

STATE OF NORTH CAROLINA
COUNTY OF UNION

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2023 JAN 10 PH U: 01

Case No. 23-CVS- \ QQ

BIGELOW CORPORATION AND
SARAH BIGELOW,

UNION CO., C.S.C.

BY
Plaintiffs

-C,CQS

v.

COMPLAINT

HOUNDS TOWN USA, LLC,
Defendant

Plaintiffs, complaining of the acts of the Defendant, alleges and states:

PARTIES

1. Plaintiff Bigelow Corporation ("Bigelow Corp") is a corporation organized and existing under and by virtue of the laws of the state of North Carolina, with its principal place of business in Mecklenburg County, North Carolina.
2. Plaintiff Sarah Bigelow is a citizen and residents of Mecklenburg County, North Carolina.
3. Defendant Hounds Town USA, LLC is a limited liability company organized and existing under and by virtue of the laws of the state of Florida, with its principal place of business in Orange County, Florida.

JURISDICTION AND VENUE

4. This Court has original civil jurisdiction pursuant to NC Gen. Stat. § 7A-243.
5. This Court has personal jurisdiction over the Defendant pursuant to N.C.G.S. § 1-75.4.
6. Venue lies in this Court pursuant to NC. Gen. Stat. § 1-82.

FACTUAL ALLEGATIONS

7. Allan Bigelow, president of Bigelow Corp, was interested in Defendant's franchise business model that involves owning and operating doggie daycares, contacted Defendant about opening a franchise location in North Carolina.

8. During the franchise information disclosure phase, Mr. Bigelow conveyed to several members of Defendant's management team, including Mike Gould, Defendant's owner, that neither he or wife, Sarah Bigelow, vice president of Bigelow Corp., did not have any construction experience, generally, and franchise location construction experience, specifically.

9. Mr. Gould advised Mr. Bigelow of Defendant's buildout process, whereby a franchisor has two options for constructing a franchise: serve as their own project manager or hire a private contractor.

10. Mr. Gould identified Edward Bharath ("Bharath"), owner of Marathi Enterprise, LLC, as Defendant's construction manager and as a competent, capable, and highly skilled contractor.

11. At all relevant times, Mr. Gould held Bharath out as Defendant's construction manager, key member of Defendant's management team, and authorized to act on Defendant's behalf.

12. Mr. Gould strongly advised Mr. Bigelow that the use of Defendant's construction manager as his contractor was an exceptional ideal due to his complete lack of construction experience.

13. Further, Mr. Gould repeatedly gave assurances that he and his management team will guide Mr. Bigelow through the buildout process and will doing everything necessary to ensure that the Bigelows will have a successful opening.

14. Mr. and Mrs. Bigelow, in reliance on Mr. Gould's representations, executed a Franchise Agreement ("Agreement") with Defendant on May 29, 2020.

15. Shortly after execution of the Agreement, Defendant presented Mr. Bigelow with its Buildout Manual ("Manual").

16. The Manual affirmed Mr. Gould's representations concerning a franchisor's buildout options and using Defendant's construction manager as a contractor.

17. On or about January 25, 2021, Mr. Gould conducted a site visit at 2613 Hayes Road, Monroe, NC 28110 ("Franchise Location") with the Bigelows to approve the proposed Franchise Location.

18. During the visit, Mr. Gould counseled the Bigelows to use Bharath as their contractor.

19. Specifically, Mr. Gould advised the Bigelows that, "If I was a franchisee, I would hire Ed [Bharath] and take a hands-off approach, and, on opening day, Ed [Bharath] hands me the keys to a brand-new franchise building."

20. In response, Mr. Bigelow stated, "That is what we are looking for." Mr. Gould's response was, "Then Ed [Bharath] is your guy."

21. On or about February 20, 2021, Plaintiffs executed a construction contract with Bharath to buildout the franchise location.

22. The Bigelows learned, contemporaneous with the execution of the Bharath construction contract, that Bharath was not a North Carolina licensed contractor and Bharath would need to hire a North Carolina licensed contractor to perform the work while Bharath managed the project.

23. At all relevant times, Defendant's management team and Mr. Gould knew that Bharath was not authorized to be a construction contractor in North Carolina.

24. On or about March 29, 2021, Defendant's management team inexplicably advised Mr. Bigelow that Mike Nagle was hired as their "construction coordinator" without providing any information as to why Mr. Nagle was hired. The Bigelows believe, upon information and belief, that this was done to mitigate severe mismanagement and contractor issues caused by Bharath.

25. On or about April 5, 2021, Mr. Bigelow contacted Mr. Gould after Mr. Bigelow received an email from Bharath whereby Bharath notified Mr. Bigelow that he was no longer affiliated with Defendant as Defendant's construction manager. Mr. Gould advised Mr. Bigelow that Bharath "wanted to do his own thing" but there were no issues between Defendant and Bharath.

26. Additionally, during conversation on April 5, 2021, Mr. Gould told Plaintiff that it "could not go wrong with Ed [Bharath]".

27. From on or about March 29, 2021, to on or about July 1, 2021, Plaintiffs had myriad, critical construction issues with Bharath, including but not limited to: (1) obtaining proper permits from Union County; (2) repeated permit denials due to Bharath not being in compliance with county building codes and regulations; (3) fraudulent, falsified contractor bids; (4) cost overruns; (5) fraudulent overpricing; (6) excessive and unexplained construction delays; (7) cost overruns; (8) overpayment for materials and broken promises for reimbursement; and (9) professional incompetence.

28. Mr. Bigelow appealed to Defendant's management team and Mr. Gould to intervene with resolving the issues with Bharath, to no avail.

29. On or about May 13, 2021, Plaintiffs notified Mr. Gould that, due to the issues with Bharath, they wanted to cancel the Agreement. Mr. Gould's response was that he will be contact them about an exit strategy. Plaintiffs were never contacted by about said exit strategy.

30. On or about May 21, 2021, Plaintiffs signed a construction contract directly with Shaheid Hasan. Mr. Hasan is the North Carolina licensed contractor retained by Bharath to perform the buildout construction.

31. At all relevant times Defendant's management team and Mr. Gould knew that Mr. Hasan was retained by Bharath to perform the buildout construction.

32. Sometime in June of 2021, the Plaintiffs learned that, upon information and belief, beginning in the first quarter of 2021, Defendant has instituted the following remediation efforts to streamline the buildout process: (1) stopped offering Bharath's services; (2) retained Bannon Construction ("Bannon") to perform franchise construction buildouts; and (3) hired a real estate team to assist in the site selection process.

33. Mr. Bigelow, due to a severe lack of progress with the construction buildout, contacted a member of Defendant's management to request using Bannon to finish the construction buildout. Said member declined Mr. Bigelow's request.

34. On or about August 13, 2021, the Plaintiffs became aware that Jamie Enders, franchisee located in Henderson, Nevada, had similar issues with Bharath. Plaintiffs contacted Mr. Enders about his experience with Bharath.

35. Mr. Enders noted that, upon the recommendation of Mr. Gould, he hired Bharath as his contractor in March of 2020 and had grave issues with Bharath immediately.

36. According to Mr. Enders, Bharath caused substantial issues related to fraud, cost overruns, and the construction buildout process that almost led to Mr. Enders suing Defendant.

37. Upon information and belief, Plaintiffs have learned that there are at least three other North Carolina franchisees who, upon Mr. Gould's recommendation, hired Bharath as their construction manager and had or are currently suffering significant construction and financial issues as well under Bharath.

38. Plaintiffs suffered significant delays and financial losses in opening the franchise location due to Defendant and Bharath's actions and Plaintiffs were not able to open the Franchise Location until over two years after Plaintiffs executed the Agreement.

39. On or about October 18, 2022, Defendant terminated its Agreement with Plaintiff.

FIRST CLAIM FOR RELIEF
BREACH OF CONTRACT- EXPRESS, IMPLIED, OR, IN THE ALTERNATIVE,
QUANTUM MERUIT

40. The allegations set forth in Paragraphs 1 through 39 are realleged and incorporated by reference as if fully set forth herein.

41. Plaintiffs and Defendant entered into a valid and legally enforceable Agreement.

42. Plaintiffs fully performed under the Agreement.

43. Defendant breached the Agreement by failing to perform the obligations it premised related to the construction buildout of the Franchise Location.

44. Plaintiffs suffered damages because of Defendant's breach.

SECOND CLAIM FOR RELIEF
UNJUST ENRICHMENT

45. The allegations set forth in Paragraphs 1 through 44 are realleged and incorporated by reference as if fully set forth herein.

46. Defendants benefitted from the Agreement by receiving payments under the Agreement.

47. It would be inequitable for Defendant to enjoy the benefit of retaining Plaintiffs' funds while Plaintiff did not get what it bargained for under the Agreement.

THIRD CLAIM FOR RELIEF
PUNITIVE DAMAGES

48. The allegations set forth in Paragraphs 1 through 47 are realleged and incorporated by reference as if fully set forth herein.

49. Defendant has engaged in a pattern of systematically reaping improper and illicit profits from North Carolina business owners, including Plaintiffs. Such conduct on the part of Defendant was willful and knowing.

50. Plaintiffs are entitled to recover punitive damages from Defendant on account of Defendant's unscrupulous, overreaching willful, and deceptive misconduct.

FOURTH CLAIM FOR RELIEF
UNFAIR AND DECEPTIVE TRADE PRACTICES

51. The allegations set forth in Paragraphs 1 through 50 are realleged and incorporated by reference as if fully set forth herein.

52. At all times relevant, Defendant was engaged in commerce in the state of North Carolina.

53. Defendant's above-described errors, omissions, misrepresentations, and breaches adversely affect commerce in the state of North Carolina.

54. Defendant's above-described errors, omissions, misrepresentations, and breaches constitute unfair and deceptive trade practices affecting commerce and offending public policy.

55. Defendant's above-described errors, omissions, misrepresentations, and breaches constitute unfair trade practices under N C. Gen. Stat. § 75-1.1 *et seq.*

56. As a direct result of Defendant's above-described errors, omissions, misrepresentations, and breaches, Plaintiffs have been damaged for \$600,000 and are entitled to recover at least that amount.

57. Plaintiff is further entitled to have the damages trebled pursuant to NC. Gen. Stat. § 75-16.

58. Plaintiff is also entitled to an award of attorney's fees pursuant to NC. Gen. Stat. § 75-16.1 to be paid for and secured by Defendant.

FIFTH CLAIM FOR RELIEF
PIERCING THE CORPORATE VEIL, ALTER EGO, AND MERE INSTRUMENTALITY

59. The allegations set forth in Paragraphs 1 through 58 are realleged and incorporated by reference as if fully set forth herein.

60. Plaintiffs are informed and believe and therefore allege that Defendant and Mr. Gould have an agreement, express or implied, to carry out a single business venture with some mechanism of sharing of the profits, and have, for all intents and purposes, an equal right of control of the means employed to carry out the venture.

61. Plaintiffs are informed and believe and therefore allege that Defendant and Mr. Gould have no separate mind, will or existence of their own, but rather exist and operate as mere alter ego of each other under the name Hounds Town USA, LLC.

62. Defendant used such control and domination in the performance of the wrongs perpetrated against Plaintiffs and the violations of duties, regulations and Statutes as stated herein and to be proven at trial. These wrongs and breaches of duty were the proximate causes of the injuries to Plaintiffs herein.

63. Defendant used the corporate form as a mere shield for its activities in violation of duties, regulations and statutes as stated herein and to be proven at trial.

64. Defendant's corporate veil should be disregarded, and Mr. Gould should be held personally responsible for any judgment rendered against Defendant.

**SIXTH CLAIM FOR RELIEF
FRAUD**

65. The allegations set forth in Paragraphs 1 through 64 are realleged and incorporated by reference as if fully set forth herein.

66. Defendant falsely and fraudulently made representations of material fact by holding Bharath out as Defendant's construction manager and advising Plaintiff that Bharath was a competent, capable, and highly skilled construction manager and contractor.

67. Defendant concealed the fact that it had knowledge of Bharath's major failings in providing construction services to other franchisees prior to Plaintiffs executing the Agreement as evidenced by Mr. Enders complaints to Mr. Gould.

68. Defendant's false and fraudulent representations were calculated and intended to induce Plaintiffs to execute the Agreement.

69. Plaintiffs were deceived by Defendant's false and fraudulent misrepresentations and executed the Agreement.

70. Plaintiffs reasonably relied upon Defendant's false and fraudulent representations to its detriment for \$600000.

71. Upon information and belief, Defendant and Bharath conspired, collaborated, and acted in concert to defraud Plaintiffs as set forth above.

72. As a direct and proximate cause of Defendant's fraudulent misconduct, Plaintiffs suffered damages in an amount to be determined by a jury, but at least equal to \$600,000.

73. Upon information and belief, Defendant's conduct was fraudulent, willful, wanton, and malicious.

**SEVENTH CLAIM FOR RELIEF
NEGLIGENT MISREPRESENTATION**

74. The allegations set forth in Paragraphs 1 through 73 are realleged and incorporated by reference as if fully set forth herein.

75. Defendant supplied information to Plaintiffs concerning the competency of Bharath as a construction manager and contractor.

76. Defendant intended for the Plaintiffs to rely on that information.

77. The information, based upon information and belief, was false.

78. Defendant failed to use reasonable care or competence in obtaining or communicating the information.

79. Plaintiffs relied on the information by executing the Agreement.

80. The reliance caused severe financial damage to Plaintiffs.

EIGHTH CLAIM FOR RELIEF NEGLIGENCE

81. The allegations set forth in Paragraphs 1 through 80 are realleged and incorporated by reference as if fully set forth herein.

82. Defendant was under a contractual duty to exercise reasonable care in conducting its business with Plaintiff.

83. Defendant knew or should have known that Bharath lacked the skill, competence, and expertise to serve as a construction manager and contractor to Plaintiff and that Plaintiff would likely be seriously injured financially if Defendant did not exercise reasonable care in making sure that Bharath had the skills, competence, and expertise in completing franchise construction buildouts.

84. Defendant was negligent and breached its duty of care owed to Plaintiff in advising Plaintiff to retain Bharath as its contractor.

85. As a direct and proximate result of Defendant's negligence, Plaintiff suffered severe financial injury and has been damaged for more than \$10,000.

NINETH CLAIM FOR RELIEF NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

86. The allegations set forth in Paragraphs 1 through 85 are realleged and incorporated by reference as if fully set forth herein.

87. Defendant engaged in negligent conduct by advising Plaintiff Sarah Bigelow that Bharath was competent, capable, and highly skilled construction manager and contractor.

88. Plaintiff Sarah Bigelow reasonably relied on Defendant's representations concerning Bharath and executed the Agreement and a separate contract with Bharath.

89. It was reasonably foreseeable that Bharath's incompetence would cause Plaintiff Sarah Bigelow severe financial injury.

90. Defendant's conduct did, in fact, cause Plaintiff Sarah Bigelow severe emotional distress to the point that she is receiving ongoing mental health treatment from a licensed therapist.

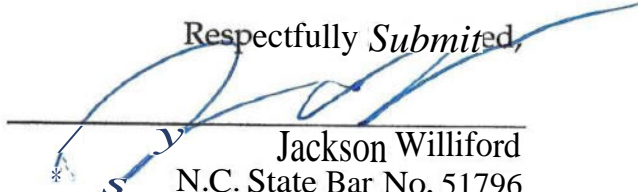
PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays the Court that:

1. That the Court enter judgment for Plaintiff against Defendant, for:
 - a. Compensatory damages for more than \$25,000.
 - b. Costs and reasonable attorney fees pursuant to N.C. Gen. Stat. §§ 75-16.1 and 20-348.
 - c. Treble damages pursuant to N.C. Gen. Stat. §§ 75-16 and 20-348; and
 - d. Punitive damages for more than \$10,000.00 pursuant to N.C. Gen. Stat. § ID-1 et seq.
 - e. Interest accruing from May 29, 2020, at the rate of 8% per annum.
2. That all issues of fact be tried to a jury.
3. That the interest and costs of this be taxed to Defendant; and
4. It recovers any further relief that the Court deems appropriate.

This the 10th day of January 2023.

Respectfully *Submitted,*



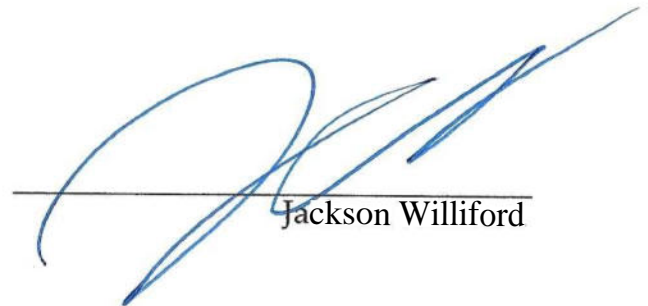
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on January 10, 2023, he has served a copy of the foregoing Complaint by to all counsel of record as an attachment to an electronic correspondence and by placing a copy of the same in a postpaid envelope addressed to the persons hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and its contents in the United States mail to:

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