

THE BEASLEY FIRM, LLC
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401 RESTAURANT ASSOCIATES, LLC :
401 City Avenue :
Bala Cynwyd, PA 19004 :

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS

AND :

FEBRUARY TERM, 2007
NO.

ALEX PLOTKIN :
401 City Avenue :
Bala Cynwyd, PA 19004 :

001451

v. :

COMPLAINT

CRAIG LaBAN :
400 North Broad Street :
Philadelphia, PA 19130 :

CODE 2L-LIBEL AND SLANDER

AND :

JURY TRIAL DEMANDED

PHILADELPHIA MEDIA HOLDINGS, :
t/a THE PHILADELPHIA INQUIRER :
400 North Broad Street :
Philadelphia, PA 19130 :

I. INTRODUCTION

1. On Sunday, February 4, 2007, DEFENDANT LABAN, food critic for DEFENDANT PHILADELPHIA INQUIRER, published in the Sunday INQUIRER and on the internet a false, fraudulent, misleading and damaging review of PLAINTIFFS' restaurant, CHOPS. This fraudulent review was done with the specific intent of harming PLAINTIFFS' business.

2. DEFENDANT LABAN has made it known in prior interviews that he can, with his columns, destroy businesses such as CHOPS. Indeed, in an August 1-7 2002 interview with

the Philadelphia citypaper.net, DEFENDANT LABAN heavily participated in the article titled "Craig LABAN, Local Man of Mystery. With just a few words, the *INQUIRER* critic can make or break a restaurant. No wonder spotting him has become a high-stakes game."

3. LABAN, when questioned about his power to destroy businesses, stated "I guess it's true because there's not really any other major competition right now." LABAN used this power to carry out a long standing vendetta against PLOTKIN, as will be set forth below.

4. As part of this vendetta, LABAN failed to conform to his own promises of being "completely fair and thorough" in his reviews when he wrote the February 4, 2007 review about PLAINTIFFS' restaurant CHOPS. In that review, LABAN stated as fact that he had the strip steak, which he trashed in the article by describing it as, in relevant part, "miserably and tough and fatty strip steak."

5. In reality, LABAN, when eating at CHOPS in preparation for the February 4, 2007 review, ate a *steak sandwich* without bread, not a strip steak, and therefore had, and has, no personal knowledge of the quality of the CHOPS strip steak. LABAN never made this critical disclosure to his readership, all in furtherance of his vendetta against PLOTKIN.

6. There is a significant difference in the meat, preparation of and presentation to the customer of a steak sandwich compared to a strip steak.

7. No legitimate food critic would ever mistake, or compare, a steak sandwich with a strip steak.

8. LABAN claimed, directly or through clear inference and innuendo, that he actually ate the food he was reviewing. He had not and therefore deceived his readers.

9. The Sunday *INQUIRER* has a circulation of approximately 700,000 and is the 11th most circulated newspaper in the United States, and its internet website continuously

publishes this fraudulent review worldwide; LABAN's false and fraudulent review has propagated a damaging falsehood about PLAINTIFFS' business to all of those readers.

10. CHOPS is a high-end steakhouse located on City Line Avenue; it purchases only the highest quality meats for its customers.

11. As will be set forth more fully below, DEFENDANTS incorrectly, unfairly and without justification contrived a "review" of the PLAINTIFFS which was known to DEFENDANTS to be blatantly false and misleading, not only because LABAN did not eat what he critiqued, but also because he compared a \$15.00 steak sandwich to an upscale dinner strip steak.

12. When PLAINTIFF PLOTKIN confronted LABAN about the February 4, 2007 review to demand a proper retraction, LABAN apologized for the "confusion", admitted that he did not have the strip steak and "saw [PLOTKIN'S] point", but would not publish a retraction in his column, contrary to the DEFENDANTS' policy on retractions.

13. For decades, DEFENDANT INQUIRER'S policy on correcting errors was that within forty-eight (48) hours, the error would be corrected in a subsequent publication.

14. Here, instead of correcting the fraud, LABAN tried to trap PLOTKIN and cause further harm to him and his business by asking him to log on to LABAN's "blog," at a specific time, to address the issues in the February 4, 2007 review.

15. Upon information and belief, LABAN ensured that other sham "bloggers" were on at the time he invited PLOTKIN to log on, so that they could identify, further harm and embarrass PLOTKIN and harm his business.

16. PLOTKIN did not log on to the "blog" as he knew it was a setup.

17. PLOTKIN did not log on to the "blog" because it was not an analogous location to the defamatory review.

18. As a result of the DEFENDANTS' misconduct, including but not limited to the failure to publish a retraction, the PLAINTIFFS seek compensatory and punitive damages substantially in excess of this Honorable Court's arbitration limits.

II. PARTIES

19. PLAINTIFF, 401 Restaurant Associates, LLC ("CHOPS") is a Pennsylvania limited liability company that conducts its restaurant business at 401 City Avenue, Bala Cynwyd, Pennsylvania, 19004.

20. PLAINTIFF, ALEX PLOTKIN ("PLOTKIN") is an adult individual resident of the Commonwealth of Pennsylvania and the managing member of CHOPS, and who maintains a business address of 401 City Avenue, Bala Cynwyd, Pennsylvania, 19004. PLOTKIN is a well respected member of his community, having previously been in charge of all of the PALM restaurants.

21. DEFENDANT, CRAIG LABAN ("LABAN"), is an adult individual resident of the Commonwealth of Pennsylvania who holds himself out to the public as the "INQUIRER restaurant critic" and who maintains a business office at 400 North Broad Street, Philadelphia, Pennsylvania 19130.

22. DEFENDANT, PHILADELPHIA MEDIA HOLDINGS, LLC ("THE INQUIRER") is a Pennsylvania limited liability company of which Brian P. Tierney is the Chief Executive Officer. PHILADELPHIA MEDIA HOLDINGS, LLC trades as, in part, THE PHILADELPHIA INQUIRER and maintains a business address of 400 North Broad Street, Philadelphia, Pennsylvania 19130.

III. JURISDICTION AND VENUE

23. Jurisdiction is appropriate in the Court of Common Pleas of Philadelphia County because all of the parties hereto are Pennsylvania residents or domiciled in Pennsylvania.

24. Venue is appropriately situated in the Philadelphia County Court of Common Pleas because the DEFENDANTS maintain offices in Philadelphia County, and regularly, continuously and systematically in and throughout Philadelphia.

IV. FACTS

25. PLOTKIN is the managing member of CHOPS, an upscale American Steakhouse located at 401 City Avenue, Philadelphia, Pennsylvania, 19004. CHOPS opened in November of 2002 and enjoyed a reputation as an excellent steakhouse. It had won various awards for the quality of its food and service.

26. At all times relevant hereto, LABAN was The INQUIRER's restaurant critic, and as part of his duties for The INQUIRER, he would write at least a weekly column in which he presumably expressed his factually based opinions about numerous restaurants in and throughout Philadelphia County and its surrounding metropolitan area.

27. As the unrebutted restaurant critic in Philadelphia, LABAN enjoyed significant power in and throughout the restaurant community.

28. LABAN is a self-proclaimed "man of mystery", who appears at various restaurants in disguise and then, under the cloak of his unrevealed identity, often writes reviews which decimate and destroy restaurants and investors.

29. LABAN's deception is not limited to disguises; as occurred here, LABAN has an undisclosed pattern and practice of misleading the public by publishing reviews of restaurants when he had not actually eaten the food being evaluated.

30. LABAN has another undisclosed and fraudulent pattern and practice; he publishes, and claims as his own, food reviews based on what he is told by others about experiences at restaurants; in that circumstance, LABAN fails to identify that the review was not based on personal experience but rather that of his friends.

31. LABAN has always sought to keep his true persona a secret from the restaurant community. Upon information and belief, DEFENDANT INQUIRER contributes to LABAN's disguises and personas by providing the expense account and/or funding necessary for LABAN to conduct his reviews.

32. Both LABAN and The INQUIRER gained an economic advantage by and through LABAN's deception and resultant "reviews."

33. PLOTKIN was one of a very limited number of people who knew LABAN's true identity, and who could identify LABAN when he tried any of his disguises, aliases and/or personas.

34. From his days managing The Palm Restaurant, PLOTKIN knew LABAN but never revealed his identity. When PLOTKIN opened CHOPS in an around November of 2002, LABAN appeared within the first few months of the restaurant's opening.

35. At that time, PLOTKIN very discreetly approached LABAN and told him because CHOPS was a new restaurant, and still working out some internal kinks, he would appreciate LABAN'S not reviewing the restaurant at that time. In this discussion, PLOTKIN also told LABAN that he could not afford LABAN "kill him" with the new business, and then jokingly

told LABAN if he did not leave, he would have to disclose LABAN'S presence to everyone. PLOTKIN did welcome LABAN to stay and eat, but wanted LABAN to promise that he would not yet review the restaurant.

36. PLOTKIN specifically told LABAN to come back after the restaurant had been "up and running for a few more months", and then review any menu item he was interested in.

37. LABAN left the restaurant and never returned until, upon information and belief, January of 2007.

38. In the Sunday, February 4, 2007 review, DEFENDANTS wrote of a competitor steakhouse, Flemings Prime Steakhouse and Wine Bar; in that review, LABAN discussed the quality of various steaks and even indicated that he "tried a number of other meats" while he was dining at Flemings.

39. The false and fraudulent review of CHOPS is right after and juxtaposed with the Flemings review.

40. When LABAN wrote about CHOPS, he stated as follows:

A serious power-lunch crowd makes this sunny room feel like "the Palm on City Line." A recent meal, though, was expensive and disappointing, from the soggy and sour CHOPS salad to a miserably and tough and fatty strip steak. The crabcake, though, was excellent. *Revisited January 2007.*

41. What DEFENDANTS wrote, and republished on the internet, was knowingly false, inaccurate, misleading and designed to harm PLAINTIFFS and to gain an upper-hand over PLOTKIN who, as stated above, was one a very few Philadelphia restaurateurs who knows LABAN's true identity.

42. DEFENDANTS intentionally withheld from the readers the following:

a. LABAN has never eaten a strip steak at CHOPS;

- b. LABAN had only been there for lunch and ate a *steak sandwich* without bread;
- c. LABAN created the impression that the Flemings dinner steaks that he had eaten were being compared to CHOPS' strip steak which LABAN has never, ever eaten.

43. LABAN's article created the distinct impression that he was comparing similar meals between competing restaurants, completely contrary to his own guidelines, at least according to what he told Philadelphia City Paper.net, when he claimed that all of his reviews were "completely fair" and "completely thorough", when clearly they were not.

44. After the February 4, 2007 "review" appeared, an outraged PLOTKIN called LABAN and demanded the specifics about what date he visited CHOPS, who his server was, and critically, what food he ate.

45. LABAN was initially reluctant to disclose any of this information but ultimately admitted the details about the lunch.

46. It was confirmed that LABAN ate a *steak sandwich* without bread, not a strip steak as he claimed in his false and misleading February 4, 2006 "review."

47. When further confronted about his misleading and incomplete review, LABAN apologized and indicated to PLOTKIN that he "saw his [PLOTKIN's] point." LABAN asked PLOTKIN to set forth his position on LABAN's blog, where LABAN indicated he would further respond.

48. Thereafter, the bloggers on LABAN's site identified PLOTKIN individually as the restaurateur and CHOPS as the restaurant.

49. In response to LABAN's request that the parties air out their differences on LABAN's blog, which was a setup to further benefit LABAN and harm PLAINTIFFS,

PLOTKIN and CHOPS declined and specifically told LABAN that while the INQUIRER has a massive circulation, LABAN's blog is not the same publication nor does it have the same circulation level.

50. To date, no retraction or correction has been posted to correct the falsehoods, inferences, innuendos and misleading commentary clearly set forth in the February 4, 2007 "review."

51. The failure to publish a retraction or correction within forty-eight (48) hours of LABAN being exposed, violates DEFENDANT INQUIRER'S decade long policy regarding retractions.

52. As a direct and proximate result of the DEFENDANTS' misconduct as set forth herein, the PLAINTIFFS have suffered damages including but not limited to loss of standing in their respective communities, loss of business profits, loss to their reputations and emotional damages, and further seek punitive damages as a result of the DEFENDANTS' continuing outrageous conduct.

V. CAUSES OF ACTION

COUNT I

MALICIOUS DEFAMATION

53. PLAINTIFFS incorporate each and every allegation as though set forth more fully at length.

54. LABAN wrote and published, and republished on the internet, the defamatory statements with knowledge that they were false or with a reckless disregard of whether they were false.

55. LABAN, acting individually and during the course and scope of his employment, agency and/or authority of the DEFENDANT INQUIRER, wrote and published the defamatory statements with a preconceived conclusion, including:

- a. LABAN has never eaten a strip steak at CHOPS;
- b. LABAN had only been at CHOPS for lunch and ate a *steak sandwich* without bread;
- c. LABAN created the impression that the Flemings dinner steaks that he had eaten were being compared to CHOPS' strip steak which LABAN has never, ever eaten.

56. LABAN, acting individually and during the course and scope of his employment, agency and/or authority of the DEFENDANT INQUIRER, purposefully avoided including in the "review" facts which would have exposed the falsities and untruths of these preconceived conclusions.

57. LABAN was acting within the course and scope of his authority as "food critic" for the INQUIRER and, as such, they were a distributor of the newspaper.

58. The defamatory statements constitute defamation *per se*, and were published by DEFENDANTS with actual malice.

59. The above-referenced statements, inferences, innuendos and implications in the "review" are defamatory of CHOPS insofar, *inter alia*, as:

- a. LABAN has never eaten a strip steak at CHOPS;
- b. LABAN had only been there for lunch and ate a *steak sandwich* without bread;
- c. LABAN created the impression that the Flemings dinner steaks that he had eaten were being compared to CHOPS' strip steak which LABAN has never, ever eaten.

60. The above-referenced statements, inferences, innuendos and implications in the "review" harmed PLAINTIFFS' reputation, lowering the restaurant in the estimation of the community and future patrons from dining at CHOPS.

61. The above-referenced statements, inferences, innuendos and implications in the "review" exposed PLAINTIFFS to contempt and/or ridicule and injured their reputation in the community.

62. The above-referenced statements, inferences, innuendos and implications in the "review" lowered PLAINTIFFS' reputation in the estimation of the restaurant community.

63. The INQUIRER "review" was published and read by, without limitation, the entire restaurant community in the Philadelphia area, citizens looking for guidance as to where (and more importantly where not to) eat, as well as any persons and/or print or electronic media to whom the defamatory statements were repeated, circulated and/or republished.

64. The content of the defamatory statements was clearly comprehensible to all persons to whom they were thus published.

65. DEFENDANTS had no privilege, whether absolute or conditional, to utter and broadcast the false and defamatory statements.

66. DEFENDANTS published the defamatory statements with full knowledge that they would raise questions in the minds of readers, the restaurant community, and the general public, as to quality of food and service being served at CHOPS.

67. DEFENDANTS did not contact PLAINTIFFS before sending the scandalous and outrageously false "review"; indeed, even after PLAINTIFFS attempted to get LABAN to do a proper retraction, he failed to do so.

68. It is outrageous that someone in LABAN's position of trust and power would fabricate such a review; therefore, DEFENDANTS' publication of the defamatory statements warrants an award of punitive damages against all DEFENDANTS because their conduct, in reckless disregard of PLAINTIFFS' interests, was malicious, outrageous, willful and wanton, and the result of improper motives.

69. PLAINTIFFS are entitled to recover from DEFENDANTS such damages as will compensate them for the severe harm to PLAINTIFFS' professional and personal reputations, for mental and emotional suffering, and for the humiliation and embarrassment caused by DEFENDANTS' malicious "review" of the above-referenced false and defamatory statements, innuendos and implications, and which, in addition, will punish the DEFENDANTS for their malicious libel and will deter them and others in the future from repetition of similar libels.

WHEREFORE, PLAINTIFFS demand judgment against the DEFENDANTS, jointly and severally, for compensatory damages in excess of the jurisdictional limit, exclusive of interest and costs. In addition, PLAINTIFF demands an award of punitive damages, costs, attorney's fees, and such other relief as the court deems just and equitable under the circumstances.

COUNT II

FALSE LIGHT

70. PLAINTIFFS incorporate each and every allegation as though set forth more fully at length.

71. The defamatory statements were widely disseminated by DEFENDANTS, broadcast throughout the Philadelphia market, the Delaware Valley, and circulated and repeated throughout the region and the Nation.

72. The defamatory statements, and resultant innuendo and inferences were knowingly false when published and republished.

73. The defamatory statements -- particularly in stating that CHOPS' strip steak was "miserabl[e] and tough and fatty" -- placed CHOPS in a false light before the public, a false light that was highly offensive to PLAINTIFFS, and that would be highly offensive to any reasonable person.

74. LABAN, acting individually and during the course and scope of his employment, agency and/or authority of The INQUIRER, wrote and published the defamatory statements with knowledge of, or acted in reckless disregard as to, their falsity, and the highly offensive false light in which they placed CHOPS.

75. The DEFENDANTS conduct was outrageous, willful and wanton.

76. It is outrageous that someone in LABAN's position of trust and power would fabricate such a review; that warrants punitive damages.

WHEREFORE, PLAINTIFFS demand judgment against the DEFENDANTS, jointly and severally, for compensatory damages in excess of the jurisdictional limit, exclusive of interest and costs. In addition, PLAINTIFF demands an award of punitive damages, costs, attorney's fees, and such other relief as the court deems just and equitable under the circumstances.

COUNT III

INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

77. PLAINTIFFS incorporate each and every allegation as though set forth more fully at length.

78. DEFENDANTS were not privileged to make the defamatory statements about CHOPS.

79. DEFENDANTS' defamatory statements have interfered and/or will in the future interfere with PLAINTIFFS' prospective economic opportunities and earning capacity.

80. DEFENDANTS' defamatory statements have interfered and/or will in the future interfere with the aforesaid economic opportunities and earning capacity of PLAINTIFFS in their career and profession, and their prospective contractual relations with present and future restaurant businesses.

81. DEFENDANTS were aware that PLAINTIFFS' prospective economic advantage and earning capacity would be harmed by the false and defamatory statements.

82. DEFENDANTS' conduct was outrageous, willful and wanton.

83. It is outrageous that someone in LABAN's position of trust and power would fabricate such a review; that warrants punitive damages.

84. WHEREFORE, PLAINTIFFS demand judgment against DEFENDANTS, for compensatory damages in excess of the jurisdictional limit, exclusive of interest and costs. In addition, PLAINTIFFS demand an award of punitive damages, costs, attorney's fees, and such other relief as the court deems just and equitable under the circumstances.

NOTICE OF PRESERVATION OF EVIDENCE

PLAINTIFFS HEREBY DEMAND AND REQUEST THAT DEFENDANTS TAKE NECESSARY ACTION TO ENSURE THE PRESERVATION OF ALL DOCUMENTS, COMMUNICATIONS, WHETHER ELECTRONIC OR OTHERWISE, ITEMS AND THINGS IN THE POSSESSION OR CONTROL OF ANY PARTY TO THIS ACTION, OR ANY ENTITY OVER WHICH ANY PARTY TO HIS ACTION HAS CONTROL, OR FROM WHOM ANY PARTY TO THIS ACTION HAS ACCESS TO, ANY DOCUMENTS, ITEMS, OR THINGS WHICH MAY IN ANY MANNER BE RELEVANT TO OR RELATE TO THE

SUBJECT MATTER OF THE CAUSES OF ACTION AND/OR THE ALLEGATIONS OF THIS COMPLAINT.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial.

THE BEASLEY FIRM, LLC

BY: _____



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