

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

ELMWOOD COUNTRY CLUB, INC.,

Plaintiff,

-against-

OLD OAKS COUNTRY CLUB, INC. and CHARLES
DORN, and THE DORN GROUP, LTD.,

Defendants.

VERIFIED COMPLAINT

Index No.

Plaintiff ELMWOOD COUNTRY CLUB INC (“Elmwood County Club,” “Elmwood,” “Club,” or “Plaintiff”), by its attorneys Daniel Szalkiewicz & Associates, P.C., as and for its Verified Complaint hereby alleges, upon information and belief, as follows:

PRELIMINARY STATEMENT

1. This case arises out of the intentional and malicious actions OLD OAK COUNTRY CLUB, INC. (“Old Oaks”), CHARLES DORN (“Defendant Dorn”) and THE DORN GROUP, LTD. (“The Dorn Group,” and collectively, “Defendants”) undertook to induce Elmwood’s former General Manager, Iwona Sterk (“Sterk”) to breach and terminate her employment contract with Elmwood.

2. After removing their former general manager for engaging in drug use and sexual misconduct, Old Oaks employed Defendant Dorn and The Dorn Group as a headhunter. Although Defendant Dorn was fully aware of Sterk’s contractual obligations to Elmwood and was actually provided with a physical copy of the contract by Sterk, Defendant Dorn and Old

Oaks took the calculated risk of inducing Sterk to leave Elmwood with the promise of an increased salary, high fringe benefits, and a \$30,000.00 expense account.

3. Unwilling to refuse their offer, Sterk left Elmwood for Old Oaks on December 31, 2017, one and a half years prior to the expiration of her contract, leaving Elmwood in financial ruin. Defendants' actions caused Plaintiff to hemorrhage members and clients, and ultimately contributed to the Club's closing.

THE PARTIES

4. Plaintiff Elmwood Country Club was, at all times relevant to this action, a domestic corporation organized under the laws of the State of New York located at 850 Dobbs Ferry Road, White Plains, New York 10607.

5. Prior to its closure because of the actions of the Defendants, Plaintiff Elmwood was engaged in the operation of a country club, golf course and catering facility.

6. Defendant Old Oaks is and was, at all times relevant to this action, a domestic corporation organized under the laws of the State of New York located at 3100 Purchase Street, Purchase, New York 10577.

7. Defendant Old Oaks runs a competing country club, golf course, and catering facility.

8. Defendant Dorn is an individual residing in the State of New York, County of Westchester, located at 472 Grace Church Street, Rye, NY 10580. Defendant Dorn is the Chief Executive Officer of Defendant The Dorn Group.

9. Defendant The Dorn Group is and was, at all times relevant to this action, a domestic corporation organized under the laws of the State of New York located at 472 Grace Church Street, Rye, NY 10580.

10. Defendant The Dorn Group advertises its services as a “full-service hospitality consulting firm” with more than “30 years of hospitality experience.”

STATEMENT OF FACTS RELATING TO ALL CAUSES OF ACTION

Elmwood Country Club’s Business

11. Elmwood Country Club opened in 1925 and, over the course of nearly a century, established itself as a premiere institution in Westchester County, New York.

12. While operational, the Club’s main sources of income were (1) membership dues, (2) social events, and (3) golf outings.

13. In addition to monthly dues paid by all of its members, Plaintiff generated significant revenue hosting social events for members and non-members of the Club, including weddings, birthdays, bar and bat mitzvahs, baby showers, and christenings.

14. Additionally, Plaintiff regularly hosted profitable outings for individuals, corporations, and charities on its world-renowned golf course.

15. To ensure that the success of their facility, Plaintiff maintained the highest standards for its employees and went to considerable effort grooming those who worked at the Club to emulate the ideals expected of an exclusive country club of Plaintiff’s caliber.

16. To ensure the privacy of its clientele, Elmwood Country Club’s membership list remained strictly confidential throughout and beyond its lifetime.

Plaintiff's Former Employee, Iwona Sterk

17. Sterk first began working for Elmwood County Club in 2000. During her nearly 18 years of employment with Elmwood, Sterk became the most integral employee at the facility, responsible for managing each and every aspect of Elmwood's operations.

18. Elmwood took great care to train Sterk and provided her with both the trust and support to develop and foster many relationships with Elmwood's guests, vendors, and golf outing hosts.

19. Sterk was the first line of contact for many of Elmwood's golf outings and weddings.

20. In late 2015 Sterk was named General Manager and on March 19, 2016, Elmwood and Sterk entered into an employment contract (hereinafter the "Contract[,]” annexed hereto as Exhibit “1”) formalizing their agreement.

21. As General Manager, Sterk was the highest paid and highest-ranking employee at the Club. As a result, Sterk received complete access to Elmwood Country Club's proprietary information, including members' names, telephone numbers, email addresses, and financial information.

The Employment Contract

22. Sterk's employment contract detailed her importance to Elmwood.

23. The term of the Contract was from March 17, 2016 until March 16, 2018 and could only be terminated by (1) mutual agreement, (2) disability of Sterk, (3) for cause, or (4) unilateral termination by either party on December 31, 2017, provided at least 90 days' prior notice is given.

24. Pursuant to the Contract, Sterk was to serve as the full-time General Manager of the Club and agreed not to engage in any other business activity. The Contract provided Sterk with a base salary of \$165,000 from March 16, 2016 until September 30, 2017, with a \$15,000 raise from October 1, 2017 until the expiration of the Contract, together with bonuses and benefits. Benefits included a “platinum” health plan and payments for a new Mercedes, among others.

25. Additionally, Sterk’s Contract clearly stated her job responsibilities which included, but were not limited to:

- Managing the day-to-day operations of the Club;
- Promoting the Club to all;
- Overseeing all recordkeeping procedures;
- Creating and managing budgets, financial plans, control expenditures within the budget and approved procedures, and negotiating pricing and contracts with external suppliers to ensure best value;
- Communicating with and attending to the needs of the Club's members;
- Devoting her best efforts, skill, and ability to promoting Club interests.

26. Further, recognizing the competitiveness of the industry and the importance of client bookings to the Club’s continued success, the Contract contained a confidentiality provision. This provision stated:

GM agrees that GM shall not during the Term or at any time thereafter, directly or indirectly, use for GM's own purpose or for the benefit of any person or entity other than the Club, nor otherwise disclose to any individual or entity, any proprietary information, unless such use or disclosure has been authorized by the Club or is otherwise required by law.

27. “Proprietary information” is defined as “the name and/or address of any current or former member or vendor of the Club or any information concerning the transactions or relations of any member or vendor of the Club” and “any business plans, budgets, advertising or marketing plans or materials.”

28. In the Contract, Sterk “acknowledge[d] and recognize[d] the highly competitive nature of the Club’s operations and that access to the Club's confidential records and proprietary information render[ing] GM special and unique within the Club’s field.”

29. Finally, the Contract contained a narrowly tailored non-solicitation provision:

In consideration of GM's employment with the Club, GM agrees that during (i) GM's employment with the Club and (ii) the period beginning on the date of termination of GM's employment for any reason and ending twelve months after the date of termination of GM's employment, GM shall not, directly or indirectly, (a) solicit, encourage or attempt to solicit or encourage any of the employees, agents, professionals, representatives or members of the Club *or parties who have booked outings or events at the Club* to terminate his, her, or their relationship with the Club or (b) solicit, encourage or attempt to solicit or encourage any of the employees, agents, professionals, representatives or members of the Club to become employees, agents, professionals, representatives or members of any other person or entity.

Defendant Dorn approaches Sterk on behalf of Old Oaks

30. In November 2016, approximately 6 months after signing her employment contract with Elmwood, Sterk was approached by Defendant Dorn through an unsolicited telephone call. During this telephone call, Defendant Dorn informed Sterk that Old Oaks was interested in having a conversation with her regarding their General Manager position.

31. Based on her conversation with Defendant Dorn, Sterk agreed to meet him for an informal first interview.

32. During the meeting, among other things, Sterk informed him that she had an employment contract with Plaintiff.

33. Shortly after Sterk’s meeting with Defendant Dorn, on November 17, 2016, Defendant Dorn sent Sterk a formal document on The Dorn Group’s letterhead.

The document to be completed by Sterk as part of Defendant Old Oaks' hiring process and contained questions concerning Sterk's employment history.

34. Several days later, Sterk returned the filled in five-page form, and included detailed confidential information about the Club's finances, a breakdown of Sterk's compensation structure, and a section confirming Sterk's existing contract with Elmwood.

35. On November 27, 2016, Sterk had a second interview for the position with Old Oaks, this time with members of the Old Oaks Executive Committee as well as Defendant Dorn.

36. Present at the meeting with the President of Old Oaks, Richard Fleder, the membership committee chair, house chair, and financial officer.

37. The interview occurred on Old Oaks' premises. At the meeting, Old Oaks made clear to Sterk that her relationships with local people in the country club circuit and industry were invaluable to them.

38. Additionally, the Club requested that Sterk being confidential information with her, including Elmwood's Club's calendar. Though at first glance a benign request, country club calendars contain valuable and highly confidential club information, including not only scheduled events, but member names, e-mails, and phone numbers. Calendars are provided only to members of the club to ensure privacy of the information contained within them. Sterk and other candidates acquiesced with Defendant Dorn's request and agreed to provide Defendant Dorn and Defendant Old Oaks with the valuable information.

39. Further illustrating their awareness of her employment contract, Defendant Old Oaks and Defendant Dorn specifically asked Sterk to provide details of her employment contract, including, but not limited to her salary and expense account.

40. Defendant Dorn scheduled a third interview in early December. Shortly thereafter Defendant Dorn sent Sterk an e-mail to offer her the position. Sterk was selected by Old Oaks because of the inherent value of her local country club circuit rolodex. On or about December 14, 2016, roughly nine months prior to the notice date permitted for unilateral termination of the Contract, Sterk provided her employer of nearly two decades with notice that she would be terminating her contract with them at the end of the year.

41. Blindsided, Elmwood scrambled to fill her role and assess and address the loose ends that would need to be dealt with as a result of Sterk's sudden departure.

Sterk resigns from her position as General Manager and begins stealing Elmwood Country Club employees and events for Old Oaks

42. Elmwood continued to pay Sterk her salary between December 14, 2016 and December 31, 2016.

43. During this time, and at the direction of her new employer, Sterk reported for duty at Elmwood's facilities while actively working for Defendant Old Oaks by soliciting Elmwood's clients, taking meetings on Old Oaks' behalf, and working on several other projects.

44. Sterk began referring Elmwood members and clients to Old Oaks. For the two-week period she continued working at Elmwood and the months following her departure, Sterk disparaged Elmwood to members and non-members alike, grossly mischaracterizing the financial state of the Club in order to steal booked events for Old Oaks.

45. One method undertaken by Sterk was to inform individuals that the Club had closed or would be closed before the date of their events and provide the member or client with a means to reach her once she began working at Old Oaks.

46. Defendant Old Oaks urged Sterk to breach her fiduciary duty to Elmwood and benefited from the breach.

47. On January 1, 2017, less than a year after entering into the Contract, Sterk unilaterally terminated her contract with Plaintiff and began to report to work at Old Oaks. Contrary to the clear terms of the Contract, Sterk failed to provide 90 days' notice of her termination.

48. Among the events that abandoned Elmwood at Old Oaks' behest were a July 8, 2017 wedding and an April 8, 2017 Bat Mitzvah.

49. Additionally, at least __ golf outings were induced to change their venue from Elmwood Country Club to Old Oaks. Longstanding Elmwood outings, including a Women's LPGA tour event, a Ronald McDonald Foundation outing, and Bank Leumi, all canceled their events to book with Old Oaks.

50. Old Oaks' raiding of Elmwood did not stop with events and outings. In violation of the non-solicitation clause contained in Sterk's contract, Old Oaks solicited and took two of Plaintiff's employees, Katarzyna Kaczmarek and Krystian Jurewicz.

51. Even more recently, in June 2017, months after the April 10, 2017 temporary restraining order prohibiting her from encouraging Club employees to become employees of another entity was ordered, Sterk warned two other Club employees that the Club would be closing within the month and suggested that they seek alternative employment. Predictably, Sterk suggested that Old Oaks as a potential future employer.

FIRST CAUSE OF ACTION
**(Intentional Interference with Contractual Relations
Elmwood's Contract with Sterk)**

52. Plaintiff repeats and realleges the allegations stated above as if fully set forth herein.

53. On March 19, 2016, Plaintiff and Sterk entered into a valid contract with Elmwood.

54. The Defendants were aware of Sterk's contract with Elmwood.

55. More so, upon information and belief, the Defendants each had a copy of Sterk's contract.

56. Upon information and belief, the Defendants utilized Sterk's contract to determine how much money she should be offered in order to ensure that she would breach her contract with Plaintiff.

57. Despite Defendants' knowledge of Sterk's existing contract, Defendants eagerly solicited Sterk to immediately become an Old Oaks employee. Defendants made the offer, which included a base salary \$70,000 higher than her salary with Elmwood, knowing that it would irreparably impact Elmwood's ability to continue operations and that Defendant Old Oaks stood to reap vast financial benefits by raiding Plaintiff's clientele and eliminating a competitor.

58. Sterk did in fact breach of contract with Elmwood and began working for Defendant Old Oaks.

59. Defendants did not have any justification for the procurement of the breach.

60. As a result of Defendants' interference, the Plaintiff was damaged.

61. That, by reason of the foregoing, Plaintiff has been damaged in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

SECOND CAUSE OF ACTION
**(Intentional Interference with Contractual Relations
Elmwood’s Contract with Events and Outings)**

62. Plaintiff repeats and realleges the allegations stated above as if fully set forth herein.

63. In 2016 and years prior, Plaintiff entered into valid contracts with members and non-members to host events and outings during the winter, spring, and summer months of 2017.

64. Defendant Old Oaks, with Sterk now at the helm, was fully aware of the existence of Elmwood’s various contracts.

65. Using their intimate knowledge of the contracts, Old Oaks, through Sterk, informed event and outing organizers that Elmwood would be closed when their date was held and offered competitive pricing to induce the organizers to move their events and outings to Old Oaks.

66. Defendants did not have any justification for the procurement of the breach.

67. As a result of Old Oaks’ interference, the Plaintiff was damaged.

68. That, by reason of the foregoing, Plaintiff has been damaged in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

THIRD CAUSE OF ACTION
(Intentional Interference with Prospective Contractual Relations)

69. Plaintiff repeats and realleges the allegations stated above as if fully set forth herein.

70. Plaintiff hosted multiple repeat events and outings at the Club year after year. Often, after a successful event, Elmwood and the hosting party would verbally confirm a date that the event would be held the following year.

71. Old Oaks, with Sterk now at the helm, was fully aware of the existence of Elmwood's longstanding outings and events.

72. Using their intimate knowledge of the contracts, Old Oaks, through Sterk, informed event and outing organizers that Elmwood would be closed when their date was held. Further, using Sterk's extensive knowledge of their events in years past, Old Oaks offered competitive pricing to induce the organizers to move their events and outings to Old Oaks.

73. As a result of Old Oaks' interference, the Plaintiff was damaged.

74. That, by reason of the foregoing, Plaintiff has been damaged in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

FORTH CAUSE OF ACTION
(Aiding and Abetting a Breach of Fiduciary Duty)

75. Plaintiff repeats and realleges the allegations stated above as if fully set forth herein.

76. Between December 14, 2016 and December 31, 2016, Sterk owed Elmwood a fiduciary duty of loyalty a care. Although she had provided Elmwood with notice of her breach of contract, Sterk was still receiving a salary from Elmwood and was under an obligation not to compete with them.

77. At the urging and behest of Defendant Old Oaks, Sterk began working for Old Oaks in December 2016, with Old Oaks requesting she attend meetings, begin projects, and reach out to Old Oaks' members and the membership committee all while still employed by Elmwood.

78. Sterk and Defendant Old Oaks engaged in extensive communication with one another, and Defendant Old Oaks was well aware that she was still employed by Elmwood.

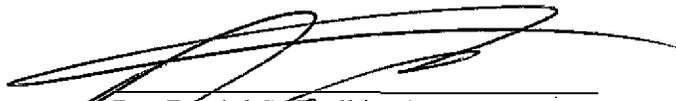
79. Plaintiff suffered damage by Defendant Old Oaks' aiding and abetting of Sterk's breach of fiduciary duty, including loss of the salary they paid her during this time.

80. That, by reason of the foregoing, Plaintiff has been damaged in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

WHEREFORE, Plaintiff demands judgment against Defendants on all causes of action in the sum of the amount greater than the jurisdictional limit of all lower courts to be determined by the trier of fact, plus punitive damages, the costs of this action, pre-judgment interest and reasonable attorney's fees as permitted under the law, together with such other and further relief as the Court may deem just and proper.

Dated: New York, New York
March 30, 2018

Daniel Szalkiewicz & Associates, P.C.



By: Daniel S. Szalkiewicz, Esq.

