintiff have judgment entered against the Defendant in the amount of \$ in actual damages and in the amount of \$ in punitive damages, plus reasonable attorneys fees and all costs of Court incurred herein.

AND, Plaintiff, prays for such other general or special relief to which it may be entitled under the circumstances.

THIS, THE DAY OF , 20 .

Respectfully submitted,

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Attorney for

Of counsel:

Telephone:  
MSB #  
Attorney for