

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

CAROL BUCKLEY,)
)
 Plaintiff,)
)
 v.)
)
 THE ELEPHANT SANCTUARY)
 IN TENNESSEE, JANICE ZEITLIN)
 and MARY BAKER, individually,)
)
 Defendants.)

Docket No. 10-1598-11
JURY DEMAND

FILED
2010 OCT - 1 PM 4:25
DAVIDSON COUNTY CHANCERY CT.
DC&M

VERIFIED COMPLAINT

I. Introduction

The Plaintiff, Carol Buckley (hereinafter "Buckley"), brings this action against the Defendant, The Elephant Sanctuary in Tennessee (hereinafter "The Sanctuary") alleging retaliatory discharge in violation of both Tennessee Common Law and the Tennessee Public Protection Act, Tenn. Code Ann. § 50-1-304, unauthorized use of her name and likeness in violation of both the Tennessee Personal Rights Protection Act, Tenn. Code Ann. § 47-25-1101 *et seq.* and Tennessee common law, breach of contract, and conversion by bailee, and Defendants Janice Zeitlin (hereinafter "Zeitlin") and Mary Baker (hereinafter "Baker"), individually, alleging defamation.

II. Jurisdiction and Venue

1. Jurisdiction and venue are proper in this Court as two (2) of the three (3) Defendants reside in Davidson County, Tennessee.



III. Parties

2. The Plaintiff is an individual residing, and at all times relevant to this lawsuit has resided in, Hohenwald, Lewis County, Tennessee.

3. Defendant, The Elephant Sanctuary in Tennessee (formerly known as The Elephant Sanctuary in Hohenwald) is a not-for-profit corporation with its principle place of business located at 804 Darby Town Road, Hohenwald, Tennessee 38462. Its agent for service of process is Scott Blais, who may be served at 804 Darbytown Road, Hohenwald, Tennessee 38462-9998.

4. Defendants Janice Zeitlin and Mary Baker are individuals residing in Nashville and at all times relevant to this lawsuit have resided in Nashville, Tennessee. Zeitlin may be served at 1919 Linden Avenue, Nashville, Tennessee 37212. Baker may be served at 209 37th Ave N Nashville, Tennessee 37209.

IV. Factual Background

5. Buckley co-founded The Sanctuary, this nation's first natural-habitat refuge for sick, old and needy elephants in 1995. Buckley purchased the property and established The Sanctuary with personal funds. She paid the monthly home loan payment without reimbursement from The Sanctuary. Some two years later, upon the request of the Board of Directors, Buckley sold the property, including her residence and all improvements to The Sanctuary, for her purchase price, realizing no gain from the sale. From The Sanctuary's founding until November 21, 2009, Buckley was its employee, serving as President, Chief Executive Officer and Board Member. Her duties included land acquisition, facility planning, one of two primary caregivers for elephants,

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consulting internationally on elephant care, managing administrative staff, facilitating elephant acquisitions, developing and implementing educational programs for the public. Most significantly, she was The Sanctuary's primary spokesperson and fundraiser. One of the elephants at The Sanctuary named Tarra, internationally known as the inspiration for The Sanctuary, was at all pertinent times and still is owned by Buckley, and not by The Sanctuary. Buckley raised Tarra from one year and has lived with Tarra for 35 years.

6. From the time of the founding of The Sanctuary until her termination of employment, Buckley amassed a vast collection of photographs, drawings, and videos of the elephants residing at The Sanctuary (hereinafter "Works of Art"), all of which were created by Buckley as a private citizen and not in accordance with her employment duties with The Sanctuary.

7. In or around 2006 at the request of the contractor, Buckley entrusted her Works of Art to Betsy Dodd and orally permitted said Works of Art to be copied and used by The Sanctuary as visual media on its website and in connection with other business materials so long as Buckley was employed by The Sanctuary. As a result of the foregoing, The Sanctuary and Buckley entered into a bailment agreement for the storage and use of the Works of Art.

8. Under of the terms of The Sanctuary's bylaws, its business activities and affairs were to be supervised and managed by its Board of Directors. In November 2009, this board of directors included Defendant Zeitlin, (hereinafter "Zeitlin"), William Schaffner, M.D., (hereinafter "Dr. Schaffner"), Charles Trost (hereinafter "Trost"), Sandra Estes (hereinafter "Estes"), and Leslie Schreiber (hereinafter "Schreiber").



Buckley and Scott Blais (hereinafter "Blais") were also members of the Board of Directors, but they had no voting rights.

9. Prior to November 2009, Defendants Zeitlin, Dr. Schaffner, and Trost had established a Transition Committee, comprised of board members Zeitlin, Dr. Schaffner and Trost. This committee was not voted on by the Board as required in the by-laws. This Transition Committee became the *de facto* entity which supervised and managed The Sanctuary in place of the Board of Directors.

10. In or around 2007, The Sanctuary planned to build a new education building, and had accepted the pro bono services of architect Manual Zeitlin, the husband of Board Member Janice Zeitlin, after she reported that he would donate his time. Despite this conflict, Ms. Zeitlin arranged for The Sanctuary to pay Mr. Zeitlin over \$60,000.00 calling for a vote from the building committee, consisting of Dr. William Schaffner, Charlie Trost (not present at the meeting), Betsy Dodd, Judith Newby, Sandra Estes (not present at the meeting) and Kathy Chutacoff. Upon learning of the payment, which had been made without a full Board vote, Buckley objected to this payment on grounds that it involved breach of the committee members' fiduciary duty to The Sanctuary under the law and involved illegal self-dealing on the part of Zeitlin. Nevertheless, Zeitlin had already signed and issued the check to her husband. Buckley closed the bank account on which Zeitlin wrote the check to her husband.

11. There was a delay in the start of the construction of the new education gallery building. Apparently, to placate the contractor, a personal friend and building contractor working for Zeitlin on personal renovations, Zeitlin proposed that Lee Restoration receive approximately \$20,000.00, although the contractor was not under



contract and had done no work on the building to that point. Buckley, as a Board Member, objected that making this payment would also be a legal breach of the Board's duty to The Sanctuary, but in 2008 this payment was made over her objection.

12. In July 2009, Buckley learned from Dr. Susan Mikota, a Sanctuary veterinary consultant, that one of the elephants of The Sanctuary had tested positive for tuberculosis. Although the law required that this information be reported to The Tennessee Wildlife Resources Agency ("TWRA"), board member and Sanctuary human TB consultant Dr. Schaffner, who is head of infectious medicine at Vanderbilt University and a nationwide spokesperson for the Centers for Disease Control, ordered her not to report it until all lab results were in. Around the same time it was discovered that four caregivers tested positive for exposure to TB. Buckley instructed the staff to continue to follow protocol and had administration schedule the follow-up testing required by the state. Buckley implemented additional safety measures for the staff requiring them to wear ventilation masks that exceeded the state's requirement. Buckley sent Cathy Jackson, office manager, and Dr. Mikota to a mask fit course in Nashville to be certified, under the direction of Dr. Schaffner.

13. Following Buckley's complaints about what she believed to be unlawful conduct and breaches of the Board's fiduciary duties, on November 21, 2009, Buckley was placed on a two-month leave of absence from her duties as President and CEO of The Sanctuary, with the understanding that her performance as CEO would be evaluated and her future relationship with The Sanctuary would be decided during the two months. This decision was made by the Transition Committee members, Zeitlin, Dr. Schaffner and Trost, and was presented to The Sanctuary's Board of Directors as a *fait accompli*,



with no regard of the views of the other Board Members, as the three Transition Committee members represented the majority vote for passage. After this date, Mary Baker (hereinafter “Baker”) became the acting CEO.

14. At the end of Buckley’s two-month leave of absence, on January 19, 2010, she was stripped of her position as non-voting director, removed as the CEO, and replaced as President by Dr. Schaffner. This action was initiated by the three members of the Transition Committee (Zeitlin, Dr. Schaffner and Trost), and rubber-stamped by the Board of Directors. On March 17, 2010, Buckley’s employment with The Sanctuary was terminated.

15. Buckley’s termination by The Sanctuary was in retaliation for her opposition to and/or refusal to participate in, and/or refusal to remain silent about which she believed were The Sanctuary’s illegal payments to the architect Manual Zeitlin and contractor Lee Restoration and what Buckley believed was The Sanctuary’s illegal failure to report the tuberculosis found in the sanctuary elephant to the TWRA.

16. The Sanctuary’s website provided an important source of information for potential donors, whose contributions were critical to its continued well-being. Before Buckley’s leave of absence and subsequent termination, this website contained her name, photo and biographical information about her as the CEO/co-founder of The Sanctuary and directed potential donors to contact Buckley at carol@elephants.com. Those persons who did make contributions were sent receipts containing acknowledgments of thanks containing Buckley’s signature. On or around November 1, 2009, The Sanctuary’s year-end fundraising appeal was mailed to all 85,000 donors. The appeal was composed and signed by Buckley; a direct ask by Buckley to donors. On November 19, 2009, the Board



held a private fundraiser with Buckley as the keynote speaker.

17. After Buckley was placed on leave of absence on November 21, 2009, after she was replaced as President by Dr. Schaffner on January 19, 2010, and after her employment was terminated on March 17, 2010, The Sanctuary website continued to include her name, photograph and biographical information as its CEO. The website also continued after these dates and, as of September 3, 2010, continues to direct online donors to donate for facility improvements using the email address carol@elephants.com. Instead of retiring this email address, as was demanded by Buckley on multiple occasions, The Sanctuary continued using it to solicit donations by routing emails intended for Buckley to other Sanctuary employees until sometime in June 2010. Upon information and belief, The Sanctuary also continued sending form donor acknowledgements identifying Buckley as the President and CEO and containing Buckley's signature as late as March 17, 2010, to persons making donations after Buckley was placed on leave of absence, replaced as President, removed as CEO and terminated. The Sanctuary refused to return donations to those persons who requested this after learning they were misled about Buckley's continued involvement with The Sanctuary. The Sanctuary failed to turn over personal mail addressed to Buckley and continues to use Buckley's recorded voice mail on her work extension as of August 12, 2010.

18. On February 18, 2010, Buckley, in accordance with the bailment agreement between Buckley and The Sanctuary, made a request to Mary Baker via email, that The Sanctuary cease using her Works of Art to which Mary Baker, acting as an agent for The Sanctuary, failed to respond to the request. Mary Baker gave no explanation for



the Sanctuary's continued use of Buckley's Works of Art and, in fact, The Sanctuary had no legal right or justification for continuing to use Buckley's Works of Art.

19. In early March 2010, both Katy Chudacoff and Judith Newby, upon their own initiative and on separate occasions made the same request to Scott Blais, to which Blais, acting as an agent for The Sanctuary, refused. Blais explained that it would be too costly for The Sanctuary to cease using the Works of Art.

20. Since the time that The Sanctuary willfully refused to comply with the terms of the bailment agreement with Buckley, it has continued to use, for commercial purposes, Buckley's Works of Art.

21. Buckley had a property right in the use of her name, photograph and likeness that The Sanctuary knowingly used without her permission to solicit donations and thereby profited.

22. On or after November 21, 2009, Zeitlin contacted key Sanctuary volunteers to inform them that Buckley had been put on leave. Zeitlin accused Buckley of failing to train staff, failing to inform staff of tuberculosis risk, being aggressive towards the elephants and "letting things slide." When some donors learned that Buckley had been replaced and terminated, they tried to contact the Board. Mary Baker, acting CEO, Scott Blais, and office staff were assigned to respond to the donors. When asked by some of these donors about the circumstances of Buckley's replacement or termination, upon information and belief, at Baker's direction, Blais falsely told them that Buckley had "engaged in illegal practices," while Mary Baker and office staff implied employee misconduct and encouraged them not to investigate further "because it would really be damaging to Carol's [Buckley's] reputation if the truth came out." Mary Baker



provided false and derogatory information to office staff and instructed them to provide that information about Buckley to donors.

23. The Defendants knew that these statements were false and defamatory. In the alternative, the Defendants acted in reckless disregard to the truth or falsity of their communications or acted negligently in failing to ascertain whether the communications were true. The defamatory statements were intended to cause damage to Buckley.

24. Since July 22, 2010, The Sanctuary has refused to let Buckley visit with Tarra, the elephant Buckley owns, despite her request for visitation rights and a written agreement issued by Mary Baker. On March 26, 2010, shortly after Buckley's termination, The Sanctuary agreed in an email from Mary Baker, The Sanctuary's acting CEO, to allow Buckley weekly visits with Tarra. A copy of this email is attached as "Exhibit A." Since this time, The Sanctuary has breached this agreement and Buckley has not been permitted to visit Tarra at all.

V. Causes of Action

A. Wrongful Common Law Retaliatory Discharge (Defendant The Sanctuary)

25. Plaintiff hereby realleges paragraphs 1-24 of this complaint as if those said paragraphs were set forth herein in full detail.

26. The retaliatory actions against Buckley were motivated substantially by her attempt to assert a protected right or comply with public policy in violation of Tennessee's common law.

27. As direct and proximate result, Buckley has suffered financial damages.

28. These wrongful actions of The Sanctuary were committed intentionally, knowingly, maliciously and/or recklessly, justifying an award of punitive damages.



**B. Wrongful Retaliatory Discharge in Violation of the Tennessee Public Protection Act
(Defendant The Sanctuary)**

29. Plaintiff hereby realleges paragraphs 1-28 of this complaint as if those said paragraphs were set forth herein in full detail.

30. The Sanctuary's retaliatory actions against Buckley were motivated substantially and/or solely by her refusal to participate in and remain silent about illegal activities, triggering the protections of the Tennessee Public Protection Act, Tenn. Code Ann. § 50-1-304.

31. As a direct and proximate result of The Sanctuary's unlawful actions, Buckley has suffered financial damages, as well as humiliation and embarrassment.

32. These wrongful actions of The Sanctuary were committed intentionally, knowingly, maliciously and/or recklessly, justifying an award of punitive damages.

**C. Unauthorized Use of Name and Likeness in Violation of the Tennessee Personal Rights Protection Act
(Defendant The Sanctuary)**

33. Plaintiff realleges and reincorporates 1-32 of this complaint as if those said paragraphs were set forth herein in full detail.

34. The Sanctuary's knowing use and infringement upon Buckley's name, photo and likeness to solicit donations renders it liable to her under the Tennessee Personal Rights Protection Act, Tenn. Code Ann. § 47-25-1101 *et seq.*, and in particular Tenn. Code Ann. § 47-25-1105(a) and § 47-25-1106. Buckley is also entitled to injunctive relief, prohibiting and restraining The Sanctuary from the unauthorized use of her name, photograph and likeness in the future.

35. As a direct and proximate result of The Sanctuary's actions, Buckley has suffered actual damages, and is also entitled to recover the amount of donations The Sanctuary collected that are attributable to the knowing use or infringement of Buckley's property rights and use of her name, photograph and likeness.

36. These wrongful actions of The Sanctuary were committed intentionally, knowingly, maliciously and/or recklessly, justifying an award of punitive damages.

**D. Violation of Common Law Privacy Rights
(Defendant The Sanctuary)**

37. Plaintiff realleges and reincorporates 1-36 of this complaint as if those said paragraphs were set forth herein in full detail.

38. The Sanctuary's knowing use and infringement of Buckley's name, photograph and likeness to solicit donations renders it liable for violating Buckley's common law privacy rights.

39. As a direct and proximate result of The Sanctuary's unlawful actions, Buckley has suffered actual damages, and she is also entitled to recover amounts of donations that The Sanctuary collected that are attributable to the knowing use or infringement of Buckley's common law privacy rights.

40. These wrongful actions of The Sanctuary were committed intentionally, knowingly, maliciously and/or recklessly, justifying an award of punitive damages.

**E. Defamation
(Defendants Zeitlin and Baker)**

41. Plaintiff realleges and reincorporates 1-40 of this complaint as if those said paragraphs were set forth herein in full detail.



42. The Defendants are liable to Buckley under the common law for false and defamatory statements they made to donors about Buckley that they either knew were false or that they negligently or recklessly failed to tell them the truth before communicating to donors.

43. As a direct and proximate result of Defendants' unlawful actions, Buckley has suffered economic damages and damage to her reputation.

44. The aforementioned wrongful actions of Defendants were committed intentionally, knowingly, maliciously and/or recklessly, justifying an award of punitive damages.

**F. Breach of Contract
(Defendant The Sanctuary)**

45. Plaintiff realleges and reincorporates 1-44 of this complaint as if those said paragraphs were set forth herein in full detail.

46. Defendant The Sanctuary breached its agreement to allow Buckley to visit her elephant, Tarra, on a weekly basis.

47. Buckley is entitled to a ruling granting specific performance of her right to visit her elephant Tarra during regular business hours.

**G. Conversion by Bailee
(Defendant the Sanctuary)**

48. Plaintiff realleges and reincorporates 1-47 of this complaint as if those said paragraphs were set forth herein in full detail.

49. By refusing Buckley's demand to cease using any copies of the Works of Art, The Sanctuary has intentionally, willfully, and maliciously breached its duties as bailee of Buckley's Works of Art and her intellectual property therein, and has converted



said goods.

50. As a direct and proximate result of said breach, Buckley has lost goods valued at an amount to be determined at trial. Buckley has further suffered pecuniary losses by reason of her need to acquire substitute goods and legal representation in an amount to be determined at trial, but in no event less than \$500,000.00.

WHEREFORE, the Plaintiff Buckley respectfully requests the following:

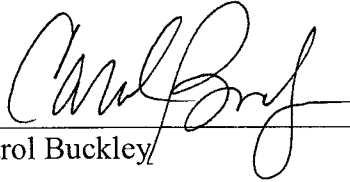
1. That process issue and that the Defendants be served and required to answer this complaint within the time allowed by law;
2. That this matter be tried by a jury of six (6);
3. That Buckley be awarded compensatory damages in an amount to be determined at trial, but in no event an amount less than \$500,000.00;
4. That Buckley be reinstated as President and Board Member with voting rights;
5. That Leslie PonTell Schreiber be reinstated as Board Member with voting rights;
6. That Buckley be awarded front pay in lieu of reinstatement as CEO in an amount to be determined at trial;
7. That Buckley be awarded additional compensatory damages including, but not limited to, emotional damages for embarrassment and humiliation, in an amount to be determined at trial;
8. That Buckley be awarded additional damages for the amount of donations obtained by The Sanctuary as a result of the knowing use and infringement of her rights to the use of her name and likeness, in an amount to be determined at trial;



9. That Buckley be awarded additional compensatory damages against Defendants Zeitlin and Baker for economic damages and damage to her reputation;
10. That Zeitlin and Baker be removed from their Sanctuary positions immediately;
11. That any remaining member of the Transition Committee still on the Board be removed from their Sanctuary position immediately;
12. That any Board Member appointed to the Board after Buckley was removed as CEO be removed from the Board;
13. That Buckley be awarded punitive damages in an amount to be determined at trial, but in no event an amount less than \$500,000.00;
14. That a permanent injunction be granted which prohibits and restrains The Sanctuary from the unauthorized use of Buckley's name, photographs, likeness and Works of Art in the future;
15. That Buckley be awarded judgment for possession of all copies of her Works of Art currently in the possession of The Sanctuary;
16. That Buckley be granted visitation rights for her elephant, Tarra, during normal business hours;
17. That all costs and discretionary costs be taxed against the Defendants;
18. That costs and attorneys fees be assessed against Defendant The Sanctuary pursuant to Tenn. Code Ann. § 50-1-304(b)(2); and
19. That the Court grants Buckley such other and further relief as the Court may deem to be just and appropriate.

VERIFICATION

I, Carol Buckley, being first duly sworn, depose and say that the facts contained in the foregoing complaint are true and correct to the best of my knowledge, information and belief.



Carol Buckley

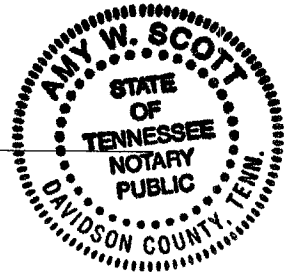
STATE OF TENNESSEE)

COUNTY OF DAVIDSON)

On this 10th day of September, 2010, before me personally appeared Carol Buckley, to me known (or proved to me on the basis of satisfactory evidence) to be the person described in and who executed the foregoing instrument and that she executed the foregoing verification for the purposes therein contained, and that the facts contained in the verified complaint are true and correct to the best of her knowledge, information and belief.

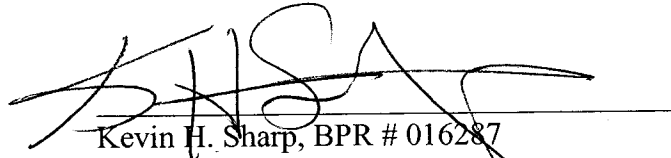


Notary Public

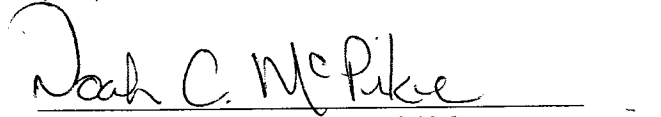


My Commission Expires: 7/7/14

Respectfully Submitted,



Kevin H. Sharp, BPR # 016287
DRESCHER AND SHARP, P.C.
1720 West End Avenue, Suite 300
Nashville, Tennessee 37203
(615) 425-7111



Noah C. McPike, BPR # 028426 *ex permissu KHS*
GORDON LAW GROUP, PLC
803 18th Avenue South
Nashville, Tennessee 37203
615 321-0220

Attorneys for Plaintiff