

CAUSE NO. DC-11-13741

AMERICAN HERITAGE CAPITAL, LP	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
v.	§	68 th JUDICIAL DISTRICT
	§	
DINAH GONZALEZ and ALAN	§	
GONZALEZ,	§	
	§	
Defendants.	§	DALLAS COUNTY, TEXAS

PLAINTIFF'S FIRST AMENDED PETITION

Plaintiff American Heritage Capital, LP d/b/a AHClending.com ("Plaintiff" or "AHC"), by and through its counsel, hereby files this First Amended Petition against Defendants Dinah Gonzalez ("Ms. Gonzalez") and Alan Gonzalez ("Mr. Gonzalez" and together with Ms. Gonzalez, "Defendants"), and respectfully shows the Court the following:

I.

PRELIMINARY STATEMENT

AHC is one of the nation's few leading, Certified UpFront, on-line mortgage lenders. AHC has a strong commitment to customer care, honesty, and integrity. AHC prides itself on its financial strength and ability to satisfy the funding needs of its clients. In or about August 2011, Ms. Gonzalez approached AHC seeking a mortgage for a home she wished to purchase. Unfortunately, Ms. Gonzalez failed to timely and accurately provide AHC with information required for the funding of her loan. When faced with the news that her loan would not fund, Ms. Gonzalez and her husband, Mr. Gonzalez, retaliated against AHC by setting out to destroy AHC's reputation by making false and defamatory statements (the "Defamatory Statements"). Defendants' Defamatory Statements, which were posted on multiple Internet websites, have, without a doubt, damaged AHC's stellar reputation, resulting in a significant loss of revenue.

After making the Defamatory Statements, Defendants attempted to blackmail AHC into funding Ms. Gonzalez's loan. *See* Exhibit A. Ms. Gonzalez did not contest that she made the Defamatory Statements until *after* this lawsuit was initiated, and now has conveniently attempted to cast blame on her husband, Mr. Gonzalez. Ms. Gonzalez has repeatedly refused to take down the Defamatory Statements, and indeed threatened that she would not remove the Defamatory Statements unless and until AHC funded her loan. As such, AHC hereby files this lawsuit against Defendants, in order to prevent Defendants from further damaging AHC's business and reputation and to recover damages that Defendants intentionally (and needlessly) caused.

II. **DISCOVERY PLAN**

Pursuant to the Texas Rules of Civil Procedure, this case is pled as a Level 2 Discovery Plan. Plaintiff expressly reserves the right to move for a discovery control plan under Level 3.

III. **PARTIES**

1. Plaintiff American Heritage Capital, LP d/b/a AHCLending.com is a Texas limited partnership with its principal place of business located at 2300 Valley View Lane, Suite 1000, Irving, Texas 75062.

2. Defendant Dinah Gonzalez is an individual resident of Weslaco, Hidalgo County, Texas and has made an appearance in this action.

3. Defendant Alan Gonzalez is an individual resident of Weslaco, Hidalgo County, Texas, who made be served with process at his residence, located at 108 Orchard Drive Weslaco, Texas 78596, or wherever he may be found.

IV.
VENUE AND JURISDICTION

4. Venue is proper in Dallas County, Texas pursuant to TEX. CIV. PRAC. & REM. CODE § 15.001 *et seq.*, because a substantial part of the events or omissions giving rise to the claims occurred in Dallas County. Furthermore, the "Rate Lock Confirmation and Agreement" executed by the parties (*see* Exhibit B) calls for Dallas County, Texas as the exclusive venue for any litigation between the parties.

5. This Court has jurisdiction over this action by virtue of the relief sought herein, because the amount in controversy exceeds the minimum jurisdictional requirements of this Court, and because Defendants are residents of the State of Texas.

V.
FACTUAL ALLEGATIONS

6. Founded in 2002, AHC is a highly rated full-service mortgage lender.

7. In August 2011, Ms. Gonzalez contacted AHC attempting to obtain financing (the "Loan") for a home she sought to purchase in Weslaco, Texas (the "Home"). Unfortunately, Ms. Gonzalez misrepresented certain information regarding her employment, causing delays in the underwriting and approval of the Loan. Ms. Gonzalez also delayed in providing appropriate loan documentation to AHC per the parties' agreement.

8. Due to Ms. Gonzalez's delays and failure to fully and accurately disclose relevant information, the rate lock on the prospective Loan expired, and the applicable interest rate increased.

9. Further exacerbating the situation, Ms. Gonzalez failed to timely file her verifiable 2010 tax return with the Internal Revenue Service by October 15, 2011, which, as Ms. Gonzalez was fully aware, was necessary for AHC to approve the Loan.

10. Ms. Gonzalez and the seller of the Home were not able to execute closing documents for the Home prior to the expiration of AHC's mortgage loan commitment on October 14, 2011, and AHC was unable to fund the Loan after that point because it had not received the necessary documents and information from Ms. Gonzalez.

11. Upon being notified on or about October 17, 2011 of AHC's inability to fund the Loan, Defendants took to the Internet to begin a defamatory campaign against AHC and Ms. Gonzalez's loan officer, Mr. Chris Brancato ("Brancato").

12. Defendants visited several websites, including Zillow.com, CreditKarma.com, and RipOffReport.com, and posted the Defamatory Statements concerning AHC and Brancato on each site's message board.

13. Continuing with this series of attacks on AHC, Ms. Gonzalez verbally threatened AHC (via telephone).

14. Further, on or about October 18, 2011, AHC received two "anonymous" emails (*see Exhibit A*) threatening AHC regarding consequences if Ms. Gonzalez's Loan did not close.

15. Despite Defendants' attempt to hide behind anonymous e-mail addresses and an alias ("True Texan"), it is clear that Defendants are the responsible parties based on the timing, nature, and substance of these posts and e-mails.

16. Prior to this lawsuit being filed, Ms. Gonzalez did not deny making the Defamatory Statements. To the contrary, Ms. Gonzalez was asked to remove the Defamatory Statements and/or make a reply post retracting the Defamatory Statements, she considered the request, and declined to do so.

17. On or about November 16, 2011, Ms. Gonzalez for the first time claimed that her husband, Mr. Gonzalez, made the Defamatory Statements. *See* Affidavit of Dinah Gonzalez submitted with Defendant's Motion to Dismiss, filed on or about November 16, 2011.

18. Plaintiff is engaged in a highly competitive business which is particularly sensitive to allegations of incompetent or improper business practices. As a direct result of Defendants' conduct, Plaintiff has already sustained business losses including an extensive loss of call-volume and a decline in on-line applications as compared to prior weeks and comparable periods of time. Further, Plaintiff will have to embark on an expensive and time consuming campaign to rehabilitate its image.

19. Rather than accepting responsibility for Ms. Gonzalez's role in the expiration of AHC's mortgage loan commitment and attempting to find financing elsewhere, Defendants embarked on a campaign to destroy the reputation of AHC and its employees by publishing the Defamatory Statements on the Internet. This campaign was calculated to cause irreparable harm to AHC and Mr. Brancato. Such conduct is unfounded. Plaintiff is entitled to recover damages it has sustained and will sustain in the future as a result of Defendants' conduct.

VI. CLAIMS

COUNT I: LIBEL

20. Plaintiff restates and incorporates the foregoing allegations as though fully set forth herein.

21. Defendants have unjustifiably and without privilege made false and defamatory statements of fact regarding Plaintiff and Plaintiff's employees.

22. In these statements, Defendants referred to Plaintiff and Plaintiff's employees by name.

23. Defendants have done so without justification and solely for the purpose of blackmailing Plaintiff into reinstating its loan commitment in an attempt to facilitate the closing on the Home.

24. Defendants chose to publish the false statements on the Internet, making those comments accessible to the unfathomable number of people searching the Internet on a daily basis. These statements have already harmed Plaintiff's business reputation, and unless removed or retracted, will continue to do so.

25. The Defamatory Statements made by Defendants were made with malice and intended to injure Plaintiff in its business.

26. Plaintiff is entitled to damages, which include, but are not limited to, compensation for injuries to its business reputation.

27. Plaintiff is further entitled to recover consequential damages in addition to any actual damages.

28. Because Defendants' actions were conducted with malice, Plaintiff is entitled to exemplary damages in an amount to be determined by the jury.

COUNT II: TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONSHIPS

29. Plaintiff restates and incorporates the foregoing allegations as though fully set forth herein.

30. Plaintiff enters into valid and enforceable business relationships and agreements with third parties for, among other things, the provision and servicing of loans, on a daily basis.

31. Defendants were aware of the existence of these relationships between AHC and its current and/or prospective clients.

32. Defendants willfully and intentionally interfered with those business relationships or business expectancies.

33. Defendants' willful and intentional interference with AHC's business relationships or business expectancies has already caused (and will continue to cause) AHC significant damage.

34. AHC has suffered and will continue to suffer significant damage as a direct and proximate result of Defendants' tortious interference with its business relationships or business expectancies.

35. In addition to its actual damages, AHC is entitled to recover exemplary damages against Defendants, for which it now sues.

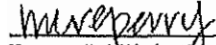
VII.
REQUEST FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that Defendants be cited to appear and answer herein and that upon final hearing, Plaintiff have and recover from Defendants as follows:

- (i) Judgment against Defendants for actual damages in an amount within the jurisdictional limits of this Court;
- (ii) Exemplary damages in an amount to be determined by the trier of fact;
- (iii) Pre-judgment interest and post-judgment interest accruing on said sums at the highest rate allowed by law;
- (v) All costs of court incurred herein; and
- (vii) Such other and further relief, at law or in equity, to which Plaintiff may show itself to be justly entitled.

Dated: December 13, 2011

Respectfully submitted,



Bryan J. Wick (SBN 24003169)

Seema Tendolkar (SBN 24053509)

Meredith L. Perry (SBN 24075622)

WICK PHILLIPS GOULD & MARTIN LLP

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Dallas, Texas 75201

(214) 692-6200 (telephone)

(214) 692-6255 (facsimile)

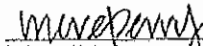
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on counsel of record pursuant to the Texas Rules of Civil Procedure on December 13, 2011, as follows:

David M. O'Dens
SettlePou
3333 Lee Parkway, 8th Floor
Dallas, TX 75219
214-526-4145 fax
odens@settlepou.com

Counsel for Defendant Dinah Gonzalez



Meredith L. Perry

EXHIBIT A

From: Dave U. Random <anonymous@anonymitaet-lm-Inter.net>
Sent: Tuesday, October 18, 2011 3:33 PM
To: [REDACTED]@ahclandlng.com
Subject: True Texan

Facts:

She uses David O'Dens with Settle and Pou in Dallas.
Her husbands uncle is US Rep Charlie Gonzalez.
Her husband spent many years as a cop or FBI (can't remember).

Someone once said "I will end it for you, and it won't be pretty" and went to jail for making a "terroristic threat"
Sec. 22.07. TERRORISTIC THREAT. (a) A person commits an offense if he threatens to commit any offense involving violence to any person or property with intent to:
(1) cause a reaction of any type to his threat by an official or volunteer agency organized to deal with emergencies;
(2) place any person in fear of imminent serious bodily injury; or
(3) prevent or interrupt the occupation or use of a building; room; place of assembly; place to which the public has access; place of employment or occupation; aircraft, automobile, or other form of conveyance; or other public place; or
(4) cause impairment or interruption of public communications, public transportation, public water, gas, or power supply or other public service.
(b) An offense under Subdivision (1) or (2) of Subsection (a) is a Class B misdemeanor. An offense under Subdivision (3) of Subsection (a) is a Class A misdemeanor. An offense under Subdivision (4) of Subsection (a) is a felony of the third degree.

I will make sure your next email setting up the closing date gets through to her.

No need to thank me.

I am sure you just made an error and would love to have a closing on her loan this week.

~~XXXXXXXXXX~~

From: Anonymous <nobody@smtp.remaller.dyndns.org>
Sent: Tuesday, October 18, 2011 5:53 PM
To: ~~XXXXXXXXXX~~@ahclending.com
Subject: True Texan

Email her and tell her about her new closing date or I post your letter on the Internet.
5 minutes

EXHIBIT B

RATE LOCK CONFIRMATION AND AGREEMENT
(Confidential - For the benefit of the Intended borrower(s) only)

Confirmation Date: 08/05/2011

Lender Loan Number:

Dinah L. Gonzalez
3804 Hegen Ct
Laredo, TX 78049

Chris

Property Address: 108 Orchard Wasloco TX 78596, Hidalgo County

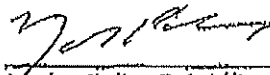
Dear Dinah Gonzalez;

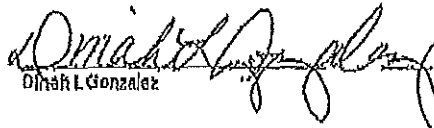
This Rate Lock Confirmation shall memorialize the terms and conditions of your rate lock with American Heritage Capital, LP herein referred as AHC. Your payment of said Rate Lock Fee or sums of any other advance deposit paid to AHC by Cash, Credit Card or in any other form, shall constitute your agreement to the terms contained herein.

Approved: Omar Gonzalez

Jurisdiction and Governing Law, Notwithstanding any other provision of this Agreement, unless prohibited by the laws of the State where subject property being financed is located, any controversy, claim or dispute arising out of or relating to this Agreement, shall be solely and exclusively settled in and according to the Laws of State of Texas in Dallas County, Texas.

Accepted by:


American Heritage Capital, LP
Rate Lock Department


Omar L. Gonzalez