

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: _____

90 2011 CA 00 11 21 XXXX

DAVID JOHNSON and
JANE JOHNSON,

Plaintiffs,

vs.

ALLEN H. LIBOW, ESQ
MELISSA T. LIBOW, and
LIBOW & SHAHEEN, LLP,
a Florida Limited Liability Partnership,
et al,

Defendants.

AI

FILED
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HARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 4

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COMPLAINT

Plaintiffs, DAVID JOHNSON and JANE JOHNSON, sue Defendants, ALLEN H. LIBOW and MELISSA T. LIBOW and state:

1. This is an action for malicious prosecution, conspiracy to commit malicious prosecution, and abuse of process, in excess of \$15,000.00.
2. Plaintiff, DAVID JOHNSON is a resident of Duval County who resides at 12225 Premier Court, Jacksonville, Fl. 3223.
3. Plaintiff, JANE JOHNSON is a resident of Duval County who resides at 12225 Premier Court, Jacksonville, Fl. 3223.
4. Defendant, ALLEN H. LIBOW, ESQ, is a resident of Palm Beach County who resides at 731 Parkside Circle North, Boca Raton, Fl. 33486. Defendant A. LIBOW is a partner in the law firm of LIBOW & SHAHEEN, LLP.
5. Defendant, MELISSA LIBOW is a resident of Palm Beach County who resides at 731 Parkside Circle North, Boca Raton, Fl. 33486.

6. Defendant, LIBOW & SHAHEEN, LLP, is a Florida Limited Liability Partnership with its principal place of business in Boca Raton, Palm Beach County, Florida.

7. Venue is proper in Palm Beach County, Florida pursuant to Fla. Stat. §§ 47.011 and 47.051 because the causes of action accrued in Palm Beach County, Florida.

8. All conditions precedent to this legal action have been met, satisfied, or waived.

ALLEGATIONS COMMON TO ALL COUNTS

9. In 2003, David and Jane Johnson retained Mr. Libow's firm, Libow & Muskat, LLP (Libow & Shaheen, LLP's predecessor) as their counsel in a real estate dispute.

10. In 2004, the attorney at Libow & Muskat who had been handling the Johnsons' litigation left the firm. The Johnsons' elected to have that attorney continue to represent them and submitted a notice to Libow & Muskat that they would no longer continue to use their services as counsel.

11. In retaliation for the Johnsons' decision to discontinue their use of Libow and his firm, Defendant Allen Libow began to harass and threaten the Johnsons to continue to use his firm and later to collect billing amounts Plaintiffs did not believe was due.

12. Defendant A. Libow's conduct escalated to more frequent and severe harassing written and verbal communications that greatly distressed both Plaintiffs. Libow brought suit against the Johnsons for legal fees but never provided the Johnsons an opportunity to pay any outstanding balance. Mr. Libow's conduct throughout this period appeared to both Plaintiffs to be unbecoming of any attorney because it involved the threat of filing and the actual filing of false police reports and excessive repeated threatening phone calls.

13. As a result of Mr. Libow's conduct, on August 16, 2004, Mr. Johnson filed a complaint with the Florida Bar. Mr. Johnson filed this Complaint in order to protect himself and the public from conduct he legitimately believes to have been unethical.

14. After receiving notice of the bar complaint, Mr. Libow stated that unless the Johnsons paid him \$100,000.00, Mr. Libow would bring suit against them.

15. Mr. Libow and his wife Melissa Libow, filed a Complaint in Palm Beach County Circuit Court against Mr. and Mrs. Johnson for defamation. *See Libow v. Johnson and Johnson*, 05-3299 CAA1, 502005CA003299XXXXMB. After multiple revisions, Defendants filed their 5th Amended Complaint on February 6, 2006.

16. The Complaint contained a total of 41 claims based upon Mr. Johnson's statement to the Florida Bar.

17. The legal proceeding was caused and continued by Mr. and Mrs. Libow.

18. On May 11, 2006, all of Mrs. Libow's claims against Mr. and Mrs. Johnson were dismissed pursuant to a Motion to Dismiss, thus resulting in a *bona fide* termination of Mrs. Libow's claims against the Johnsons.

19. Mr. Libow's claims against Mrs. Johnson were also dismissed pursuant to a Motion to Dismiss, thus resulting in a *bona fide* termination of Mr. Libow's claims against Mrs. Johnson.

20. During this same proceeding, the Court also dismissed 38 of Mr. Libow's 41 claims against David Johnson.

21. Mr. Libow filed an appeal with the District Court of Appeal, Fourth District on June 5, 2006.

22. On January 24, 2007, the District Court of Appeal, Fourth District, affirmed the lower court's dismissal of 38 of Mr. Libow's 41 counts of defamation against Mr. Johnson. The Court allowed 3 counts to proceed to Summary Judgment.

23. On December 31, 2008, the Circuit Court entered Final Summary Judgment in favor of David Johnson against all of Mr. Libow's remaining claims.

24. On March 13, 2008, Mr. Libow and his firm appealed the lower court's entry of Final Summary Judgment in favor of Mr. Johnson. *See Libow & Shaheen, LLP v. Johnson and Johnson*, 05-3299 CAA1, 502005CA003299XXXXMB.

25. On July 8, 2008, the Fourth DCA issued its mandate affirming the lower court's grant of summary judgment in favor of Mr. Johnson.

26. There was an absence of probable cause for Defendants' initiation and continuation of claims against the Johnsons, and such absence was at all times known or should have been known to all Defendants

27. Malice was present on the part of the Defendants, as inferred from the lack of probable cause to institute the proceedings, and the continuation of such proceedings.

28. As a result of Defendants' unjust prosecution, Plaintiffs were forced to expend hundreds of thousands of dollars in legal fees and have suffered legal damages in an amount to be proved at trial.

COUNT I – MALICIOUS PROSECUTION

Plaintiffs sue Defendants Allen H. Libow, Melissa Libow, and Libow and Shaheen, LLP for Malicious Prosecution.

29. Plaintiffs reallege Paragraphs 1 thru 28 above as if fully set forth herein.

30. Defendants instigated and continued a legal proceeding against each of the Plaintiffs for defamation by filing a Complaint in Palm Beach County, Florida.

31. The original proceeding concluded with *bona fide* terminations in favor of the Plaintiffs.

32. The Defendants were without probable cause to file the original proceeding for these and other reasons:

- a. Florida law has long recognized an absolute privilege on the part of a citizen to make a complaint against a member of the bar;
- b. A reasonable lawyer would not have regarded the claims against the Johnsons to be tenable;
- c. Mr. Libow unreasonably neglected to investigate the law and the facts before deciding to proceed;
- d. Neither Mr. Libow, nor Libow and Sheen LLP, had any reasonable or honest belief that Mrs. Libow had a tenable claim against the Johnsons for defamation;
- e. Mrs. Libow had no legitimate basis to bring claims against the Johnsons for defamation;

33. Each of the Defendants acted with actual and legal malice in filing and continuing the original proceeding.

34. Defendants' initiation and continuation of the civil proceeding for defamation has damaged the Plaintiffs in an amount to be proven at trial.

35. The Plaintiffs' joint and individual reputations have been injured by the unlawful actions of the Defendants.

36. As a further result of Defendants' actions, Plaintiffs have been damaged by having to pay monies to defend themselves in the defamation proceedings, loss of reputation, lost business opportunities and lost profits, and pain and suffering due to wanton and grossly reckless conduct.

WHEREFORE, Plaintiffs demand judgment for damages against Defendants, plus punitive damages, interest, costs, attorney's fees, and any other appropriate remedies.

COUNT II – CONSPIRACY TO COMMIT MALICIOUS PROSECUTION

37. This is an action for the tort of civil conspiracy to commit malicious prosecution brought against Allen Libow / Libow & Sheen, LLP and Melissa Libow.

38. Plaintiffs reallege 1 through 28 above as if fully set forth herein.

39. Defendants Allen Libow / Libow and Sheen LLP shared with Melissa Libow the common purpose to illegally and unjustifiably engage in malicious prosecution of the Johnsons.

40. Defendants joined together and used their power to maliciously prosecute the Johnsons by intentional and unjustifiable means.

41. Defendants took these actions against the Johnsons for the purpose of accomplishing the underlying tort of malicious prosecution.

42. Defendants' conspiracy resulted in the malicious prosecution of the Johnsons by the commencement and continuation of a civil proceeding for defamation in Palm Beach County. *See Libow v. Johnson and Johnson*, 05-3299 CAA1, 502005CA003299XXXXMB.

43. Defendants' initiation and continuation of the civil proceeding for defamation has damaged the Plaintiffs in an amount to be proven at trial.

44. The Plaintiffs' joint and individual reputations have been injured by the unlawful actions of the Defendants.

As a further result of Defendants' actions, Plaintiffs have been damaged by having to pay monies to defend themselves in the defamation proceedings, loss of reputation, lost business opportunities and lost profits, and pain and suffering due to wanton and grossly reckless conduct.

WHEREFORE, Plaintiffs demand judgment in an amount to be proven at trial to compensate Plaintiffs for Defendants' conspiracy to maliciously prosecute Plaintiffs, and for fees, costs and such other relief as this court deems just and proper.

COUNT III – ABUSE OF PROCESS

45. This is an action for abuse of process against all Defendants.

46. Plaintiffs reallege the allegations set forth in paragraphs 1-28 as if set forth fully herein and further alleges:

47. Defendants instigated and continued a civil action against the Johnsons in bad faith and for purposes of extorting monies from the Johnsons to which Defendants were not entitled, to extort other concessions from the Johnsons, and to damage the Johnsons' reputations.

48. After the proceedings were instigated Defendants threatened to file and filed false police reports, manufactured evidence, and otherwise carried on a pattern of wrongful, harassing, and threatening misconduct.

49. Defendants' use of civil court proceedings for purposes of extorting funds and damaging the Johnsons' reputations was an illegal, improper, and perverted use of the judicial process.

50. Defendants' initiation and continuation of the civil proceeding for defamation has damaged the Plaintiffs in an amount to be proven at trial.

51. The Plaintiffs' joint and individual reputations have been injured by the unlawful actions of the Defendants.

52. As a further result of Defendants' actions, Plaintiffs have been damaged by having to pay monies to defend themselves in the defamation proceedings, loss of reputation, lost business opportunities and lost profits, and pain and suffering due to wanton and grossly reckless conduct.

WHEREFORE, Plaintiffs demand judgment in an amount to be proven at trial to compensate Plaintiffs for Defendants' conspiracy to maliciously prosecute Plaintiffs, and for fees, costs and such other relief as this court deems just and proper.

NOTICE OF INTENT TO PLEAD PUNITIVE DAMAGES

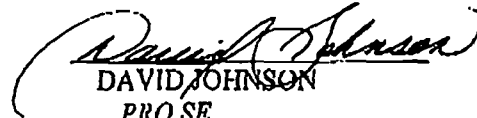
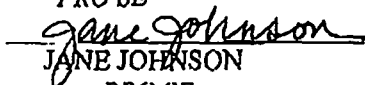
54. Plaintiffs hereby give notice to Defendants that they intend to claim and will proffer evidence to support an award of punitive damages.

WHEREFORE, Plaintiffs demand judgment in an amount to be proven at trial to compensate Plaintiffs for Defendants' conspiracy to maliciously prosecute Plaintiffs, and for fees, costs and such other relief as this court deems just and proper.

DEMAND FOR JURY TRIAL


Plaintiffs respectfully request a trial by jury.

DATED: January 24th, 2011.


DAVID JOHNSON
PRO SE

JANE JOHNSON
PRO SE
12225 Premier Court,
Jacksonville, Fl. 32223

CERTIFICATE OF SERVICE

I HEREBY CERTIFY under penalty of perjury that a true and correct copy of the foregoing was served via hand delivery and U.S. Mail on: **Allen Libow, Esquire**, as an individual and as a partner of **Libow & Shaheen, LLP**, at **Libow & Shaheen, LLP, 3351 Northwest Boca Raton Boulevard, Boca Raton, Fl. 33431-6623**, **Melissa Libow**, on this 24th day of January, 2011.


DAVID JOHNSON
PRO SE

