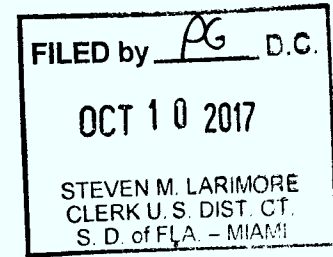


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION



GRISEL ALONSO as Receiver for
Elm Tree Investment Advisors, LLC,
Elm Tree Investment Fund, LP,
Elm Tree 'e'conomy Fund, LP,
Elm Tree Motion Opportunity, LP, and
Etopia, LP

Case no. 17-cv-61390
Proceeding Ancillary to
No. 15-CV-60082-Dimitrouleas/Snow

Plaintiff,

VS

VICTOR ELMALEH, an individual,
MERCEDES ELMALEH, an individual
1925333 ONTARIO INC. d/b/a CLEARTECH
COMPUTING SYSTEM, a Canadian corporation
ENGAGE MARKETING GROUP, INC., a
Canadian corporation, and M3 DESIGNS, LP a
Delaware partnership,

Defendants.

**DEFENDANTS. VICTOR ELMALEH'S, MERCEDES ELMALEH'S, CLEARTECH
COMPUTING SYSTEM'S, ENGAGE MARKETING GROUP'S AND M3 DESIGNS'
ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT**

Defendant, VICTOR ELMALEH on behalf of himself, MERCEDES ELMALEH, CLEARTECH COMPUTING SYSTEMS (hereinafter referred to as "CCS"), ENGAGE MARKETING GROUP (hereinafter referred to as "Engage") and M3 DESIGNS (hereinafter referred to as "M3") fil this Answer and Affirmative Defenses to Plaintiff's Complaint and answers as follows:

PRELIMINARY STATEMENT

1. As it relates to Paragraph 1, without knowledge and demands strict proof thereof.

2. As it relates to Paragraph 2, without knowledge and demands strict proof thereof.
3. As it relates to Paragraph 3, without knowledge and demands strict proof thereof.
4. As it relates to Paragraph 4, without knowledge and demands strict proof thereof.
5. As it relates to Paragraph 5, without knowledge and demands strict proof thereof.
6. As it relates to Paragraph 6, without knowledge and demands strict proof thereof.
7. As it relates to Paragraph 7, without knowledge and demands strict proof thereof.
8. As it relates to Paragraph 8, without knowledge and demands strict proof thereof.
9. As it relates to Paragraph 8, without knowledge and demands strict proof thereof.

JURISDICTION AND VENUE

10. As it relates to Paragraph 10, without knowledge and demands strict proof thereof.
11. As it relates to Paragraph 11, without knowledge and demands strict proof thereof.
12. As it relates to Paragraph 12, without knowledge and demands strict proof thereof.

PARTIES

13. As it relates to Paragraph 13, without knowledge and demands strict proof thereof.
14. As it relates to Paragraph 14, admit for jurisdictional purposes only.
15. As it relates to Paragraph 15, admit for jurisdictional purposes only.

16. As it relates to Paragraph 16, without knowledge and demands strict proof thereof.
17. Denied.
18. Denied.
19. Denied.
20. Admit.

FACTS

21. As it relates to Paragraph 21, without knowledge and demands strict Proof thereof.
22. As it relates to Paragraph 22, without knowledge and demands strict Proof thereof.
23. As it relates to Paragraph 23, without knowledge and demands strict Proof thereof.
24. As it relates to Paragraph 24, without knowledge and demands strict Proof thereof.
25. As it relates to Paragraph 25, without knowledge and demands strict Proof thereof.
26. As it relates to Paragraph 26, without knowledge and demands strict Proof thereof.
27. As it relates to Paragraph 27, without knowledge and demands strict Proof thereof.
28. As it relates to Paragraph 28, without knowledge and demands strict Proof thereof.
29. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
30. Denied.
31. Denied.
32. Denied.
33. Denied.

- 34. Denied.
- 35. Denied.
- 36. Denied.
- 37. Denied.
- 38. As it relates to Paragraph 29, without knowledge and demands strict Proof thereof.
- 39. Denied. Etopia was not even part of the Receivership at the time.
- 40. Denied.

B. The Transfers to Defendants

- 41. Denied.
- 42. Denied.
- 43. Denied.
- 44. Denied.
- 45. Denied.

1. The Transfers to 1925333 ONTARIO Inc. d/b/a Cleartech Computing Systems

- 46. Denied.
- 47. Denied.
- 48. Denied.

2. The Transfers to Engage Marketing Group, Inc.

- 49. Denied.
- 50. Denied.
- 51. Denied.

3. The Transfers to M3 Designs

- 52. Denied.

53. Denied.

54. Denied.

4. Alter Ego

55. Denied.

56. Denied.

57. Denied.

58. Denied.

**COUNT 1 – Fraudulent Transfer under Section 726.105, Florida Statutes
(Against CCS)**

59. See corresponding answers above.

60. Denied.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

65. Denied.

66. Denied.

67. Denied.

68. Denied.

69. Denied.

**COUNT 2 – Fraudulent Transfer under Section 726.106, Florida Statutes
(Against CCS)**

70. See corresponding answers above.

71. Denied.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

78. Denied.

COUNT 3 – Unjust Enrichment
(Against CCS)

79. See corresponding answers above.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

84. Denied.

COUNT 4 – Conversion
(Against CCS)

85. See corresponding answers above.

86. Denied.

87. Denied.

88. Denied.

89. Denied.

COUNT 5 – Fraudulent Transfer under Section 726.105, Florida Statutes
(Against Engage)

90. See corresponding answers above.

91. Denied.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

100. Denied.

COUNT 6 – Fraudulent Transfer under Section 726.106, Florida Statutes
(Against Engage)

101. See corresponding answers above.

102. Denied.

103. Denied.

104. Denied.

105. Denied.

106. Denied.

107. Denied.

108. Denied.

109. Denied.

COUNT 7 – Unjust Enrichment
(Against Engage)

110. See corresponding answers above.

111. Denied.

112. Denied.

113. Denied.

114. Denied.

115. Denied.

COUNT 8 – Conversion
(Against Engage)

116. See corresponding answers above.

117. Denied.

118. Denied.

119. Denied.

120. Denied.

COUNT 9 – Fraudulent Transfer under Section 726.105, Florida Statutes
(Against M3)

121. See corresponding answers above.

122. Denied.

123. Denied.

124. Denied.

125. Denied.

126. Denied.

127. Denied.

128. Denied.

129. Denied.

130. Denied.

131. Denied.

COUNT 10 – Fraudulent Transfer under Section 726.106, Florida Statutes
(Against M3)

132. See corresponding answers above.

- 133. Denied.
- 134. Denied.
- 135. Denied.
- 136. Denied.
- 137. Denied.
- 138. Denied.
- 139. Denied.
- 140. Denied.

COUNT 11 – Unjust Enrichment
(Against M3)

- 141. See corresponding answers above.
- 142. Denied.
- 143. Denied.
- 144. Denied.
- 145. Denied.
- 146. Denied.
- 147. Denied

COUNT 12 – Conversion
(Against M3)

- 148. See corresponding answers above.
- 149. Denied.
- 150. Denied.
- 151. Denied.

COUNT 13 – Conversion
(Against Victor Elmaleh)

152. See corresponding answers above.

153. Denied.

154. Denied.

155. Denied.

COUNT 14 – Aiding and Abetting Conversion
(Against Victor Elmaleh)

156. Denied.

157. Denied.

158. Denied.

159. Denied.

160. Denied.

161. Denied.

COUNT 15 – Conversion
(Against Mercedes Elmaleh)

162. See corresponding answers above.

163. Denied.

164. Denied.

165. Denied.

COUNT 16 – Aiding and Abetting Conversion
(Against Mercedes Elmaleh)

166. Denied.

167. Denied.

168. Denied.

169. Denied.

170. Denied.

171. Denied.

COUNT 17 – Civil Conspiracy
(Against All Elmaleh Defendants)

172. See corresponding answers above.

173. Denied.

174. Denied.

175. Denied.

176. Denied.

177. Denied.

AFFIRMATIVE DEFENSES

1. As and for their First Affirmative Defense, Plaintiffs claims failed to state a claim upon which relief can be granted.

2. As and for his Second Affirmative Defense, to the extent that Plaintiff has alleged fraud on behalf of the ELMALEH's, ELMALEH'S denies any bad faith or bad intent. ELMALEH'S vehemently deny the allegations and misrepresentations by the Plaintiff. As such, Plaintiff is unable to establish the bad faith element necessary for any fraud action as per *Parker v. State of Florida Board of Regents*, 724 So.2d 163, 169 (Fla. 1st DCA 1998); *First Interstate Development Corp. v. Ablanedo*, 511 So.2d 536, 539 (Fla. 1987).

3. As and for his Third Affirmative Defense, the ELMALEH'S denies any involvement in any unsubstantiated and alleged investment scheme to Elm Tree and any

of its related entities

4. As and for their Fourth Affirmative Defense, ELMALEH's denies any involvement with soliciting, marketing any investment and has no knowledge or intent in regards to participating in any Elm Tree investment or fund. In fact, Plaintiff has failed to even identify Etopia as an investment fund and not brought forth any so called investor with any material facts. Victor Elmaleh and Mercedes Elmaleh have never spoken to, emailed or received an email or ever communicated with any alleged investors. The Plaintiff has provided no proof whatsoever that Victor Elmaleh or Mercedes Elmaleh have ever dealt with any investor. The ELMALEH'S have never signed any documents, subscription documents, offering memorandums or any investment agreements as they pertain to investors. The Plaintiff has not proven any of their false claims

5. As and for their Fifth Affirmative Defense, ELMALEH'S never received a payment from Elm for an alleged benefit and never profited or personally received funds from Etopia, CCS, Engage or M3. As such, unjust enrichment cannot exist where payment has not been received.

6. As and for their Sixth Affirmative Defense, Victor Elmaleh and Mercedes Elmaleh were only officers of the mentioned companies, they did not personally benefit, did not personally receive funds and were not the beneficial owners of the companies mentioned in the Plaintiff's claim. As a result, Victor Elmaleh and Mercedes Elmaleh should be immediately removed from this litigation.

7. As and for their Seventh Affirmative Defense, Victor Elmaleh could not have sent the alleged transfers from Etopia or M3 because he lives in Canada and was

not in Florida at the time of the alleged transfers.

8. As and for their Eighth Affirmative Defense, the action should not be filed or take place within the State of Florida. None of the companies mentioned in the claim operate or reside in Florida and Victor and Mercedes Elmaleh are Canadian citizens that reside in Canada. CSS is a Canadian company that has never done business in Florida. M3 is a Delaware Company has never done business in Florida. Etopia is a Delaware Company with no office or operation in Florida. Engage is a Canadian company that has never done business in Canada. The Palintiff has shown no legitimate reason as to why this case showed be tried in Florida. The venue should be moved to Canada.

9. As and for their Ninth Affirmative Defense, DEFENDANTS reserves their right to amend or supplement these Affirmative Defenses as discovery and this litigation is currently ongoing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been filed and a copy has been emailed to: **Daniel S. Newman, Esquire, Christopher Cavallo, Esquire** Broad and Cassel, Attorneys for Plaintiff, 2 South Biscayne Boulevard, 21st Floor, Miami, Florida 33131 .Email: dnewman@broadandcassel.com; ccavallo@broadandcassel.com.

VICTOR ELMALEH.
59 McCabe Crescent
Thornhill, Ontario
Canada L4J 2S6
Email:
velmaleh1944@gmail.
com
Facsimile : 905-660-9666