

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

RIGHT OF THE DOT, LLC and)
BOLTEN PROPERTIES, LLC,)
)
Plaintiffs,)
)
v.)
)
DAVID LIZMI,)
)
Defendant.)
_____)

Case No. CACE-21-008099

**PLAINTIFFS' ANSWER
TO COUNTERCLAIM**

Dated: June 10, 2021

Pursuant to Florida Rule of Civil Procedure 1.100(c), Plaintiffs-Counterclaim Defendants RIGHT OF THE DOT, LLC and BOLTEN PROPERTIES, LLC file this Answer to the Affirmative Defenses and Counterclaim asserted by Defendant-Counterclaim Plaintiff DAVID LIZMI, and state the following:

RESPONSE TO DEFENDANT'S AFFIRMATIVE DEFENSES

**FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)**

The Affirmative Defense is denied.

**SECOND AFFIRMATIVE DEFENSE
(Lack of Personal Jurisdiction)**

The Affirmative Defense is denied. Plaintiffs-Counterclaim Defendants assert and have alleged that this Court has jurisdiction over this matter because this district was the situs of a contract between Defendant-Counterclaim Plaintiff Lizmi and at least one of the Plaintiffs-Counterclaim Defendants, and because at least one of the Plaintiffs-Counterclaim Defendants sustained damages in this district due to Lizmi's conduct.

**THIRD AFFIRMATIVE DEFENSE
(Fraud/Illegality)**

The Affirmative Defense is denied. Plaintiffs deny that they made any misrepresentations or fraudulent statements and also deny that Lizmi intended to or did in fact rely on any misrepresentation or fraudulent statement, or that he was damaged thereby. They further deny that Defendant has pleaded fraud with particularity.

**FOURTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)**

The Affirmative Defense is denied.

**FIFTH AFFIRMATIVE DEFENSE
(Plaintiff's Own Conduct)**

The Affirmative Defense is denied.

**SIXTH AFFIRMATIVE DEFENSE
(Assumption of the Risk)**

The Affirmative Defense is denied.

**SEVENTH AFFIRMATIVE DEFENSE
(Waiver/Estoppel)**

The Affirmative Defense is denied.

**EIGHTH AFFIRMATIVE DEFENSE
(Unclean Hands)**

The Affirmative Defense is denied.

**NINTH AFFIRMATIVE DEFENSE
(Failure of Condition Precedent)**

The Affirmative Defense is denied. Plaintiffs deny both that there was a condition precedent and in the alternative that any condition precedent was not satisfied.

**TENTH AFFIRMATIVE DEFENSE
(Misrepresentation)**

The Affirmative Defense is denied. Plaintiffs deny that they made any misrepresentations and also deny that Lizmi intended to or did in fact rely on any misrepresentation, or that he was damaged thereby. They further deny that Defendant has pleaded fraud with particularity.

**ELEVENTH AFFIRMATIVE DEFENSE
(Vague)**

The Affirmative Defense is denied.

**TWELFTH AFFIRMATIVE DEFENSE
(Excuse)**

The Affirmative Defense is denied.

**THIRTEENTH AFFIRMATIVE DEFENSE
(Obstruction)**

The Affirmative Defense is denied.

**FOURTEENTH AFFIRMATIVE DEFENSE
(Offset)**

The Affirmative Defense is denied.

**FIFTEENTH AFFIRMATIVE DEFENSE
(Ratification)**

The Affirmative Defense is denied.

**SIXTEENTH AFFIRMATIVE DEFENSE
(Speculative)**

The Affirmative Defense is denied.

**SEVENTEENTH AFFIRMATIVE DEFENSE
(Plaintiffs' Own Acts/Omissions)**

The Affirmative Defense is denied.

**EIGHTEENTH AFFIRMATIVE DEFENSE
(Indemnity)**

The Affirmative Defense is denied.

**NINETEENTH AFFIRMATIVE DEFENSE
(Privity)**

The Affirmative Defense is denied.

**TWENTIETH AFFIRMATIVE DEFENSE
(Unjust Enrichment)**

The Affirmative Defense is denied.

**TWENTY-FIRST AFFIRMATIVE DEFENSE
(Statute of Frauds)**

The Affirmative Defense is denied.

RESPONSE TO COUNTERCLAIM

PARTIES

1. Admitted.
2. Admitted.
3. Admitted.

JURISDICTION AND VENUE

4. Plaintiffs-Counterclaim Defendants assert and have alleged that this Court has jurisdiction over this matter because this district was the situs of a contract between Defendant-Counterclaim Plaintiff Lizmi and at least one of the Plaintiffs-Counterclaim Defendants, and because at least one of the Plaintiffs-Counterclaim Defendants sustained damages in this district due to Lizmi's conduct. This paragraph is denied to the extent that it is inconsistent with that allegation.

5. Plaintiffs-Counterclaim Defendants assert and have alleged that this Court has jurisdiction over this matter because this district was the situs of a contract between Defendant-Counterclaim Plaintiff Lizmi and at least one of the Plaintiffs-Counterclaim Defendants, and because at least one of the Plaintiffs-Counterclaim Defendants sustained damages in this district due to Lizmi's conduct. This paragraph is denied to the extent that it is inconsistent with that allegation.

6. Plaintiffs-Counterclaim Defendants assert and have alleged that venue is proper in this district was the situs of a contract between Defendant-Counterclaim Plaintiff Lizmi and at least one of the Plaintiffs-Counterclaim Defendants, and because at least one of the Plaintiffs-Counterclaim Defendants sustained damages in this district due to Lizmi's conduct. This paragraph is denied to the extent that it is inconsistent with that allegation.

FACTUAL ALLEGATIONS

7. Admitted.

8. Right of the Dot admits that it charges a fixed percentage of the final winning bid of any item as its fee, and denies any characterization inconsistent with that admission. All remaining allegations are admitted.

9. Admitted.

10. The allegations refer to an email, the contents of which are the best evidence of the email's meaning. Plaintiffs-Counterclaim Defendants deny any characterization inconsistent with the email's plain terms. Plaintiffs-Counterclaim Defendants specifically deny that Lizmi was not approved to bid at the auction at amounts higher than \$2,000 and have alleged that he knowingly did so. In addition, it is specifically alleged that on or about February 25, 2021 Lizmi acknowledged that he placed the bids and that his bids were the winning bids.

11. Admitted, except that Plaintiffs-Counterclaim Defendants deny that Lizmi is owed any amount from the sale of his domain names, as the proceeds from those sales are offset by the \$4.1 million Lizmi bid on fish.com and bird.com and did not pay.

12. Admitted, except that Plaintiffs-Counterclaim Defendants deny that Lizmi “never requested a credit with which to bid,” and have alleged that Lizmi did knowingly make bids well in excess of \$2,000 in the auction. Further, the paragraph refers to the Right of the Dot terms and conditions, the contents of which are the best evidence of the meaning of those terms and conditions. Plaintiffs-Counterclaim Defendants deny any characterization inconsistent with the plain terms of those terms and conditions.

13. Denied.

14. Denied.

15. The allegations refer to an email, the contents of which are the best evidence of the email’s meaning. The terms and conditions to which Lizmi agreed in order to participate in the auction state that the auctioneer’s decision and hammer price supersede any and all notices bidders receive during an auction. All other allegations in the paragraph are denied.

16. The allegations refer to an email, the contents of which are the best evidence of the email’s meaning. The terms and conditions to which Lizmi agreed in order to participate in the auction state that the auctioneer’s decision and hammer price supersede any and all notices bidders receive during an auction. All other allegations in the paragraph are denied.

17. Plaintiffs-Counterclaim Defendants admit that Lizmi was the winning bidder for both fish.com and bird.com. All other allegations in this paragraph are denied.

18. The allegations refer to a text message, the contents of which are the best evidence of the text message’s meaning. All other allegations in this paragraph are denied.

19. The allegations refer to a Settlement Statement, the contents of which are the best evidence of the Settlement Statement's meaning. All other allegations in this paragraph are denied.

20. Denied.

21. Admitted that, consistent with the terms and conditions to which Lizmi had agreed, that he was instructed to place the domain names he sold into a registry escrow account in order to permit title to be transferred to the winning bidders. Also admitted, consistent with the terms and conditions and industry practice, the proceeds of those sales less any outstanding balances would be transferred to Lizmi, and that Lizmi had an outstanding balance of \$4.1 million. Any characterization inconsistent with these admissions, and all other allegations in the paragraph, are denied.

22. Admit that Lizmi transferred the domain names to a registry escrow account. All other allegations in the paragraph are denied, and it is specifically denied that Lizmi took any action in reliance upon any untrue or misleading representation by Right of the Dot or any of its agents or employees.

23. Denied.

COUNT 1 FRAUD

24. This paragraph is duplicative of and incorporates other paragraphs and therefore no response is required. To the extent a response is required, the allegations are denied.

25. Admitted, except that Plaintiffs-Counterclaim Defendants deny that Lizmi is owed any amount from the sale of his domain names, as the proceeds from those sales are offset by the \$4.1 million Lizmi bid on fish.com and bird.com and did not pay.

26. Admitted that, consistent with the terms and conditions to which Lizmi had agreed, Lizmi was instructed to place the domain names he sold into a registry escrow account in order to permit title to be transferred to the winning bidders. Also admitted, consistent with the terms and conditions and industry practice, the proceeds of those sales less any outstanding balances would be transferred to Lizmi, and that Lizmi had an outstanding balance of \$4.1 million. Any characterization inconsistent with these admissions, and all other allegations in the paragraph, are denied.

27. The allegations refer to an email, the contents of which are the best evidence of the email's meaning. All other allegations in this paragraph are denied.

28. Denied.

29. Denied, and specifically denied that Cahn made any misrepresentation.

30. Denied.

COUNT 2 BREACH OF CONTRACT

31. This paragraph is duplicative of and incorporates other paragraphs and therefore no response is required. To the extent a response is required, the allegations are denied.

32. Admitted, except that Plaintiffs-Counterclaim Defendants deny that Lizmi is owed any amount from the sale of his domain names, as the proceeds from those sales are offset by the \$4.1 million Lizmi bid on fish.com and bird.com and did not pay.

33. Denied.

34. Denied.

35. Denied.

**COUNT 3
PROMISSORY ESTOPPEL**

36. This paragraph is duplicative of and incorporates other paragraphs and therefore no response is required. To the extent a response is required, the allegations are denied.

37. This paragraph purports to describe the legal basis for this claim and thus no response is required. To the extent a response is required the allegations are denied.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

43. This paragraph is duplicative of and incorporates other paragraphs and therefore no response is required. To the extent a response is required, the allegations are denied.

44. Denied.

45. This paragraph purports to describe legal requirements in the abstract and thus no response is required. To the extent a response is required the allegations are denied.

46. Denied.

PRAYER FOR RELIEF

Plaintiffs-Counterclaim Defendants deny that Lizmi is entitled to any relief.

Respectfully submitted,

/s/ Howard Neu

Howard Neu, Fla. Bar No. 108689

Law Office of Howard Neu, PA

4839 SW Volunteer Road

Suite 512

Southwest Ranches, FL 33330

Tel: 954-662-1816

Fax: 954-337-2121
Howard@NeuLaw.com

/s/ Stevan H. Lieberman

Stevan H. Lieberman, pro hac vice
Greenberg & Lieberman, LLC
2141 Wisconsin Ave., NW
Suite C2
Washington, D.C. 20007
Tel: 202-625-7000
Fax: 202-625-7001
Stevan@aplegal.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of June, 2021, I did cause a copy of the foregoing to be placed in the United States Mail, first-class, and be sent to Defendant David Lizmi at his place of residence at 323 Wye Road, Queenstown, Maryland, 21658.

/s/ Howard Neu
Howard Neu