

**SUPERIOR COURT OF THE STATE OF RHODE ISLAND
PROVIDENCE COUNTY**

SMALL BUSINESS TERM LOANS, INC.,
a North Carolina corporation, and
BFS WEST, INC., a California corporation,

Plaintiffs,

vs.

Case No. PC-2018-0694

CHRISTOPHER M. MULHEARN,
an individual, and LAW OFFICE OF
CHRISTOPHER M. MULHEARN, INC.,
a Rhode Island corporation,

Defendants.

COMPLAINT

Plaintiffs Small Business Term Loans, Inc. and BFS West, Inc. sue Defendants Christopher M. Mulhearn and Law Office of Christopher M. Mulhearn, Inc., and allege as follows:

JURISDICTION, PARTIES, AND VENUE

1. This is an action for injunctive relief and damages in excess of ten thousand dollars (\$10,000.00), exclusive of attorney's fees and costs. This Court, therefore, has jurisdiction over this matter pursuant to Sections 8-2-13 and 8-2-14 of the Rhode Island General Laws.

2. Plaintiff Small Business Term Loans, Inc. ("SBTL") is a corporation organized and existing under the laws of the State of North Carolina.

3. Plaintiff BFS West, Inc. ("BFS West") is a corporation organized and existing under the laws of the State of California.

4. Defendant Christopher M. Mulhearn (“Mulhearn”) is an individual, *sui juris*, who dwells, works, and can be found in Providence County, Rhode Island.

5. Defendant Law Office of Christopher M. Mulhearn, Inc. (“Law Office”) is a corporation organized and existing under the laws of the State of Rhode Island, which is based in Providence County, Rhode Island.

6. Venue is proper in Providence County under Sections 9-4-3 and 9-4-4 of the Rhode Island General Laws.

GENERAL ALLEGATIONS

Plaintiffs’ Business and Financing Products

7. BFS Capital¹ is a small business financing platform that helps small- and medium-sized businesses obtain financing to fund their working capital requirements and to take advantage of growth opportunities. BFS Capital provides merchants with up to five hundred thousand dollars (\$500,000.00) in capital as quickly as within one business day with flexible repayment options. BFS Capital, together with an affiliated company, has delivered more than \$1.6 billion in financing to merchants in all 50 states, Canada, and the United Kingdom.

8. BFS Capital offers two different commercial financing products to its customers: (i) small business term loans and (ii) merchant cash advances.

9. In a term loan transaction, a merchant is provided with a loan in exchange for its agreement to make periodic repayments of principal plus interest at a fixed repayment amount over the specified repayment term. SBTL both makes loans directly, and, as part of its business, purchases promissory notes evidencing loans originated by a federally chartered bank. In a term loan transaction, SBTL earns a profit by collecting interest on the principal lent to the commercial borrower.

¹ When applicable, SBTL and BFS West shall be referred to together as “BFS Capital”.

10. In a merchant cash advance transaction, BFS West purchases a merchant's future payment card receivables in exchange for the merchant's agreement to assign to BFS West an agreed-upon percentage of the merchant's payment card receipts as those receivables are generated. In this type of transaction, BFS West earns a profit by purchasing the merchant's receivables at a discounted price and then collecting the full value of the purchased receivables if and when they are generated.

11. In each type of transaction, BFS Capital performs rigorous due diligence and underwriting.

Defendants' Tortious Interference with BFS Capital's Contractual Relationships

12. Starting in or about March 2017, Mulhearn and Law Office began to tortiously interfere with BFS Capital's contractual relationships with at least seven of its customers, including (i) Domenico's Italian Kitchen, LLC ("Domenico's Italian Kitchen"); (ii) Express Mobile Detail, LLC ("Express Mobile"); (iii) Infinity Landscapes, LLC ("Infinity Landscapes"); (iv) J and B Executive Transportation, Inc. ("J&B Executive"); (v) Lucas Brothers Hardware, LLC ("Lucas Brothers"); (vi) Mancraft Industries; and (vii) Son Shine Foods, Inc. d/b/a Atlantic Stand ("Atlantic Stand").

13. In late 2016 through mid-2017, BFS Capital first entered into, or succeeded to, separate contracts with each of the forgoing merchants. Between October 13, 2016 and June 27, 2017, BofI Federal Bank entered into separate term loan agreements with Express Mobile, Infinity Landscapes, J&B Executive, Lucas Brothers, Mancraft Industries, and Atlantic Stand. Shortly after each term loan was originated, SBTL acquired all of BofI Federal Bank's rights and obligations under the respective loan agreements and incorporated security agreements. Additionally, on or about April 3, 2017, BFS West and Domenico's Italian Kitchen entered into

an Accounts Receivable Purchase Agreement pursuant to which BFS West purchased payment card receivables in a certain amount from Domenico's Italian Kitchen.

14. Upon information and belief, between March 2017 and August 2017, Mulhearn and Law Office learned of each of these transactions from Ponte Investments LLC d/b/a SBALoanProgram.com ("Ponte Investments"), Independence Bank, and/or one of their agents. Ponte Investments and Independence Bank are both located in East Greenwich, Rhode Island. According to Ponte Investments' website, Ponte Investments and Independence Bank have entered into a partnership for Ponte Investments to "spearhead" the bank's small business lending program. Upon information and belief, Mulhearn and Law Office maintain a referral relationship with one or more of the foregoing.

15. Upon information and belief, once Ponte Investments or Independence Bank becomes interested in forming a lending relationship with one of BFS Capital's customers, they provide Mulhearn and Law Office with the contact information for the merchant. In this way, Mulhearn and Law Office obtained the contact information for the BFS Capital customers referenced in this Complaint.

16. Shortly after having obtained the contact information for BFS Capital's customers, Mulhearn and Law Office began contacting the customers for the purpose of inducing them to breach their contracts with BFS Capital. Mulhearn and Law Office first contacted (i) Atlantic Stand on or before March 28, 2017; (ii) Express Mobile on or before June 26, 2017; (iii) Mancraft Industries on or before July 14, 2017; (iv) Lucas Brothers on or before August 10, 2017; (v) Domenico's Italian Kitchen on or before August 11, 2017; (vi) J&B Executive on or before August 25, 2017; and (vi) Infinity Landscapes on or before August 31, 2017, for the foregoing purpose.

17. Mulhearn's and Law Office's pursuit of BFS Capital's customers has also been, in certain instances, persistent and intrusive. For example, in September 2017, a principal of J&B Executive told BFS Capital that he had been repeatedly contacted by Mulhearn and "didn't even want to hear Mulhearn's name [again]."

18. The dubiousness of Mulhearn's and Law Firm's conduct and believed arrangement with Ponte Investments and/or Independence Bank is compounded by the fact that the BFS Capital customers that Mulhearn and Law Office seek out to represent are located hundreds or thousands of miles away from Mulhearn's and Law Office's single office in Providence, Rhode Island. Specifically, (i) Infinity Landscapes is located in White Marsh, Maryland; (ii) Express Mobile is located in League City, Texas; (iii) Lucas Brothers is located in Hardinsburg, Kentucky; (iv) Domenico's Italian Kitchen is located in Beaumont, California; (v) Mancraft Industries is located in Corona, California; (vi) Atlantic Stand is located in Ocean City, Maryland; and (vii) J&B Executive is located in Troy, Michigan. None of these merchants has any business presence in Rhode Island.

19. Although Mulhearn is a licensed attorney in Rhode Island, Mulhearn does not appear to be acting as attorney when representing BFS Capital's customers because the subject representations do not implicate Rhode Island law and it does not appear that Mulhearn is authorized to practice law in any other state. As to the former point, (i) the contracts that govern the subject loans and cash advances are not governed by Rhode Island law, (ii) the BFS Capital customers that Mulhearn represents have no business presence in Rhode Island, and (iii) SBTL and BFS West are not incorporated in Rhode Island and have no offices in Rhode Island. Thus, it is apparent that Mulhearn and Law Office are not acting as legal counsel to the BFS Capital customers referenced in this Complaint.

20. Upon information and belief, in attempting to persuade BFS Capital's customers to breach their obligations to BFS Capital, Mulhearn and Law Office routinely make misleading representations to such customers, including by promising to save them money by settling their obligations to BFS Capital for a discounted amount, when Mulhearn and Law Office have no legitimate basis for making such promise and no reasonable expectation of being able to fulfill such promise.

21. For providing such "services" to BFS Capital's customers, Mulhearn and Law Office presumably charge the customers a fee and/or a percentage of the amount of the discount negotiated. It is also likely that Mulhearn and Law Office are paid a fee by Ponte Investments and/or Independence Bank.

22. Based on their misrepresentations, Mulhearn and Law Office have succeeded in persuading at least seven of BFS Capital's customers to breach their respective contracts with BFS Capital. Specifically, Mulhearn and Law Office succeeded in persuading the following customers of SBTL to breach their respective loan agreements with SBTL by instructing their banks to stop all loan payments to SBTL: (i) Atlantic Stand, which breached on or about March 28, 2017; (ii) Express Mobile, which breached on or about June 26, 2017; (iii) Mancraft Industries, which breached on or about July 14, 2017 (iv) J&B Executive, which breached on or about August 25, 2017; (v) Lucas Brothers, which breached on or about August 30, 2017; and (vi) Infinity Landscapes, which breached on or about August 31, 2017.

23. Additionally, on or about September 1, 2017, Mulhearn and Law Office succeeded in persuading Domenico's Italian Kitchen to breach its Accounts Receivable Purchase Contract with BFS West by switching its payment card processor to prevent BFS West from

being able to continue to collect the agreed-upon portion of the merchant's payment card receipts to apply toward the outstanding obligation.

24. On the original dates of default, (i) Atlantic Stand's outstanding loan balance was \$119,731.00; (ii) Express Mobile's outstanding loan balance was \$82,668.00; (iii) Mancraft Industries' outstanding loan balance was \$120,585.00; (iv) J&B Executive's outstanding loan balance was \$46,080.00; (v) Lucas Brothers' outstanding loan balance was \$208,410.00; (vi) Infinity Landscapes' outstanding loan balance was \$86,285.25; and (vii) Domenico's Italian Kitchen's outstanding balance due under the Accounts Receivable Purchase Contract was \$129,691.51.

25. Prior to having been contacted by Mulhearn and Law Office, none of these merchants (except for Atlantic Stand on one occasion) had missed any payments owed to BFS Capital under their respective contracts. Additionally, as detailed below, at the time of their defaults, these merchants maintained the financial means to continue making the agreed-upon payments to BFS Capital owed under the respective contracts.

26. After having induced BFS Capital's customers into breaching their contracts with BFS Capital, Mulhearn and Law Office then directly and indirectly used deceptive and dishonest means to obtain and attempt to obtain discounted payoffs of the merchants' obligations to BFS Capital. Upon information and belief, one technique Mulhearn and Law Office employed was to advise BFS Capital's customers to feign cash-flow problems or financial distress to encourage BFS Capital to grant them discounted payoffs. Indeed, each of the merchants that are referenced in this Complaint requested a discounted payoff from BFS Capital, either directly or through Mulhearn or Law Office, by asserting that they were experiencing financial distress or cash-flow shortfalls.

27. In most cases, however, BFS Capital was unable to award the merchants discounted payoffs or restructured payment terms. This was, in large part, because the financial conditions of the merchants referenced in this Complaint had not materially changed since the origination of the transactions. BFS Capital, therefore, was not incentivized to allow a write-down on a loan or cash advance that continued to satisfy its underwriting requirements.

28. Infinity Landscapes is one such example. At the time that Infinity Landscapes was approved for the subject loan, it had seven other outstanding loans evidenced by seven UCC-1 Financing Statements filed with the Maryland Department of Assessments & Taxation. By August 31, 2017 (i.e., the date of default), Infinity Landscapes had satisfied one of those outstanding loans as evidenced by a UCC-3 Termination Statement filed on August 29, 2017. In the following weeks, Infinity Landscapes satisfied three additional outstanding loans as evidenced by UCC-3 Termination Statements filed on September 5, 2017 and September 26, 2017. And when BFS Capital spoke with a principal of Infinity Landscapes on August 31, 2017 regarding the request for a reduced payoff, the principal informed BFS Capital that his business was "doing fine", but that BFS Capital needed to speak with Mulhearn regarding the requested discount nonetheless.

29. Lucas Brothers is another example. At the time the loan was originated on June 27, 2017, Lucas Brothers' bank account had a monthly average balance of \$10,257.99 over the preceding three months. By August 30, 2017 (i.e., the date of default), Lucas Brothers' bank account had a monthly average balance of \$32,316.87 over the preceding three months – more than three times the amount of the prior three-month average balance on the date of the loan's origination.

30. Additionally, the fact that Ponte Investments and/or Independence Bank were simultaneously seeking to enter into lending relationships with the very merchants which were purportedly in financial distress is further evidence that the BFS Capital customers referenced in this Complaint were financially healthy and sufficiently creditworthy at the time that the discounted payoffs were requested.

31. The inevitable and intended result of Mulhearn's and Law Office's tortious conduct was that the BFS Capital customers referenced in this Complaint breached their contractual obligations to BFS Capital, impairing, delaying, and preventing BFS Capital from being able to obtain full payment of the amounts to which it was entitled under the respective contracts between BFS Capital and its customers. This intentional harm to BFS Capital (and supposed corresponding benefit to BFS Capital's customers) is apparently being used by Mulhearn and Law Office as an inducement to persuade such customers to enter into loan agreements with Ponte Investments and/or Independence Bank.

32. Mulhearn's and Law Office's tortious conduct prevented BFS Capital from collecting the full amounts owed to it under its contracts with Express Mobile, Infinity Landscapes, and Atlantic Stand, and delayed and impaired BFS Capital from collecting the amounts owed to it under its contracts with J&B Executive, Lucas Brothers, Mancraft Industries, and Domenico's Italian Kitchen.

33. Moreover, despite their presumed promises of cost savings to BFS Capital's customers, Mulhearn and Law Office frequently fail to obtain discounted payoffs of the customers' obligations to BFS Capital, even through their deceptive means, and, therefore, cause financial harm to the very BFS Capital customers they represent. In such cases, Mulhearn and Law Office leave the customers in worse financial condition by causing them to incur default

fees or the acceleration of obligations under the governing contracts, by subjecting them to legal action for non-payment and the contractual obligation to pay BFS Capital's litigation expenses, and by placing their business equipment and instrumentalities (which serve as collateral) at risk for attachment and seizure.

COUNT I
TORTIOUS INTERFERENCE

34. SBTL and BFS West repeat and reallege each of the allegations contained in Paragraphs 1 through 33 above as though set forth fully herein, and further state as follows:

35. SBTL and BFS West maintained valid and enforceable contracts and advantageous business relationships with the customers identified herein including: (i) Infinity Landscapes; (ii) Lucas Brothers; (iii) Express Mobile; (iv) Mancraft Industries; (v) Atlantic Stand; (vi) J& B Executive; and (vii) Domenico's Italian Kitchen.

36. Mulhearn and Law Office had knowledge of SBTL's or BFS West's valid and enforceable contracts and advantageous business relationships with the foregoing merchants.

37. Mulhearn and Law Office intentionally and unjustifiably interfered with SBTL's and BFS West's valid and enforceable contracts and advantageous business relationships with the foregoing merchants by inducing them to cease making required payments, or into switching payment card processing companies, when the merchants maintained their ability to continue to make such payments.

38. Mulhearn and Law Office, upon information and belief, also induced the foregoing merchants into feigning financial distress or cash-flow difficulties in an attempt to mislead SBTL and BFS West and induce SBTL and BFS West into accepting discounted payoffs to settle the merchants' obligations.

39. Mulhearn's and Law Office's acts of interference were undertaken for a wrongful purpose and by deceptive and dishonest means.

40. As a direct and proximate cause of Mulhearn's and Law Office's tortious conduct, both SBTL and BFS West have suffered damages, including, but not limited to, the loss of principal invested and contracted-for profits on transactions with their customers.

41. In addition to money damages, SBTL and BFS West are also entitled to an award of injunctive relief against Mulhearn and Law Office.

42. Money damages alone are insufficient to protect SBTL and BFS West from the real and legitimate threat of harm posed by Mulhearn's and Law Office's repeated and ongoing tortious conduct.

43. SBTL and BFS West will suffer irreparable harm unless Mulhearn and Law Office are permanently enjoined from tortiously interfering with SBTL's and BFS West's contractual relationships with their customers now and prospectively.

44. SBTL and BFS West have a clear legal right to the award of injunctive relief sought herein, and the public interest will be furthered by an award of injunctive relief in favor of SBTL and BFS West and against Mulhearn and Law Office.

WHEREFORE, SBTL and BFS West respectfully request that the Court:

A. Award actual and compensatory monetary damages to SBTL and BFS West and against Mulhearn and Law Office in an amount to be proven at trial, together with interest thereon;

B. Permanently enjoin Mulhearn and Law Office from tortiously interfering with SBTL's and BFS West's contractual relationships with their customers, including, without

limitation, by prohibiting Mulhearn and Law Office from contacting SBTL's and BFS West's customers for any business purpose at any time in the future;

B. Reserve SBTL's and BFS West's right to assert claims for punitive damages against Mulhearn and Law Office for their willful and intentional tortious conduct; and

C. Award SBTL and BFS West such other and further relief as this Court deems just and proper.

Respectfully submitted,

By: s/ Scott F. Bielecki, Esq.

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