

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

EDWARD B. FLINK and
FLINK SMITH LAW LLC,
Plaintiffs,

**VERIFIED
COMPLAINT**

v

JAY A. SMITH, JENNIFER L.
DOMINELLI and SMITH,
DOMINELLI & GUETTI LLC,
Defendants.

Index No.

Plaintiffs Edward B. Flink (“Flink”) and Flink Smith Law LLC (“FSL”) by and through their attorneys, McNamee Lochner P.C., for their verified complaint hereby state as follows:

NATURE OF THIS ACTION

1. This action arises out of a plan, developed and implemented by Defendants Jay A. Smith (“Smith”) and Jennifer L. Dominelli (“Dominelli”), to unlawfully collapse FSL, their former law firm of which Flink was a partner, and divert its business to a newly-created entity, Smith, Dominelli & Guetti LLC (“SDG”), in violation of both their contractual and fiduciary obligations to Flink and FSL.
2. Until early 2017, Flink, Smith and Dominelli were law partners in FSL. Flink is the majority owner of FSL, whereas Smith and Dominelli each hold minority stakes.
3. FSL is organized as a professional service limited liability company.
4. In 2010, Flink, Smith and Dominelli signed an operating agreement (the “2010 Agreement”) that defines their obligations to each other and to FSL as law partners. These obligations include, among others, billing a certain number of hours per year and buying Flink's shares in FSL.

5. Prior to 2010, Flink, in contemplation of his phased retirement, sought to plan for an orderly transfer of his ownership and control of FSL to a new generation of leadership. That plan was established in the 2010 Agreement, to which Smith and Dominelli agreed.

6. But in February 2017, with Flink on the cusp of retirement, Smith and Dominelli, in a concerted plan, simultaneously “withdrew” from FSL and immediately diverted nearly all of its business to SDG, an entity created in late 2016.

7. In doing so, Smith and Dominelli, acting in conjunction with SDG, breached both their contractual and fiduciary obligations to Flink and to FSL.

8. Moreover, Smith and Dominelli destroyed the value of FSL and Flink’s interest in it, causing both Flink and FSL to suffer substantial damages.

9. Consequently, Flink and FLS now seek, among other relief, the compensatory and other damages to which they are entitled from Smith, Dominelli and SDG.

THE PARTIES

10. Plaintiff Flink Smith Law LLC is a domestic limited liability company and was, until recently, an active law firm with a principal office in the City of Albany.

11. Plaintiff Edward B. Flink is an attorney licensed to practice law in the State of New York and is a member and majority owner of FSL. He resides at 20 Birchwood Court in the Hamlet of Loudonville, Albany County.

12. Defendant Jay A. Smith is an attorney licensed to practice law in the State of New York and is a former member of FSL.

13. Defendant Jennifer L. Dominelli is an attorney licensed to practice law in the State of New York and is a former member of FSL.

14. Upon information and belief, Smith, Dominelli & Guetti LLC is a domestic professional service limited liability company and active law firm with a principal office in the City of Albany.

15. Upon information and belief, both Smith and Dominelli are currently affiliated with SDG.

JURISDICTION AND VENUE

16. The Court has personal jurisdiction over Smith, Dominelli and SDG under CPLR 301 because they reside and do business in New York and under CPLR 302 because this action arises out of their transaction of business and tortious conduct in New York.

17. Venue is proper under CPLR 503 because Flink is a resident of Albany County, because FSL has a principal office in Albany County and because a substantial part of the events giving rise to these claims occurred in Albany County.

STATEMENT OF FACTS

18. FSL was first established in 1999 as Flink, Smith & Associates, LLC. Flink, Smith & Associates, LLC was a partnership between Flink and Smith who established the firm as a successor to Edward Flink & Associates. Flink established Edward Flink & Associates, as sole owner in 1995, when Flink and his partner at the time, Timothy P Kelleher, closed their firm Kelleher & Flink, which was a partnership they formed in 1984.

19. As Flink was forming Edward Flink & Associates, in late 1995, Smith came to work with Flink on an of counsel basis. In or about 1996, Dominelli came to work for Flink as a salaried associate and continued to work in that capacity for what became FSL up until the 2010 agreement.

20. By the time Flink invited Smith to join him in the partnership they formed in 1999, as a successor to Edward Flink & Associates of which Flink was the sole owner, Flink had

a substantial client base in the insurance industry and a thriving, active commercial and plaintiffs' personal injury litigation practice, as well as the hard assets and intellectual property and the systems and processes which he transferred to the new partnership between Flink and Smith, of which Fink was the majority owner.

21. Building on Flink's client base and Flink's business acumen, structure and operation, FSL developed successful practices in the areas of insurance, personal injury, real estate, matrimonial and family law, among others.

22. In addition to this legal work, FSL also developed a profitable title business.

23. For several years prior to 2010, Dominelli expressed interest in becoming a partner and equity owner of the Flink Smith & Associates law firm which had changed its name to Flink Smith Law in 2004.

The Parties Enter Into the 2010 Operating Agreement

24. On or about May 1, 2010, Flink, Smith, Dominelli, and non-party Robert Coughlin ("Coughlin") entered into an operating agreement (the "2010 Agreement") that modified and superseded all prior FSL operating agreements.

25. This 2010 Agreement established each party's rights and obligations with respect to FSL and its business. A copy of the 2010 Agreement is attached as Exhibit A.

26. When the 2010 Agreement was executed, Flink and Smith were the sole FSL members. At that time, Flink owned 75 of FSL's 100 shares, and Smith owned 25 of FSL's 100 shares.

27. When the 2010 Agreement was executed, Dominelli and Coughlin effectively became contract partners who held no equity or ownership interest in FSL.

The Plan to Transition FSL to New Ownership Under the 2010 Agreement

28. By 2009 into 2010, Flink, having been FSL's majority owner and also primary manager for most of the years since its founding, was looking ahead to and planning for his retirement.

29. Accordingly, Flink sought to gradually reduce his workload and transition to an "of counsel" role with FSL.

30. At the same time, Smith and Dominelli expressed to Flink on numerous occasions their desire to acquire Flink's ownership interests in FSL and assume responsibility for its management.

31. Accordingly, the parties entered into the 2010 Agreement, the overarching purpose of which was to transition FSL from Flink's ownership and leadership to that of FSL's other equity and contract partners.

32. Indeed, the 2010 Agreement recites on its first page, under the heading "Guiding Principles", that "[t]he firm must transition itself from [Flink's] firm to the next generation".

33. The 2010 Agreement provides that the prevailing party in any litigation concerning a breach of the 2010 Agreement is entitled to recover all reasonable expenses and attorneys' fees.

The FSL Buyout Schedule

34. The 2010 Agreement thus established a schedule under which Flink would gradually transfer his shares of FSL to Smith, Dominelli and Coughlin. It also set the prices for which Flink's shares would be purchased.

35. Under that schedule, Flink was to sell 7.5 shares each to Coughlin and Dominelli at a price of \$8,000 per share by April 30, 2012, which occurred.

36. After that, Flink was to sell an additional 2.5 shares each to Coughlin and Dominelli at a price of \$8,000 per share by April 30, 2014, yet Dominelli failed to perform.

37. Four of Flink's remaining shares were earmarked for sale to potential new FSL members by April 30, 2014, with rights of refusal then granted to Smith and Dominelli if there were no new FSL members.

38. Finally, after April 30, 2014 but before April 30, 2018, Flink's remaining shares were to be sold to the other members on a mutually agreeable schedule. The 2010 Agreement set the price of these Flink shares at the greater of either \$10,000 per share or the value as determined by a certain formula referenced in the 2010 Agreement.

39. As additional consideration for the transfer of Flink's shares and his transitioning his clients to Smith, Dominelli and Coughlin, the 2010 Agreement also provided Flink with an annual income of approximately \$100,000 above the value of his required billable hours, for the years 2014-2018.

40. The 2010 Agreement further specified that, if FSL ever ceased to be an "operating entity", then Smith and Dominelli must purchase all of Flink's remaining shares on or before December 31, 2018.

41. The 2010 Agreement also provided for an orderly transfer of Flink's interest in FSL's title business, from which Flink derived approximately \$50,000 per year in additional income, to Smith and Dominelli.

The Minimum Required Hours Provisions of the 2010 Agreement

42. The 2010 Agreement also established minimum total hours requirements for each party.

43. Under these provisions, Smith was required to bill no fewer than 1800 total hours per year throughout the life of the 2010 Agreement. If Smith failed to meet this requirement, then the 2010 Agreement called for his income to be reduced by \$150 per hour of shortfall.

44. Similarly, Dominelli was required to bill no fewer than 1900 total hours per year throughout the life of the 2010 Agreement. If Dominelli failed to meet this requirement, the 2010 Agreement called for her income to be reduced by \$125 per hour of shortfall.

Smith and Dominelli Breach the 2010 Agreement

45. On or about April 16, 2010, Flink, Smith and Dominelli signed the 2010 Agreement establishing the structure of FSL, and it became effective on May 1, 2010.

46. In disregard of her obligations under the 2010 Agreement, beginning in 2014 and in each year thereafter through 2017, Dominelli failed to satisfy her minimum required hours commitments under the 2010 Agreement.

47. Notwithstanding this failure, Dominelli took over \$250,000 in excessive draws from FSL during 2014 and later years.

48. Similarly, beginning in 2014 and in each year thereafter, Smith also failed to satisfy his minimum required hours commitments under the 2010 Agreement.

49. Notwithstanding that failure, Smith took over \$100,000 in excessive draws from FSL during 2014 and later years.

Smith and Dominelli Conspire to Collapse FSL

50. Upon information and belief, at some point prior to February 2017, Smith and Dominelli surreptitiously agreed to breach the 2010 Agreement by fashioning a new entity to which they could redirect FSL's business and then collapsing FSL by simultaneously "withdrawing" from FSL once their plan was in place.

51. To that end, upon information and belief, papers were filed on behalf of Smith and Dominelli with the New York State Department of State on December 22, 2016 to create SDG, a new professional service limited liability company.

52. Smith and Dominelli then simultaneously “withdrew” from FSL on or about February 8, 2017, effective approximately three months later.

53. With Coughlin having previously withdrawn from FSL in accordance with the provisions of the 2010 Agreement at a time when he was in compliance with and had honored his obligations under the 2010 Agreement, this left Flink as the only remaining FSL member.

54. FSL consequently ceased to be an operating entity once Smith and Dominelli “departed” the firm, Defendants having hired all of FSL’s employees except for James L. Maswick, who they tried to hire.

55. At that time, SDG commenced operations as a new law firm, with Smith and Dominelli marketing themselves as its founding members, purportedly as a successor of FSL.

56. Furthermore, at that time, Smith and Dominelli barred Flink from work at the former FSL offices that they continued to occupy, now as SDG.

57. Defendants also retained FSL’s physical assets and intellectual property.

58. Although FSL remains a non-operating entity today, it has not been dissolved.

59. Flink still owns 60 of FSL’s 100 shares.

60. Smith and Dominelli have refused to buy Flink’s shares, notwithstanding their commitment to do so under the 2010 Agreement.

FIRST CAUSE OF ACTION*Breach of Contract**(Plaintiff Flink against Defendants Smith and Dominelli)*

61. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 60 above as if set forth in full herein.

62. Flink, Smith and Dominelli formed a valid contract with and among each other when they entered into the 2010 Agreement.

63. Flink fully performed his obligations during the life of the 2010 Agreement, including, among other things, satisfying and indeed exceeding all minimum hour requirements and remaining willing to sell his FSL shares as contemplated by the 2010 Agreement.

64. Smith and Dominelli repeatedly breached the 2010 Agreement by, among other things, refusing to purchase Flink's shares as required by the 2010 Agreement and conspiring to collapse FSL and redirect its business to SDG, in clear violation of the 2010 Agreement.

65. As a result, Flink has suffered damages that include, but are not limited to, the share value of FSL for which he has not been compensated, lost income stemming from the collapse of FSL's legal and title businesses and lost good will.

66. Flink's damages stemming from Smith's and Dominelli's various breaches of their buy out obligations under the Agreement collectively exceed \$920,000.

SECOND CAUSE OF ACTION*Breach of Contract**(Plaintiff Flink Smith Law LLC against Defendants Smith and Dominelli)*

67. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 66 above as if set forth in full herein.

68. Flink, Smith and Dominelli formed a valid contract with and among each other when they entered into the 2010 Agreement.

69. FSL was a third-party beneficiary of the 2010 Agreement. The 2010 Agreement was intended for FSL's immediate benefit, and the parties assumed a duty to compensate FSL if those benefits were lost because of a breach.

70. Additionally, the 2010 Agreement clearly evidences the parties' intent to permit enforcement by FSL.

71. The 2010 Agreement provides that FSL may, at its election, "obtain either or both injunctive relief and money damages" from a breaching party and that, under certain circumstances, FSL may recover liquidated damages and attorneys' fees.

72. Additionally, FSL may recover damages stemming from the parties' failure to meet their minimum hours obligations because the specified remedy for this violation is a reduction in income flowing from FSL.

73. Smith and Dominelli repeatedly breached the 2010 Agreement by, among other things, failing to meet their minimum hours obligations.

74. Smith and Dominelli further breached the 2010 Agreement by conspiring to collapse FSL and redirect its business to SDG.

75. Because of Smith's and Dominelli's breaches, FSL has suffered damages that include, but are not limited to, substantial overdrafts, lost profits and lost good will.

76. FSL's damages stemming from Smith's and Dominelli's various breaches for excessive draws in breach of the 2010 Agreement collectively exceed \$350,000.

THIRD CAUSE OF ACTION
Breach of Fiduciary Duty
(Plaintiff Flink against Defendants Smith and Dominelli)

77. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 76 above as if set forth in full herein.

78. Smith and Dominelli owed fiduciary duties to Flink as co-members of FSL, which is organized as a professional service limited liability company.

79. Smith and Dominelli breached those duties by committing misconduct. Their misconduct includes, but is not limited to, secretly forming a competing entity for the purposes of soliciting Flink's clients and diverting Flink's business opportunities and good will.

80. Smith's and Dominelli's misconduct directly caused Flink damages, including, but not limited to, lost share value, lost income stemming from the collapse of FSL's legal and title businesses, lost business opportunities and lost client good will.

81. Flink's damages stemming from Smith's and Dominelli's various breaches collectively exceed \$1,270,000.

FOURTH CAUSE OF ACTION

Breach of Fiduciary Duty

(Plaintiff Flink Smith Law LLC against Defendants Smith and Dominelli)

82. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 81 above as if set forth in full herein.

83. Smith and Dominelli owed fiduciary duties to FSL, which is organized as a professional service limited liability company.

84. Smith and Dominelli breached those duties by committing misconduct. Their misconduct includes, among other things, enriching themselves at FSL's expense by accepting unauthorized compensation and by secretly forming a competing entity for the purposes of soliciting FSL's clients and diverting FSL's business opportunities.

85. Smith's and Dominelli's misconduct directly caused FSL damages, including, but not limited to, the value of their unauthorized compensation, compensation and expenses paid to

Smith and Dominelli during their period of disloyalty, lost profits, lost business opportunities and lost good will.

86. FSL's damages stemming from Smith's and Dominelli's various breaches collectively exceed \$1,270,000.

FIFTH CAUSE OF ACTION

Tortious Interference with Contractual Relations
(Plaintiffs Flink and Flink Smith Law LLC against Defendant SDG)

87. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 86 above as if set forth in full herein.

88. Flink, Smith and Dominelli formed a valid contract with and among each other when they entered into the 2010 Agreement.

89. FSL was a third-party beneficiary of the 2010 Agreement. The 2010 Agreement was intended for FSL's immediate benefit, and the parties assumed a duty to compensate FSL if those benefits were lost.

90. Smith and Dominelli, acting for their own personal gain and for the gain of SDG, repeatedly breached the 2010 Agreement.

91. SDG possessed actual knowledge of the existence of the 2010 Agreement.

92. SDG, without justification, intentionally procured Smith's and Dominelli's breaches of the 2010 Agreement by providing Smith and Dominelli with office space, reference materials, marketing opportunities and other resources used for the solicitation of FSL's and of Flink's clients and the diversion of FSL's and of Flink's business opportunities and client good will.

93. SDG's conduct contributed to and caused Smith's and Dominelli's breaches of the 2010 Agreement.

94. SDG's conduct therefore caused Flink and FSL to suffer damages, which include, among other things, lost profits, lost income, lost business opportunities, and lost good will.

95. Flink's and FSL's damages stemming from SDG's conduct collectively exceed \$1,000,000.

SIXTH CAUSE OF ACTION

*Aiding and Abetting Breach of Fiduciary Duty
(Plaintiffs Flink and Flink Smith Law LLC against Defendant SDG)*

96. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 95 above as if set forth in full herein.

97. For the reasons alleged above, Smith and Dominelli breached their fiduciary duties to both Flink and FSL.

98. SDG knowingly participated in these breaches by affirmatively assisting Smith and Dominelli with their misconduct. Upon information and belief, this assistance included, but is not limited to, providing Smith and Dominelli with office space, reference materials, marketing opportunities and other resources used for the solicitation of FSL's and of Flink's clients and the diversion of FSL's and of Flink's business opportunities and client good will.

99. Smith's and Dominelli's misconduct directly caused Flink and FSL damages, including, but not limited to, compensation and expenses paid to Smith and Dominelli during their period of disloyalty, lost profits, lost business opportunities and lost good will.

100. Flink's and FSL's damages stemming from Smith's and Dominelli's various breaches collectively exceed \$1,000,000.

SEVENTH CAUSE OF ACTION*Accounting*

(Plaintiffs Flink and Flink Smith Law LLC against Defendants Smith, Dominelli and SDG)

101. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 100 above as if set forth in full herein.

102. Smith and Dominelli owed a fiduciary duty to Flink and to FSL.

103. Smith and Dominelli breached their fiduciary duties owed to Flink and to FSL.

104. Included within the accounts of FSL is a series of FSL IOLA escrow accounts (“the Escrow Accounts”), which contain monies that are being held in trust for FSL clients and others.

105. The Escrow Accounts were opened and managed solely by Smith and/or Dominelli, who alone have the knowledge, information and duty to account for and distribute the Escrow Accounts.

106. Since FSL is no longer an operating entity, Smith and Dominelli have a fiduciary duty to account for and distribute all the monies in the Escrow Accounts, yet they have refused to provide an accounting to Flink or FSL.

107. Because Defendants took control of FSL, its Escrow Accounts and its clients, FSL has been denied information relative to how the Escrow Accounts were being used and/or managed by Defendants, despite the fact that FSL may continue to owe a fiduciary duty to its past clients concerning the whereabouts of said escrowed monies.

108. In 2017, Smith noted that it was his responsibility, not Flink’s, to provide an accounting of and to engage in proper distribution of the Escrow Accounts to clients and owners of the funds held therein, yet Smith continues to refuse to discharge this legal and ethical obligation.

109. Defendants are thus obligated to provide a full accounting of all activity concerning the Escrow Accounts, so as to ensure that all FSL client monies have been preserved, in trust, and to further distribute from and liquidate the escrow accounts of FSL as required by law.

WHEREFORE, Plaintiff respectfully prays for an order of this Court:

- A. finding that Defendants Smith and Dominelli are liable to Flink under the first cause of action for damages of not less than \$920,000, plus interest;
- B. finding that Defendants Smith and Dominelli are liable to FSL under the second cause of action for damages of not less than \$350,000, plus interest;
- C. finding that Defendants Smith and Dominelli are liable to Flink under the third cause of action for damages of not less than \$732,000, plus interest;
- D. finding that Defendants Smith and Dominelli are liable to FSL under the fourth cause of action for damages of not less than \$350,000, plus interest;
- E. finding that Defendant SDG is liable to Flink and FSL under the fifth cause of action for damages of not less than \$1,000,000, plus interest;
- F. finding that Defendant SDG is liable to Flink and FSL under the sixth cause of action for damages of not less than \$1,000,000, plus interest;
- G. directing that Defendants provide a full and complete accounting under the seventh cause of action of all activity pertaining to those monies that are within the Escrow Accounts at the time they were wrongfully diverted by Defendants, and directing that all funds be returned to clients and lawful owners of such funds;
- H. awarding to Plaintiffs attorneys' fees and the costs and disbursements of this action pursuant to the terms of the 2010 Agreement; and
- I. for such other and further relief that the Court deems just and proper.

Dated: 05/13/18
Albany, New York

McNAMEE LOCHNER P.C.

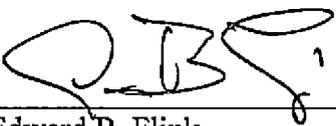
 By: _____
 John J. Privitera
 Ryan J. Coyne
 Attorneys for Plaintiffs
 677 Broadway
 Albany, New York 12207
 Telephone: (518) 447-3200

VERIFICATION

STATE OF NEW YORK)
 : SS.:
COUNTY OF ALBANY)

I, the undersigned Edward B. Flink, being a member of the Bar of this Court in good standing, hereby swear and affirm:

I am a Plaintiff in the above Complaint. I have read the foregoing Complaint and know the contents thereof, and the same is true of my own knowledge.



Edward B. Flink