

13503.0020

ROBERT LEVERETT,

Plaintiff,

vs.

CAPACITY INSURANCE COMPANY,
a Florida Corporation, MILLS MEHR &
ASSOCIATES, INC., a Florida
Corporation, SHAWN STARBUCK and
KEITH BOLEN,

Defendants.

IN THE CIRCUIT COURT OF THE
17th JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY,
FLORIDA

CASE NO.: *CACE-15-003338 (25)*

COMPLAINT

Plaintiff, ROBERT LEVERETT, by and through the undersigned attorneys, sues the Defendants, CAPACITY INSURANCE COMPANY, a Florida Corporation, MILLS MEHR & ASSOCIATES, INC., a Florida Corporation, SHAWN STARBUCK, and KEITH BOLEN and in support thereof states as follows:

1. This is an action for damages in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00), exclusive of interest, attorney's fees and costs, and is otherwise within the jurisdictional limits of this Court.

2. At all times material hereto, the Defendant, CAPACITY INSURANCE COMPANY, was an insurance company authorized to do business in the State of Florida, and doing business in Broward County, Florida and with a principle place of business in Broward County Florida.

3. At all times material hereto, the Defendant, MILLS MEHR & ASSOCIATES, INC. was an insurance adjusting company authorized to do business in the State of Florida, and doing business in Broward County, Florida.

4. At all times material hereto, Defendant, SHAWN STARBUCK, was and is a Florida resident, and is otherwise *sui juris*.

5. At all times material hereto, Defendant, SHAWN STARBUCK was an employee, and/or agent, and/or under the control of MILLS MEHR & ASSOCIATES and CAPACITY INSURANCE COMPANY and was working within his scope of employment with MILLS MEHR & ASSOCIATES and/or CAPACITY INSURANCE COMPANY.

6. At all times material hereto, Defendant, KEITH BOLEN, was and is a Florida resident, and is otherwise *sui juris*.

7. At all times material hereto, Defendant, KEITH BOLEN was an employee, and/or agent, and/or under the control of CAPACITY INSURANCE COMPANY and was working within his scope of employment with CAPACITY INSURANCE COMPANY.

8. At all times material hereto, the Plaintiff, ROBERT LEVERETT, was and is a Florida resident, and is otherwise *sui juris*.

9. At all times material hereto, Plaintiff, ROBERT LEVERETT, was a licensed public adjuster in the State of Florida.

10. That on or about August 26, 2012, a property owned by Sai Jal, LLC d/b/a Red Carpet Inn ("Red Carpet") and insured by the Defendant CAPACITY INSURANCE COMPANY was damaged as the result of a fire.

11. Red Carpet retained the services of Plaintiff, ROBERT LEVERETT, to perform adjusting services for the damage to the property.

12. At all material times hereto, SHAWN STARBUCK and KEITH BOLEN were employees and/or hired by CAPACITY INSURANCE COMPANY, to adjust, determine the cause of, estimate and handle the claim for the fire loss.

13. At all times material hereto Defendants, CAPACITY INSURANCE COMPANY, MILLS MEHR & ASSOCIATES, INC, SHAWN STARBUCK, KEITH BOLEN, and their employees, agents and/or representatives provided false, misleading and/or incomplete information, contained within sworn affidavits, to the Department of Financial Services, Division of Insurance Fraud for purposes of beginning a fraud investigation of Plaintiff.

14. That at all times material hereto the false, misleading or incomplete information provided by Defendants to the Department of Financial Services, Division of Insurance Fraud was done so fraudulently and/or in bad faith.

15. That as a result of the Defendants, CAPACITY INSURANCE COMPANY, MILLS MEHR & ASSOCIATES, INC, SHAWN STARBUCK, KEITH BOLEN, and their employees, agents, and/or representatives actions of providing false, misleading and/or incomplete information to the Department of Financial Services, Division of Insurance Fraud a fraud investigation of Plaintiff was started.

16. At all times material hereto the false, misleading and/or incomplete information provided was for the express purpose of instituting a fraud investigation against Plaintiff so that Plaintiff would be charged and prosecuted by the State Attorney's Office for fraud.

17. At all time material hereto, the State Attorney filed charges against Plaintiff and an arrest warrant or capias was subsequently issued against Plaintiff on May 8, 2014.

18. Plaintiff turned himself in and was arrested and taken into custody by the Sheriff of Orange County, Florida and was held in custody until Plaintiff gave bond for Plaintiff's appearance to answer the criminal charges made against him.

19. Thereafter the criminal charges made against Plaintiff were dismissed because there was no evidence to prove the charges against Plaintiff. The criminal charges have been finally disposed of in favor of Plaintiff and no further prosecution has been instituted against Plaintiff in the matter.

COUNT I
MALICIOUS PROSECUTION AGAINST CAPACITY

Plaintiff realleges and readopts paragraphs 1-19 as fully set forth herein and further states as follows:

20. Defendant CAPACITY INSURANCE COMPANY instituted the criminal charges without any probable cause and did so with malice.

21. Defendant CAPACITY INSURANCE COMPANY procured the prosecution of Plaintiff maliciously and with the intent of injuring Plaintiff. Defendant made the referral in bad faith in order to procure a criminal prosecution of Plaintiff.

22. As a proximate result, Plaintiff paid and incurred expenses for attorneys fees in defending Plaintiff from the criminal charges, the cost of the bond posted in the criminal proceeding, suffered mental anguish, damage to his reputation and humiliation personally and professionally, and suffered loss of earnings and the loss of ability to earn money in Plaintiff's business.

WHEREFORE, the Plaintiff, ROBERT LEVERETT, demands judgment against the Defendant, CAPACITY INSURANCE COMPANY, for his damages including but not limited to

those listed herein as a result of Defendant's actions, as well as punitive damages and the Plaintiff demands a trial by jury of all issues triable as a matter of right by jury.

COUNT II
NEGLIGENT RETENTION AND SUPERVISION AGAINST CAPACITY

Plaintiff realleges and readopts paragraphs 1-19 as fully set forth herein and further states as follows:

23. At all times material hereto, SHAWN STARBUCK and/or KEITH BOLEN were employees, agents, and/or representatives of the Defendant CAPACITY INSURANCE COMPANY and were working on its behalf.

24. At all times material hereto, the Defendant CAPACITY INSURANCE COMPANY, owed a duty to Plaintiff to supervise their employees, representatives and/or agents so as not to allow them to submit false, misleading and/or incomplete information to the Department of Financial Services, Division of Insurance Fraud.

25. At all times material hereto, CAPACITY INSURANCE COMPANY exercised control over said individuals and/or directed them in their capacity to perform the jobs and duties in the handling of the subject claim, including the submission of the affidavits to the Department of Financial Services, Division of Fraud.

26. At all times material hereto SHAWN STARBUCK and/or KEITH BOLEN provided false, misleading and/or incomplete information to the Department of Financial Services, Division of Insurance Fraud resulting in the malicious prosecution of Plaintiff.

27. As a proximate result, Plaintiff paid and incurred expenses for attorneys fees in defending Plaintiff from the criminal charges, the cost of the bond posted in the criminal proceeding, suffered mental anguish, damage to his reputation and humiliation personally and

professionally, and suffered loss of earnings and the loss of ability to earn money in Plaintiff's business.

WHEREFORE, the Plaintiff, ROBERT LEVERETT, demands judgment against the Defendant, CAPACITY INSURANCE COMPANY, for his damages including but not limited to those listed herein as a result of Defendant's actions, as well as punitive damages and the Plaintiff demands a trial by jury of all issues triable as a matter of right by jury.

COUNT III
LIBEL, SLANDER, AND DEFAMATION AGAINST CAPACITY

Plaintiff realleges and readopts paragraphs 1-19 as fully set forth herein and further states as follows:

28. At all times material hereto, SHAWN MILLS and/or KEITH BOLEN were employees, agents, and/or representatives of the Defendant CAPACITY INSURANCE COMPANY and were working on its behalf.

29. At all times material hereto, SHAWN STARBUCK and/or KEITH BOLEN made false statements to the Department of Financial Services, Division of Fraud.

30. At all times material hereto, the false statements were done knowingly, with reckless disregard and/or negligently as to the falsity of the matter.

31. The false statements made were defamatory in nature.

32. As a proximate result, Plaintiff paid and incurred expenses for attorneys fees in defending Plaintiff from the criminal charges, the cost of the bond posted in the criminal proceeding, suffered mental anguish, damage to his reputation and humiliation personally and professionally, and suffered loss of earnings and the loss of ability to earn money in Plaintiff's business.

WHEREFORE, the Plaintiff, ROBERT LEVERETT, demands judgment against the Defendant, CAPACITY INSURANCE COMPANY, for his damages including but not limited to those listed herein as a result of Defendant's actions, as well as punitive damages and the Plaintiff demands a trial by jury of all issues triable as a matter of right by jury.

COUNT IV
MALICIOUS PROSECUTION AGAINST MILLS MEHR

Plaintiff realleges and readopts paragraphs 1-19 as fully set forth herein and further states as follows:

33. Defendant MILLS MEHR & ASSOCIATES, INC instituted the criminal charges without any probable cause and did so with malice.

34. Defendant MILLS MEHR & ASSOCIATES, INC procured the prosecution of Plaintiff maliciously and with the intent of injuring Plaintiff. Defendant made the referral in bad faith in order to procure a criminal prosecution of Plaintiff.

35. As a proximate result, Plaintiff paid and incurred expenses for attorneys fees in defending Plaintiff from the criminal charges, the cost of the bond posted in the criminal proceeding, suffered mental anguish, damage to his reputation and humiliation personally and professionally, and suffered loss of earnings and the loss of ability to earn money in Plaintiff's business.

WHEREFORE, the Plaintiff, ROBERT LEVERETT, demands judgment against the Defendant, MILLS MEHR & ASSOCIATES, INC, for his damages including but not limited to those listed herein as a result of Defendant's actions, as well as punitive damages and the Plaintiff demands a trial by jury of all issues triable as a matter of right by jury.

COUNT V
NEGLIGENT RETENTION AND SUPERVISION AGAINST MILLS MEHR

Plaintiff realleges and readopts paragraphs 1-19 as fully set forth herein and further states as follows:

36. At all times material hereto, SHAWN STARBUCK, was an employee, agent, and/or representative of the Defendant MILLS MEHR ASSOCIATES, INC. and was working on its behalf.

37. At all times material hereto, the Defendant MILLS MEHR ASSOCIATES, INC, owed a duty to Plaintiff to supervise their employees, representatives and/or agents so as not to allow them to submit false, misleading and/or incomplete information to the Department of Financial Services, Division of Insurance Fraud.

38. At all times material hereto, MILLS MEHR ASSOCIATES, INC exercised control over said individual and/or directed him in his capacity to perform the job and duties in the handling of the subject claim, including the submission of the affidavits to the Department of Financial Services, Division of Fraud.

39. At all times material hereto SHAWN STARBUCK, provided false, misleading and/or incomplete information to the Department of Financial Services, Division of Insurance Fraud resulting in the malicious prosecution of Plaintiff.

40. As a proximate result, Plaintiff paid and incurred expenses for attorneys fees in defending Plaintiff from the criminal charges, the cost of the bond posted in the criminal proceeding, suffered mental anguish, damage to his reputation and humiliation personally and professionally, and suffered loss of earnings and the loss of ability to earn money in Plaintiff's business.

WHEREFORE, the Plaintiff, ROBERT LEVERETT, demands judgment against the Defendant, MILLS MEHR ASSOCIATES, INC, for his damages including but not limited to those listed herein as a result of Defendant's actions, as well as punitive damages and the Plaintiff demands a trial by jury of all issues triable as a matter of right by jury.

COUNT VI
LIBEL, SLANDER, AND DEFAMATION AGAINST MILLS MEHR

Plaintiff realleges and readopts paragraphs 1-19 as fully set forth herein and further states as follows:

41. At all times material hereto, SHAWN STARBUCK, was an employee, agent, and/or representative of the Defendant MILLS MEHR ASSOCIATES, INC and was working on its behalf.

42. At all times material hereto, SHAWN STARBUCK made false statements to the Department of Financial Services, Division of Fraud.

43. At all times material hereto, the false statements were done knowingly, with reckless disregard and/or negligently as to the falsity of the matter.

44. The false statements made were defamatory in nature.

45. As a proximate result, Plaintiff paid and incurred expenses for attorneys fees in defending Plaintiff from the criminal charges, the cost of the bond posted in the criminal proceeding, suffered mental anguish, damage to his reputation and humiliation personally and professionally, and suffered loss of earnings and the loss of ability to earn money in Plaintiff's business.

WHEREFORE, the Plaintiff, ROBERT LEVERETT, demands judgment against the Defendant, MILLS MEHR ASSOCIATES, INC, for his damages including but not limited to

those listed herein as a result of Defendant's actions, as well as punitive damages and the Plaintiff demands a trial by jury of all issues triable as a matter of right by jury.

COUNT VII
MALICIOUS PROSECUTION AGAINST SHAWN STARBUCK

Plaintiff realleges and readopts paragraphs 1-19 as fully set forth herein and further states as follows:

46. Defendant SHAWN STARBUCK instituted the criminal charges without any probable cause and did so with malice.

47. Defendant SHAWN STARBUCK procured the prosecution of Plaintiff maliciously and with the intent of injuring Plaintiff. Defendant made the referral in bad faith in order to procure a criminal prosecution of Plaintiff.

48. As a proximate result, Plaintiff paid and incurred expenses for attorneys fees in defending Plaintiff from the criminal charges, the cost of the bond posted in the criminal proceeding, suffered mental anguish, damage to his reputation and humiliation personally and professionally, and suffered loss of earnings and the loss of ability to earn money in Plaintiff's business.

WHEREFORE, the Plaintiff, ROBERT LEVERETT, demands judgment against the Defendant, SHAWN STARBUCK, for his damages including but not limited to those listed herein as a result of Defendant's actions, as well as punitive damages and the Plaintiff demands a trial by jury of all issues triable as a matter of right by jury.

COUNT VIII
LIBEL, SLANDER, AND DEFAMATION AGAINST SHAWN STARBUCK

Plaintiff realleges and readopts paragraphs 1-19 as fully set forth herein and further states as follows:

49. At all times material hereto, SHAWN STARBUCK made false statements to the Department of Financial Services, Division of Fraud.

50. At all times material hereto, the false statements were done knowingly, with reckless disregard and/or negligently as to the falsity of the matter.

51. The false statements made were defamatory in nature.

52. As a proximate result, Plaintiff paid and incurred expenses for attorneys fees in defending Plaintiff from the criminal charges, the cost of the bond posted in the criminal proceeding, suffered mental anguish, damage to his reputation and humiliation personally and professionally, and suffered loss of earnings and the loss of ability to earn money in Plaintiff's business.

WHEREFORE, the Plaintiff, ROBERT LEVERETT, demands judgment against the Defendant, SHAWN STARBUCK, for his damages including but not limited to those listed herein as a result of Defendant's actions, as well as punitive damages and the Plaintiff demands a trial by jury of all issues triable as a matter of right by jury.

COUNT IX
MALICIOUS PROSECUTION AGAINST KEITH BOLEN

Plaintiff realleges and readopts paragraphs 1-19 as fully set forth herein and further states as follows:

53. Defendant KEITH BOLEN instituted the criminal charges without any probable cause and did so with malice.

54. Defendant KEITH BOLEN procured the prosecution of Plaintiff maliciously and with the intent of injuring Plaintiff. Defendant made the referral in bad faith in order to procure a criminal prosecution of Plaintiff.

55. As a proximate result, Plaintiff paid and incurred expenses for attorneys fees in defending Plaintiff from the criminal charges, the cost of the bond posted in the criminal proceeding, suffered mental anguish, damage to his reputation and humiliation personally and professionally, and suffered loss of earnings and the loss of ability to earn money in Plaintiff's business.

WHEREFORE, the Plaintiff, ROBERT LEVERETT, demands judgment against the Defendant, KEITH BOLEN, for his damages including but not limited to those listed herein as a result of Defendant's actions, as well as punitive damages and the Plaintiff demands a trial by jury of all issues triable as a matter of right by jury.

COUNT X
LIBEL, SLANDER, AND DEFAMATION AGAINST KEITH BOLEN

Plaintiff realleges and readopts paragraphs 1-19 as fully set forth herein and further states as follows:

56. At all times material hereto, KEITH BOLEN made false statements to the Department of Financial Services, Division of Fraud.

57. At all times material hereto, the false statements were done knowingly, with reckless disregard and/or negligently as to the falsity of the matter.

58. The false statements made were defamatory in nature.

59. As a proximate result, Plaintiff paid and incurred expenses for attorneys fees in defending Plaintiff from the criminal charges, the cost of the bond posted in the criminal proceeding, suffered mental anguish, damage to his reputation and humiliation personally and professionally, and suffered loss of earnings and the loss of ability to earn money in Plaintiff's business.

WHEREFORE, the Plaintiff, ROBERT LEVERETT, demands judgment against the Defendant, KEITH BOLEN, for his damages including but not limited to those listed herein as a result of Defendant's actions, as well as punitive damages and the Plaintiff demands a trial by jury of all issues triable as a matter of right by jury.

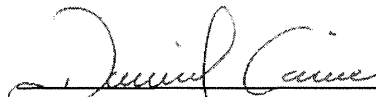
Dated this 24th day, of February, 2015.

NOTICE OF DESIGNATION OF E-MAIL ADDRESSES

The undersigned, in accordance with Florida Rule of Judicial Administration 2.516, hereby designates the following as his e-mail addresses:

Primary: dcaine@stabinski-funt.com
Secondary: service@stabinski-funt.com

STABINSKI & FUNT, P.A.
Attorneys for Plaintiff
757 NW 27th Avenue
Third Floor
Miami, FL 33125
Tel.: (305) 643-3100
Fax: (305) 643-1382
dcaine@Stabinski-Funt.com
service@stabinski-funt.com


Daniel Caine, Esq.
Fla Bar No.: 0013097