



IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

**INNOVATIVE MEDICINE
PARTNERS, LLC, INNOMED ONE,
LLC, CARLA W. FALKNER and
DENEEN T. PLESSALA,**

Plaintiffs,

v.

**JACK SOLBERGER, DONNA BAIN
SMITH, SOLBERGER & SMITH,
L.L.P., and JACK SOLBERGER, P.C.,**

Defendants.

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Case No. _____

COMPLAINT

COMES NOW the Plaintiffs in the above-styled action, Innovative Medicine Partners, LLC (“IMP”), InnoMed One, LLC, Carla W. Falkner, and Deneen T. Plessala, and file this Complaint against the Defendants, Jack Solberger, Donna Bain Smith, Solberger & Smith, L.L.P., and Jack Solberger, P.C., on the following grounds:

JURISDICTION & VENUE

1. The Circuit Court has jurisdiction of this action pursuant to *Alabama Code* § 12-11-30, *Alabama Code* § 12-11-31, and *Alabama Code* § 6-6-220.
2. Venue is proper in this Court pursuant to *Alabama Code* § 6-3-2.

PARTIES

3. Plaintiff, Innovative Medicine Partners, LLC, was an Alabama limited liability company with its principal place of business in Mobile County Alabama, at all times material to this action.

4. Plaintiff, InnoMed One, LLC, was an Alabama limited liability company with its principal place of business in Mobile County Alabama, at all times material to this action.

5. Plaintiff, Carla W. Falkner was an adult resident of Mobile County, Alabama, and a member of Innovative Medicine Partners, LLC, at all times material to this action.

6. Plaintiff, Deneen T. Plessala was an adult resident of Mobile County, Alabama, a medical doctor, and a member of Innovative Medicine Partners, LLC, at all times material to this action.

7. Defendant, Jack Solberger, was an adult resident of Mobile County, Alabama, a certified public accountant, and a partner in Solberger & Smith, L.L.P., as well as a shareholder in Jack Solberger, P.C., at all times material to this action.

8. Defendant, Donna Bain Smith, was an adult resident of Mobile County, Alabama, a certified public accountant, and a partner in Solberger & Smith, L.L.P., at all times material to this action.

9. Defendant, Solberger & Smith, L.L.P., was an Alabama limited-liability partnership, operating a certified public accounting practice, with its principal place of business in Mobile County, Alabama, at all times material to this action.

10. Defendant, Jack Solberger, P.C., was an Alabama professional corporation, operating a certified public accounting practice, with its principal place of business in Mobile County, Alabama, at all times material to this action.

FACTS

11. On August 29, 2014, Innovative Medicine Partners, LLC, was formed to create a unique approach to bringing medical devices and products to market. IMP collaborates with doctors and other medical professionals to identify and create new and original treatment options for medical patients. The company offers knowledge, experience and resources to its partners, which creates the pathway for IMP and its partners to deliver these innovative medical devices and products to patients.

12. IMP owns a majority interest in four subsidiaries: InnoMed One, LLC, InnoMed Two, LLC, InnoMed Three, LLC, and InnoMed Four, LLC. Each subsidiary is developing a separate medical device or product, and each subsidiary has its own set of investors. For example, InnoMed One, LLC, which currently has more than 20 investors, is developing a medical device that will serve as a new and unique fertility aid.

13. As of September 1, 2016, the members of IMP were Carla W. Falkner and Deneen T. Plessala.

14. In December of 2016, the members of IMP sought the services of a certified public accounting firm to provide bookkeeping services, accounting services and tax services to IMP and its subsidiaries. Toward that goal, the members of IMP became acquainted with the Defendants, Jack Solberger and Donna Bain Smith, of the accounting firm, Solberger & Smith, L.L.P.

15. During meetings with the IMP members, Defendants Solberger and Smith not only offered to perform the required professional accounting services for IMP and its subsidiaries, but they also negotiated an agreement to purchase their own membership interests in IMP.

16. Defendants Solberger and Smith paid \$10,000.00 each to IMP. In return, they both received a five-percent (5%) membership interest in IMP. As further consideration for the

members of IMP allowing Defendants Solberger and Smith to join IMP, Defendants Solberger and Smith agreed to provide professional accounting services without charge to IMP, and to provide the same professional services to IMP's subsidiaries, pursuant to a delayed billing arrangement.

17. On January 3, 2017, the Solberger and Smith relationship with IMP was consummated with a meeting of the IMP members, Carla W. Falkner and Deneen T. Plessala. Minutes were taken, various documents were created and signed, and IMP's limited liability company agreement was amended and executed.

18. After the execution of the aforementioned agreements, Defendants Solberger and Smith owed IMP, its members, and its subsidiaries, a duty to perform certified public accounting services in a competent, ethical and professional manner. Defendants Solberger and Smith were also obligated to deal fairly and in good faith with the Plaintiffs, and to honor their fiduciary duties.

19. As agreed, Defendants Solberger and Smith provided professional accounting services without charge to IMP for several months, and also provided the same professional services to IMP's subsidiaries, pursuant to the delayed billing arrangement.

20. In July of 2017, Defendant Solberger requested to purchase a two-percent membership interest in InnoMed One, LLC, but the members never granted that request. As a matter of fact, Defendants Solberger and Smith never purchased any membership interest in the IMP subsidiaries.

21. In August of 2017, Defendants Solberger and Smith became disgruntled about the services that they had agreed to perform for IMP and its subsidiaries. Rather than work out any differences with the Plaintiffs, Defendants Solberger and Smith unilaterally breached their agreements with IMP and its members by failing to adhere to the obligations and requirements described therein.

22. Specifically, Defendants Solberger and Smith willfully neglected to perform certified public accounting services in a competent, ethical and professional manner, failed to deal fairly and in good faith with the Plaintiffs, and breached their fiduciary duties to IMP and its members.

23. For example, on August 21, 2017, Defendants Solberger and Smith notified IMP that they would no longer perform any accounting services for IMP or its subsidiaries in direct breach of the aforementioned agreements.

24. Defendants Solberger and Smith also submitted large, inflated invoices for services that they agreed to perform without charge, and/or that they agreed to submit for payment on a delayed billing arrangement.

25. At the same time, Defendants Solberger and Smith continued to claim that they were full members of IMP. They notified IMP that they expected to receive all the same rights and privileges of membership that they had been entitled to before they breached their agreements.

26. Furthermore, Defendants Solberger and Smith breached their agreements with IMP and its members by losing, destroying and/or withholding critical financial records and other corporate documents which IMP had entrusted to their care. IMP has repeatedly requested that Defendants Solberger and Smith return said documents, but they refuse to cooperate.

27. It was no accident that Defendants Solberger and Smith lost, destroyed and/or withheld numerous documents showing the contractual relationship that they created with IMP and its members. They also lost, destroyed and/or withheld numerous emails exchanged during the discussions and negotiations between the parties in December 2016 and January 2017. These discussions lead to the oral agreements that eventually resulted in the creation of written contracts between the parties, which the Defendants also lost, destroyed and/or withheld.

28. Moreover, Defendants Solberger and Smith defamed IMP, its members and staff, by publishing false and libelous statements to current and potential investors. The defamatory statements encouraged the withdrawal of investments from IMP's subsidiaries. The defamatory statements were therefore made with the intent to interfere with business relations between the subsidiaries and their investors. As a result of these defamatory statements, InnoMed One, LLC, lost \$25,000.00.

29. On September 18, 2017, IMP demanded that Defendants Solberger and Smith cease and desist from making any further false and defamatory statements, and to retract the false and defamatory statements. However, the Defendants refused to retract their false and defamatory statements.

30. On October 4, 2017, IMP notified Defendants Solberger and Smith that they had breached their agreements with IMP and its members, and therefore they were no longer members of the company.

31. On October 18, 2017, IMP attempted in good faith to return the \$10,000.00 investments to both Defendants, Solberger and Smith, but they refused to accept the funds, and continued to claim full membership status.

32. In October, 2017, Defendants Solberger and Smith received but intentionally withheld additional important documents from the Plaintiffs. These documents included two investment checks issued for \$25,000.00 each, as well as numerous tax notices and other important financial documents. These documents were not delivered to Plaintiffs until mid-December, 2017. Due to this unprofessional conduct, stop payments were demanded on the \$25,000.00 checks, resulting in unnecessary banks fees. Also, the Defendants' spiteful delays caused several tax delinquencies.

33. At all times material to this action, Defendants Solberger and Smith acted both for themselves, individually, as well as within the line and scope of their duties for Solberger & Smith, L.L.P. and Jack Solberger, P.C.

COUNT ONE:

BREACH OF CONTRACT

34. All of the above paragraphs are re-alleged and incorporated by reference as if fully set forth herein.

35. Defendants Solberger and Smith made offers to Plaintiffs, IMP, Carla Falkner and Deneen Plessala, and Plaintiffs accepted Defendants' offers. There was mutual assent to and consideration for these agreements.

36. Plaintiffs, IMP, Carla Falkner and Deneen Plessala, were damaged as a proximate result of Defendants' breaches of said agreements.

WHEREFORE, Plaintiffs pray this Honorable Court enter a judgment in favor of Plaintiffs and against Defendants, jointly and severally, for compensatory damages in an amount to be determined by a jury, plus interest and taxable costs.

COUNT TWO

CONVERSION

37. All of the above paragraphs are re-alleged and incorporated by reference as if fully set forth herein.

38. Plaintiffs possessed certain personal property or had the immediate right to possession of said property, i.e., certain financial records and other corporate documents.

39. Defendants had the intent to exercise dominion or control over the Plaintiffs' property, which was in fact inconsistent with Plaintiffs' rights.

40. Defendants intentionally, wrongfully and illegally: (a) took, lost and/or destroyed Plaintiffs' property; (b) assumed ownership of Plaintiffs' property; (c) used or misused Plaintiffs' property; and (d) withheld or interfered with Plaintiffs' property.

41. Plaintiffs demanded that Defendants return the property and Defendants refused to return said property.

42. Plaintiffs did not consent to Defendants' conduct, which proximately caused harm to Plaintiffs.

WHEREFORE, Plaintiffs pray that this Honorable Court enter a judgment in favor of Plaintiffs and against Defendants, jointly and severally, for compensatory and punitive damages in an amount to be determined by a jury, plus interest and taxable costs.

COUNT THREE

DEFAMATION - LIBEL

43. All of the above paragraphs are re-alleged and incorporated by reference as if fully set forth herein.

44. Defendants Solberger and Smith made false and defamatory statement about Plaintiffs which said statements exposed them to disgrace, ridicule and contempt.

45. Defendants Solberger and Smith negligently, intentionally and/or wantonly published the statements to third persons.

46. The statements were the proximate cause of economic harm to Plaintiffs.

WHEREFORE, Plaintiffs pray that this Honorable Court enter a judgment in favor of Plaintiffs and against Defendants, jointly and severally, for compensatory and punitive damages in an amount to be determined by a jury, plus interest and taxable costs.

COUNT FOUR

INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS

47. All of the above paragraphs are re-alleged and incorporated by reference as if fully set forth herein.

48. Defendants intentionally interfered with a contract that they knew existed between Plaintiff InnoMed One, LLC, and a third party.

49. Defendants' interference was wrongful, malicious, unlawful, and/or unjustified.

50. Plaintiff InnoMed One, LLC, was damaged and will continue to be damaged as a result of Defendants' interference with said contract.

WHEREFORE, Plaintiff InnoMed One, LLC, prays this Honorable Court enter a judgment in favor of Plaintiff and against Defendants, jointly and severally, for compensatory and punitive damages in an amount to be determined by a jury, plus interest and taxable costs.

COUNT FIVE:

BREACH OF FIDUCIARY DUTIES

51. All of the above paragraphs are re-alleged and incorporated by reference as if fully set forth herein.

52. Defendants Solberger and Smith owed fiduciary duties to Plaintiff, IMP, and its members, as well as the duties of good faith, fair dealing, trust, confidence, and candor.

53. Defendants' willful and wanton conduct, and gross negligence, breached the duties owed to Plaintiffs and said breach was the proximate cause of damage to Plaintiffs.

WHEREFORE, Plaintiffs pray that this Honorable Court enter a judgment in favor of Plaintiffs and against Defendants, jointly and severally, for compensatory and punitive damages in an amount to be determined by a jury, plus interest and taxable costs.

COUNT SIX:**DECLARATORY JUDGMENT**

54. All of the above paragraphs are re-alleged and incorporated by reference as if fully set forth herein.

55. This action is brought, and the Court's jurisdiction invoked pursuant to the provisions of *Declaratory Judgment Act, Alabama Code § 6-6-220, et seq. (1975)*, and *Rule 57 of the Alabama Rules of Civil Procedure*.

56. An actual and justiciable controversy exists between the parties.

57. Plaintiffs pray that this Court enter a judgment to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations of the parties hereto, to wit: Defendant Solberger and Defendant Smith are judicially expelled and dissociated from IMP for the reasons stated herein.

58. An event stated in the IMP limited-liability company agreement as causing the expulsion and/or dissociation of Defendants Solberger and Smith has occurred.

59. Defendants Solberger and Smith willfully and persistently committed or are willfully and persistently committing material breaches of certain agreements with the Plaintiffs and/or their duties or obligations under Alabama law.

60. Defendants Solberger and Smith engaged and continue to engage in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the Plaintiffs' activities and affairs.

61. Defendants Solberger and Smith engaged and continue to engage in conduct relating to the Plaintiffs' activities and affairs that makes it not reasonably practicable to carry on

the activities and affairs with Defendants Solberger and Smith as members of a limited liability company.

62. Defendants Solberger and Smith were expelled as members pursuant to the limited liability company agreement, and the unanimous consent of the legitimate members, but continue to claim they are entitled to full membership status.

63. WHEREFORE, Plaintiffs move this Honorable Court to issue an Order:

- (a) Finding that Defendants have materially breached their agreements and their fiduciary duties to Plaintiffs;
- (b) Ruling that the Defendants Solberger and Smith are dissociated and judicially expelled from IMP and are no longer members thereof;
- (c) Ordering Defendants to return financial records and corporate documents owned by Plaintiffs;
- (d) Finding that Defendants Solberger and Smith are responsible for all damages proximately caused by their wrongful and/or tortious conduct;
- (e) Enter a final judgment on the jury verdict awarding damages to the Plaintiffs; and
- (f) For such further and other relief to which Plaintiffs are entitled.

PLAINTIFFS DEMAND TRIAL BY JURY ON ALL COUNTS SO TRIABLE

Respectfully submitted,

/s/ Harry V. Satterwhite
 HARRY V. SATTERWHITE (SAT003)
 Attorney for Plaintiffs

OF COUNSEL:

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