

FILED Document

CO Boulder County District Court 20th JD DATE FILED: April 20, 2004

Filing Date: Apr 20 2004 3:23PM MDT

Filing ID: 3452553

Review Clerk: Debra Crosser

DISTRICT COURT, BOULDER COUNTY,
STATE OF COLORADO

1777 6th Street
Boulder, Colorado 80302
(303) 441-3750

Plaintiff: Hepburn Ingham

Defendants: Todd D. Burke and Kirstin
Burke

Michael E. Lindsay, #15126
Ballard Spahr Andrews & Ingersoll, LLP
1225 17th Street, Suite 2300
Denver, Colorado 80202
Telephone: (303) 292-2400
Facsimile: (303) 296-3956
Email: Lindsay@ballardspahr.com

? COURT USE ONLY ?

Case No.

Division

VERIFIED COMPLAINT AND JURY DEMAND

Plaintiff Hepburn Ingham (“Ingham”) states:

GENERAL ALLEGATIONS

1. Ingham resides at 2261 Market Street, #447, San Francisco, CA 94114.
2. Defendant Todd D. Burke (“Burke”) resides at 1423 Quince Street, Boulder, Colorado 80304.
3. Defendant Kirstin Burke (“K. Burke”) resides at 1423 Quince Street, Boulder, Colorado 80304. Burke and K. Burke are legally married.
4. Pursuant to C.R.C.P. 98(c), this Court is the proper venue for this action as Burke and K. Burke reside in Boulder County.
5. Ingham was introduced to Burke in the fall of 1999. Burke informed Ingham that he was a principal and corporate officer of globalTowers Inc., a California corporation (“GTI”). Burke further informed Ingham that the primary business of GTI was the

engineering, construction, maintenance and ownership of telecommunication towers for use primarily in wireless communication within the United States. Burke further informed Ingham that GTI's future business plan included the construction of telecommunication towers for the use of marketing tower space to wireless carriers. At that time, GTI had offices in California and Colorado. Burke's description of the business activities of GTI were a part of Burke's ongoing efforts to induce Ingham into purchasing GTI stock from both GTI and Burke, and lending funds to both GTI and Burke.

6. In furtherance of these efforts, in February 2000, Burke represented to Ingham that GTI was doing very well in the marketplace and that GTI had a documented market valuation of \$20 million. Burke further represented at that time that GTI could have well over a billion dollar market cap within several years. In making these representations, Burke also described the need for thousands of additional telecommunication towers in the United States within the following five to seven years. Burke further claimed that similar tower numbers were required in Europe and that GTI was positioning itself to compete in the European market. Burke claimed that buildings in each major city of the United States represented an untapped market and that GTI was leading the market with numerous lease agreements to utilize buildings for microwave repeaters. Burke assured Ingham that Burke could successfully lead these efforts because he had run a successful civil construction company, specializing in overpass bridges and water storage tanks, before his involvement with GTI. Burke further assured Ingham that his brother-in-law, John Childs, and his father-in-law were financially committed to GTI and thus the financial risk to Ingham would be minimal, if not non-existent.

7. Upon information and belief and unbeknownst to Ingham, each of these statements by Burke were materially false.

8. Based upon the above identified representations of Burke, on or about May 1, 2000, Ingham purchase 80,000 shares of GTI stock from GTI in exchange for \$100,000. In facilitating and promoting this transaction, Burke failed to inform Ingham that GTI had recently repurchased substantial GTI stock for a value of approximately ninety percent less than the amount paid by Ingham. A copy of the resulting GTI stock certificate is attached as Exhibit A.

9. Based upon the above identified representations of Burke, on or about November 16, 2000, Ingham loaned \$150,000 to GTI. This loan was documented in the form of a convertible promissory note (the "\$150,000 GTI Note"), a copy of which is attached as Exhibit B.

10. Based upon the above identified representations of Burke, on or about February 21, 2001, Ingham purchased 75,000 shares of GTI stock from Burke in exchange for \$150,000. To date, however, Burke has failed and refused to provide Ingham with a GTI stock certificate evidencing this purchase.

11. Based upon the above identified representations of Burke, on March 30, 2002, Ingham loaned Burke \$100,000. This amount, plus interest, was to be repaid by Burke to Ingham by August 30, 2002.

12. Based upon the above identified representations of Burke, on or about December 30, 2002, Ingham loaned Burke an additional \$65,000. This amount, plus interest, plus the amount loaned on March 30, 2002, was to be repaid by Burke by January 31, 2003.

13. Based upon the above identified representations of Burke, on or about June 23, 2003, the \$150,000 GTI Note was converted to a \$100,000 promissory note from GTI in favor of Ingham back dated to November 15, 2001, and 31,750 shares of GTI stock. A copy of the new \$100,000 promissory note is attached as Exhibit C.

14. On or about July 29, 2003, Burke and K. Burke purchased certain real property located at 1423 Quince Street, Boulder, Colorado 80304. Upon information and belief, a substantial portion, if not all of the funds paid for this purchase were provided by Burke.

FIRST CLAIM FOR RELIEF
(Breach of Contract)

15. Paragraphs 1 through 14 above are realleged and incorporated by reference.

16. Burke has failed and refused to perform his obligation to timely repay the amounts loaned by Ingham to Burke on March 30 and December 30, 2002, i.e., a collective \$165,000, plus accrued interest. As a direct result of Burke's failure in this regard, Ingham has incurred substantial damages in an amount to be determined at trial.

SECOND CLAIM FOR RELIEF
(Fraud)

17. Paragraphs 1 through 16 above are realleged and incorporated by reference.

18. Burke made numerous misrepresentations and omissions of material fact in inducing Ingham to enter into the transactions identified above. These material misrepresentations and omissions were made by Burke knowing such misrepresentations and omissions were false.

19. Burke made the misrepresentations and omissions with the intent that Ingham would act in reliance on the misrepresentations and omissions. Ingham relied on the misrepresentations and omissions; Ingham's reliance was justified; and the reliance caused damages to Ingham in an amount to be determined at trial.

20. The actions of Burke complained of are attended by circumstances of fraud, malice, or willful and wanton conduct thus justifying an award of exemplary damages.

THIRD CLAIM FOR RELIEF
(Negligent Misrepresentation)

21. Paragraphs 1 through 20 above are realleged and incorporated by reference.

22. Burke negligently gave false information to or failed to disclose information to Ingham as part of his efforts to induce Ingham to enter into the above identified agreements.

23. Ingham justifiably relied upon such information and omissions in entering into the above identified agreements and this reliance caused Ingham to incur substantial damages in an amount to be determined at trial.

24. The actions of Burke complained of were attended by circumstances of fraud, malice or willful and wanton conduct thus justifying an award of exemplary damages.

FOURTH CLAIM FOR RELIEF
(Violation of Colorado Securities Act)

25. Paragraphs 1 through 24 above are realleged and incorporated by reference.

26. Burke knowingly or recklessly made material misrepresentations to Ingham in connection with Ingham's purchase of GTI common stock in violation of the Colorado Securities Act, C.R.S. § 11-51-101, et seq.

27. Ingham has incurred damages as a result of Burke's complained of actions in an amount to be determined at trial.

FIFTH CLAIM FOR RELIEF
(Breach of Fiduciary Duty)

28. Paragraphs 1 through 27 above are realleged and incorporated by reference.

29. Burke owed fiduciary duties to Ingham to disclose all material information relating to the financial business affairs of GTI.

30. In failing to promptly disclose all such information to Ingham, Burke breached his fiduciary duties to Ingham.

31. As a result of Burke's breaches of his fiduciary duties to Ingham, Ingham has incurred damages in an amount to be determined at trial.

SIXTH CLAIM FOR RELIEF
(Civil Theft)

32. Paragraphs 1 through 31 above are realleged and incorporated by reference.

33. As alleged above, on November 16, 2000, March 30, 2002, and December 30, 2002, Burke knowingly and without authorization exercised control over Ingham's funds in the respective amounts of \$150,000, \$100,000, and \$65,000, by failing and refusing to provide the agreed to consideration for the same.

34. As a direct result of this theft, Ingham has suffered actual damages in an amount to be proven at trial.

35. Pursuant to C.R.S. § 18-4-405, Burke is liable for treble damages, plus costs and attorney fees incurred by Ingham in pursuing this matter.

SEVENTH CLAIM FOR RELIEF
(Violation of Colorado Consumer Protection Act)

36. Paragraphs 1 through 35 above are realleged and incorporated by reference.

37. In the course of his trade, business, or occupation, Burke intentionally and in bad faith induced Ingham into purchasing GTI stock from both GTI and Burke, and lending monies to both GTI and Burke.

38. Upon information and belief, Burke has and continues to perform the same deceptive pattern of conduct with respect to other potential investors in GTI and lenders to both GTI and Burke, significantly impacting numerous consumers.

39. Burke's complained of actions are prohibited by the Colorado Consumer Protection Act, C.R.S. § 6-1-105, et seq., which establishes the resulting right to recover statutory damages, actual damages and treble damages.

40. As a direct result of Burke's violation of the Colorado Consumer Protection Act, Ingham has suffered injuries, damages, losses and attorney fees in an amount to be determined at trial.

EIGHTH CLAIM FOR RELIEF

(Fraudulent Conveyance – C.R.S. Section 38-8-105)

41. Paragraphs 1 through 40 above are realleged and incorporated by reference.

42. On July 29, 2003, Burke and K. Burke purchased certain real property with an address of 1423 Quince Street, Boulder, Colorado. Upon information and belief, Burke funded a significant portion, if not all of this purchase with the intent to hinder, delay or defraud creditors of Burke, including Ingham.

43. Upon information and belief, Burke funded these purchase monies without receiving from K. Burke the equivalent value of the purchase monies he was conveying on her behalf.

44. Upon information and belief, Burke has conveyed his ownership interest in and to 1423 Quince Street, Boulder, Colorado, to K. Burke for no consideration.

45. By such actions, Burke has made fraudulent conveyances as defined by C.R.S. § 38-8-105, and K. Burke has participated in the same.

46. Ingham has been damaged by Burke's fraudulent conveyances to K. Burke in an amount to be determined at trial.

WHEREFORE, Ingham requests that this Court entered judgment in favor of Ingham and against Burke and K. Burke, jointly and severally, in an amount to be proven at trial, including actual and consequential damages, exemplary and other statutorily mandated damages, and his costs and expenses, including reasonable attorney fees, incurred in pursuing this matter, and for such other and further relief as this Court deems just and proper.

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY

DATED: April 20, 2004.

Respectfully submitted,

BALLARD SPAHR ANDREWS
& INGERSOLL, LLP

By *Duly Signed Original On File*

Michael E. Lindsay

Leslie A. Tuft

1225 17th Street, Suite 2300

Denver, Colorado 80202-5596

(303) 292-2400

ATTORNEYS FOR HEPBURN INGHAM

