

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

RIGHT OF THE DOT, LLC, and
BOLTEN PROPERTIES, LLC.

Plaintiff,

v.

DAVID LIZMI,

Defendant.

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) No. _____
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) JURY TRIAL DEMANDED
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COMPLAINT

1. This is a complaint for breach of contract, promissory estoppel, and tortious interference with business relationships filed by Plaintiff Right of the Dot, LLC, (“ROTD”), an Internet domain name auctioneer, and for promissory estoppel, and tortious interference with a business relationship filed by Plaintiff Bolten Properties, LLC, (“BOLTEN”), owner and registrant of the domain names in question, all of which originated from the same transactions. This complaint is brought against DAVID LIZMI to recover damages exceeding \$15,000 sustained by both ROTD and BOLTEN when Defendant LIZMI bid on and won two extremely valuable Internet domain names at auction for a total of four million, one hundred thousand dollars (\$4,100,000) and then refused to pay for his bids in material breach of promises made to ROTD.

PARTIES

2. Plaintiff ROTD is a Delaware limited liability corporation with its principal place of business in Pompano Beach, Florida.

3. Plaintiff BOLTEN is a Nevada limited liability corporation with its principal place of business in Los Angeles, California.

4. Defendant LIZMI is a resident of Queenstown, Maryland.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter because it is a contract dispute that arises under the laws of the state of Florida.

6. This Court has jurisdiction over the parties because Broward County, Florida is the situs of a contract between the parties. Under that contract, Defendant agreed “to the exclusive jurisdiction of the courts of ... Broward County, Florida, USA for any dispute arising out of these Terms.” General Terms of Use ¶ 19.a.

7. Venue is proper in this Court because Plaintiff ROTD has its principal place of business in Pompano Beach, Florida and because conduct giving rise to liability occurred in this district.

FACTUAL ALLEGATIONS

8. ROTD is an Internet domain name consultancy that, *inter alia*, conducts Internet domain name auctions. That is, it contracts with Internet domain name owners to sell their domain names to the highest bidder, through either “sealed” auctions or live auctions conducted by webcast, with live and electronic bidding. For its marketing and auctioneering services, ROTD takes a percentage of the winning bid as its fee.

9. BOLTEN is an Internet domain name investor and developer that submitted a number of its domain names to ROTD for the purpose of auctioning them off to the highest bidder.

10. On or about February 25, 2021, ROTD served as the auctioneer for more than one hundred (100) domain names, including two extremely valuable names: fish.com and bird.com; which were owned and registered by Plaintiff BOLTEN. The properties are very valuable because they are one word “gTLDs” or generic top-level domains, which attract substantial consumer traffic because of the generic words used in the domain name.

11. LIZMI is a self-styled “Internet entrepreneur” from Queenstown, Maryland, and was a participant in the auction on that date, as both a seller and a buyer. He frequently intervened to drive up bidding on various domain names that went up for auction.

12. In order to bid on Internet domain names, LIZMI agreed to ROTD’s Terms of Use, which are located on the ROTD website and to which every seller and bidder must agree.

13. Those terms state that a bidder agrees that it “is acting on its own behalf and is responsible for any actions that it may take with respect to any auctions or related transactions that it may enter into.” General Terms of Use ¶ 1.

14. The Terms of Use also state that bidders agree that “When you submit a bid using our Services, your bid will be forwarded to ROTD and the Seller (BOLTEN), and may be viewed by ROTD and the Seller as a firm commitment and an irrevocable offer to purchase. Once you place a bid on our Site, it may not be retracted. If you have the winning bid, ROTD and/or Seller may hold you legally obligated to complete the transaction unless otherwise prohibited by law or regulation.” Bidder User Terms ¶ 8.a.

15. Because of the value of the domain names being auctioned, the auction on February 25, 2021, attracted significant attention from industry media and a large number of bidders. More than one thousand persons watched the live, four-hour auction.

16. Though Defendant LIZMI had the option to set a maximum bid amount for his account, he chose unlimited bidding instead.

17. LIZMI eventually won the bids for bird.com and fish.com, bidding two million five hundred thousand dollars (\$2,500,000) for Bird.com and one million six hundred thousand dollars (\$1,600,000) for Fish.com, for a total of 4 million one hundred thousand dollars (\$4,100,000). The winning bid on bird.com was the largest bid of the auction. The bidding and these purchases were reported extensively in industry media later. *See, e.g.,* <https://domainnamewire.com/2021/02/25/one-person-spends-4-75-million-in-domain-auction/>; <https://www.dnjournal.com/archive/lowdown/2021/dailyposts/20210225.html>.

18. However, when Monte Cahn, President of ROTD, approached LIZMI to collect his bids, LIZMI demurred, saying that his “backers sidelined me after the auction and left me holding the bag.”

19. Cahn reminded LIZMI of the Terms of Use to which he had agreed and the considerable attention and participation that this auction had engendered. He pointed out that failure to make good on his bids would threaten the integrity of the domain name auction process, and directed LIZMI to financing options that he might have, including putting him in touch with contacts at financing companies that specialize in domain name capital investments. LIZMI replied that he was “working on it.”

20. The next day, Cahn reached back out to LIZMI, stating that he needed an update and that “I’ve got the sellers and the media all over me for info and answers.” LIZMI did not respond.

21. Cahn continued to try to reach out to LIZMI over an extended period of time, including attempting to set up a meeting with the backers who had pulled out of financing the bidding. He also asked LIZMI to put up a deposit to demonstrate good faith, which LIZMI declined to do. LIZMI largely did not respond to these communications, except to tell Cahn to sell to the second-highest bidders—who, by that point, were no longer interested in the domain names.

22. LIZMI has ceased all communication with ROTD and Cahn and has not paid his bids.

23. ROTD’s auctioneer fees for the auction of Bird.com and Fish.com were approximately one million two hundred thousand dollars (\$1,200,000).

24. ROTD and BOLTEN have suffered serious damage to their commercial reputations. The sellers of these and other domain names have expressed concern that ROTD’s auctions may lack integrity and they have explored other means to sell their domain names, leading to substantial loss of business and good will to ROTD. Further, the value of BOLTEN’S domain name investments has been diminished severely due to the tortious actions and breach of contract by LIZMI.

**COUNT ONE
BREACH OF CONTRACT**

25. Plaintiffs incorporate all prior paragraphs as if restated herein and, if necessary, plead this cause of action in the alternative.

26. When placing a bid during a ROTD domain name auction, Defendant LIZMI agreed that his bid was not retractable and was “a firm commitment and an irrevocable offer to purchase,” and that he was “legally obligated to complete the transaction.” Bidder User Terms ¶ 8.a.

27. Defendant LIZMI’s bid thus constituted a binding contractual promise to pay if he won the bid for the domain names.

28. Despite winning the bids for Bird.com and Fish.com, LIZMI did not pay his winning bids, thereby materially breaching his agreement. This breach by LIZMI was intentional.

29. By virtue of this breach of contract, ROTD has suffered actual damages in an amount exceeding one million two hundred thousand dollars (\$1,200,000), exclusive of fees and interest, as well as damage to its commercial reputation.

**COUNT TWO
PROMISSORY ESTOPPEL**

30. Plaintiffs incorporate all prior paragraphs as if restated herein and, if necessary, plead this cause of action in the alternative.

31. For the purposes of this Count, Plaintiffs allege in the alternative that there was no applicable contract or contractual provision or that the promises made were outside of actions by the parties that were not covered by any existing contract otherwise referred to herein.

32. Defendant LIZMI made misrepresentations of material facts.

33. Defendant LIZMI should reasonably have expected to induce action or forbearance on the part of Plaintiff ROTD.

34. Defendant LIZMI’s misrepresentations induced such action or forbearance by ROTD as described herein. These misrepresentations were intentional.

35. Plaintiffs ROTD and BOLTEN suffered detriment caused by reliance on LIZMI's misrepresentations. Injustice can only be avoided by enforcement of the promise made by LIZMI to pay his winning bids.

36. As a result of LIZMI's misrepresentations, ROTD has suffered actual damages in an amount exceeding one million two hundred thousand dollars (\$1,200,000), exclusive of fees and interest, as well as damage to its commercial reputation and good will.

37. As a result of LIZMI's misrepresentations, BOLTEN has suffered actual damages in the amount of four million two hundred thousand dollars (\$4,200,000), exclusive of fees and interest, as well as damage to its commercial reputation and good will.

**COUNT THREE
TORTIOUS INTERFERENCE
WITH BUSINESS RELATIONSHIPS**

38. Plaintiffs incorporate all prior paragraphs as if restated herein and, if necessary, plead this cause of action in the alternative.

39. Plaintiff ROTD had business relationships with BOLTEN at to the domain names bird.com and fish.com, and had entered into contractual relationships with BOLTEN to sell its domain names at auction.

40. More generally, Plaintiff ROTD has business relationships throughout the domain name sales industry, and its reputation as a principled, effective marketer and auctioneer of domain names is of substantial commercial value to it.

41. More generally, BOLTEN has business relationships throughout the domain name industry as an investor in premium domain names, and the valuation of its domain name investments has been denigrated and devalued, and its reputation as a legitimate investor in premium domain names has been severely damaged.

42. Defendant LIZMI has knowledge of these business relationships. In fact, it was this knowledge that caused LIZMI to enter into the auction process in the first place.

43. Defendant LIZMI intentionally and unjustifiably interfered with these relationships by entering winning bids for these extremely valuable domain names and then intentionally failing to pay for his bids.

44. By virtue of this interference with its business relationships, both ROTD and BOLTEN have suffered actual damages in an amount to be proven at trial as well as damage to their commercial reputations.

PRAYER FOR RELIEF

45. WHEREFORE, Plaintiff Right of the Dot, LLC. demands that judgment be entered in its favor against Defendant David Lizmi as follows:

- a) For actual, consequential, and punitive damages, as permitted by law, in an amount proven at trial, but not less than \$1,200,000;
- b) payment of prejudgment interest,
- c) attorney's fees, expenses, and costs, and
- d) for such other and further relief as the Court deems just and equitable.

45. WHEREFORE, Plaintiff Bolten Properties, LLC. Demands that judgment be entered in its favor against Defendant David Lizmi as follows:

- a) For actual, consequential, and punitive damages as permitted by law, in an amount proven at trial, but not less than \$4,200,000;
- b) payment of prejudgment interest;
- c) attorney's fees, expenses and costs, and
- d) for such other and further relief as the Court deems just and equitable.

TRIAL BY JURY IS DEMANDED.

DATED: April 21, 2021

/s/ Howard Neu

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