

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CURRENT MEDICAL DIRECTIONS, LLC,
Plaintiff,

-against-

DANIEL SALOMONE,
Defendant.

06600941

Index No.

Date of Filing: March 17, 2006.

SUMMONS

Plaintiffs designate New York
County, as the place of trial based
upon CPLR 503(c).

TO THE ABOVE-NAMED DEFENDANT: DANIEL SALOMONE

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer on plaintiff's attorneys within 20 days after service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: New York, New York
March 17, 2006

DAVIS & GILBERT LLP
Attorneys for Plaintiff

FILED

MAR 17 2006

By: *Bruce Ginsberg*
Bruce M. Ginsberg
Scott L. Walker
1740 Broadway
New York, New York 10019
(212) 468-4800

NEW YORK
CLERK

Address(es):

Daniel Salamone
6193 Northern Boulevard
Muttontown, NY 11732

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CURRENT MEDICAL DIRECTIONS, LLC,

Plaintiff,

-against-

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Index No.

COMPLAINT

06600941

Plaintiff CURRENT MEDICAL DIRECTIONS, LLC ("CMD" or "plaintiff"), by and through its undersigned attorneys, Davis & Gilbert LLP, for its Complaint against DANIEL SALOMONE ("Salomone") hereby alleges as follows:

ALLEGATIONS COMMON TO ALL CLAIMS

1. Plaintiff Current Medical Directions, LLC is a Delaware limited liability company, with its principal place of business at 1250 Broadway, 36th Floor, New York, NY 10001. Plaintiff is a medical education company that specializes in the organization and presentation of health information to health professionals.

2. Upon information and belief, defendant Daniel Salomone resides at 6193 Northern Boulevard, Muttontown, NY 11732.

3. On or about December 14, 2004, plaintiff (then known as CMD Sudler Acquisition Company, LLC), Salomone and several other parties executed an asset purchase agreement (the "Agreement") pursuant to which plaintiff on January 1, 2005 purchased substantially all of the assets of an entity then known as Current Medical Directions Inc. ("CMDI").

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COUNTY OF NEW YORK
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4. Prior to execution of the Agreement, Salomone was the President and majority shareholder of CMD Holding Corporation, which in turn owned 100% of the capital stock of CMDI.

5. Salomone during the months prior to the closing of the Agreement induced plaintiff to agree to complete the acquisition by affirmatively representing that the business was not dependent on his leadership alone in order to prosper, but instead that there was a designated "heir apparent" working within the organization, who had the skills, experience and talent to succeed him as head of the company. The person he identified was Diane Plateis, who was at the time an officer and shareholder of CMDI.

6. Plaintiff relied on Salomone's representations regarding Ms. Plateis being a qualified successor to head the company in deciding to execute the Agreement.

7. Approximately three months after the Agreement was signed, Salomone announced that Ms. Plateis should be terminated because in his view, she was not capable of bringing in business, did not like meeting with clients and did not like managing people. This took plaintiff by complete surprise, since during the negotiation of the sale of CMDI to plaintiff Salomone had held Ms. Plateis out to be his chosen successor to lead the business.

8. The grounds cited by Salomone for terminating Ms. Plateis were known to him prior to executing the Agreement.

9. Salomone's representations to plaintiff prior to closing the transaction regarding Ms. Plateis' qualification to succeed him as head of the company were then known by him to be false.

10. Salomone during the months prior to the closing of the Agreement also induced plaintiff to agree to complete the acquisition by affirmatively representing that he had a reasonable basis for projecting approximately \$17 million in revenue for CMDI during 2005.

11. However, the projections proved to be false from the very time the transaction closed onward, off by approximately 47% for 2005.

12. Salomone's representations to plaintiff during the negotiation of the transaction that he had a reasonable basis for his projections were then known by him to be false.

13. Immediately after Salomone began his employment for plaintiff, he failed to report to work on a regular basis for approximately six months, during which time he failed to foster and develop existing or new client relationships, or develop new business with existing or new clients.

14. At the time he negotiated the Agreement, Salomone had no intention of performing his duties as President of plaintiff after the acquisition, including his duties in developing client relationships and new business. For this reason as well, his representations prior to closing that he had a reasonable basis for projecting \$17 million in client revenues for CMDI during 2005 were then known by him to be false.

15. In the Agreement, Salomone made further representations, including:

3.4.1 Financial Statements Schedule 3.4.1 sets forth the following financial statements: (A) an audited balance sheet of [CMDI] as of December 31, 2003 and the related audited statements of income and cash flows for the twelve months then ended . . . ; and (B) an unaudited balance sheet of [CMDI] as of October 31, 2004 Such financial statements, including the footnotes thereto, have been prepared in accordance with GAAP consistently applied throughout the period indicated . . . Such balance sheets fairly present the financial condition of [CMDI] at the respective dates thereof, and . . . reflect all claims against and all debts and liabilities of [CMDI], fixed or contingent, as at the respective dates thereof, required to be shown thereon under GAAP, and the related statements of income and cash flows fairly present the results of operations of [CMDI] for the respective periods indicated.

Section 3.12 Liabilities Except as set forth in the Balance Sheet or referred to in the footnotes thereto, [CMDI does not have] any outstanding claims, liabilities, obligations or indebtedness of any nature whatsoever (collectively "Liabilities"), whether accrued, absolute or contingent, determined or undetermined, asserted or unasserted, and whether due or to become due

16. However, these representations proved not to be true, because the financial statements and balance sheet failed to report CMDI's liability in connection with amounts that had been overbilled to its clients during the years at issue, in amounts that plaintiff learned of only after the Agreement had been entered.

17. Likewise, Salomone represented that:

3.4.2 2004 [and 2005] Budget. Schedule 3.4.2 sets forth ... [the] budget and most recent profit projections for the 2005 calendar year. ... [Salomone] represent[s] that ... the 2005 budget and profit projections were made in good faith and on a reasonable basis.

18. The scheduled 2005 budget and profit projections, including projected revenues, proved to be inaccurate immediately upon closing the transaction, and continued to be inaccurate throughout 2005, with revenues off by 41% and operating profit off by 71%.

19. The 2005 budget and profit projections were known by Salomone to be false. Moreover, the company's actual performance proved to be so significantly off budget and projections, beginning with January, 2005 – mere weeks after the projections were represented to by Salomone – that they could not have been made by Salomone in good faith or on a reasonable basis.

20. Likewise, Salomone represented that:

Section 3.10 Litigation ... [T]o the best knowledge, information and belief of Salomone, no act, fact, circumstance, event or condition occurred or exists which is a basis for any ... action, suit, claim, proceeding or investigation [against or affecting CMDI or its properties, rights or assets, except as set forth in Schedule 3.10].

21. However, this representation proved to be false. Although Schedule 3.10 disclosed one instance in which a client had given notice that it intended to audit CMDI's bills for accuracy and compliance with the client contracts, Schedule 3.10 failed to disclose that there was another instance in which CMDI's billing was a basis for an action, suit, claim, proceeding or investigation on the grounds that the billing did not comply with the terms of the client contract.

22. Salomone expressly agreed pursuant to the terms of the Agreement (Section 12.2.1) in his individual capacity to indemnify plaintiff for, *inter alia*, all losses, damages, out-of-pocket costs, expenses and disbursements (including costs of investigation, and attorneys', accountants' and expert witnesses' fees) of whatever kind and nature incurred as a result of or in connection with misrepresentations, inaccuracies and/or breaches of representations contained in Article III.B of the Agreement, including the representations made at Sections 3.4.1, 3.4.2, 3.10 and 3.12 of the Agreement.

23. The Agreement further provided (e.g., Sections 12.6.1, 12.6.3) that Salomone is obligated to indemnify plaintiff in an amount up to the full purchase price paid by plaintiff pursuant to the Agreement, or in a greater amount than the purchase price (without limitation) in the event that the losses relate, directly or indirectly, to "any fraudulent acts, omissions or misrepresentations."

AS AND FOR A FIRST CAUSE OF ACTION
(Fraudulent Inducement)

24. Plaintiff hereby realleges and incorporates by reference paragraphs 1 through 23 of the Complaint as if fully set forth herein.

25. In order to induce plaintiff to enter the Agreement, Salomone made material misrepresentations of present fact to plaintiff during the negotiation of the purchase and sale of CMDI to plaintiff, known by Salomone to be false, including that Diane Plateis was a

qualified and suitable successor to Salomone to head the business, and that he had a reasonable basis for projecting approximately \$17 million in revenue for CMDI during 2005.

26. Salomone's actions were willful and wanton and were taken with the deliberate intent to deceive plaintiffs and induce them to execute the Agreement.

27. Salomone knew that plaintiff would not execute the Agreement if plaintiff was aware of the falsity of the above-referenced representations.

28. Plaintiff to its detriment reasonably and justifiably relied on Salomone's misrepresentations of present fact in agreeing to enter the Agreement.

29. Accordingly, plaintiff is entitled to (a) rescission of the Agreement; and (b) restitution of the payment of the entire purchase price that was paid pursuant to the Agreement.

AS AND FOR A SECOND CAUSE OF ACTION
(Common Law Fraud)

30. Plaintiff hereby realleges and incorporates by reference paragraphs 1 through 29 of the Complaint as if fully set forth herein.

31. Salomone made material misrepresentations of present fact to plaintiff during the negotiation of the purchase and sale of CMDI to plaintiff, known by Salomone to be false, including that Diane Plateis was a qualified and suitable successor to Salomone to head the business, and that he had a reasonable basis for projecting approximately \$17 million in revenue for CMDI during 2005.

32. Salomone's actions were willful and wanton and were taken with the deliberate intent to deceive plaintiffs and induce them to execute the Agreement.

33. Salomone knew that plaintiff would not execute the Agreement if plaintiff was aware of the falsity of the above-referenced representations.

34. Plaintiff to its detriment reasonably and justifiably relied on Salomone's misrepresentations of present fact in agreeing to enter the Agreement.

35. Plaintiff is entitled to compensatory and punitive damages in an amount to be determined at trial, but in any event not less than \$18 million, plus punitives.

AS AND FOR A THIRD CAUSE OF ACTION
(Breach of Contract)

36. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 35 of the Complaint as if set forth fully herein.

37. Salomone made various representations in the Agreement in his individual capacity, including the representations made at Sections 3.4.1, 3.4.2, 3.10 and 3.12 of the Agreement.

38. Plaintiff performed all of its responsibilities with respect to the Agreement.

39. Salomone expressly agreed in his individual capacity to indemnify plaintiff for, *inter alia*, all losses, damages, out-of-pocket costs, expenses and disbursements (including costs of investigation, and attorneys', accountants' and expert witnesses' fees) of whatever kind and nature incurred as a result of or in connection with misrepresentations, inaccuracies and/or breaches of representations contained in Article III.B of the Agreement, including the representations made at Sections 3.4.1, 3.4.2, 3.10 and 3.12 of the Agreement.

40. The representations made by Salomone in the Agreement were inaccurate, including the representations made at Sections 3.4.1, 3.4.2, 3.10 and 3.12 of the Agreement.

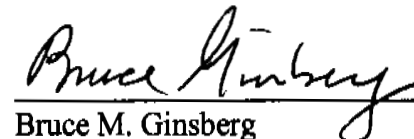
41. By reason of the foregoing, plaintiff has suffered damages in an amount to be determined at trial, but in any event not less than \$18 million.

WHEREFORE, plaintiff demands judgment against Salomone as follows:

- (a) On the First Cause of Action, (1) rescission of the Agreement, and (2) restitution of the entire purchase price in the amount of \$18 million that plaintiff paid pursuant to the Agreement, plus interest;
- (b) On the Second Cause of Action, compensatory damages in an amount to be determined at trial, but in any event not less than \$18 million, together with punitive damages, plus interest;
- (c) On the Third Cause of Action, compensatory damages in an amount to be determined at trial, but in any event not less than \$18 million, plus interest;
- (d) The costs and disbursements of this action, including reasonable attorneys' fees ; and
- (e) Such other and further relief as the Court deems necessary and proper.

Dated: New York, New York
March 17, 2006

DAVIS & GILBERT LLP



Bruce M. Ginsberg
Scott L. Walker
1740 Broadway
New York, N.Y. 10019
Attorneys for Plaintiff

NOTICE OF ENTRY

PLEASE take notice that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on

Dated,

Yours, etc.

DAVIS & GILBERT LLP

Attorneys for

Office and Post Office Address
1740 Broadway
NEW YORK, N.Y. 10019

To

Attorney(s) for

NOTICE OF SETTLEMENT

PLEASE take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on

at

M.

Dated,

Yours, etc.

DAVIS & GILBERT LLP

Attorneys for

Office and Post Office Address
1740 Broadway
NEW YORK, N.Y. 10019

To

Attorney(s) for

Index No. Year
SUPREME COURT OF THE STATE OF NEW YORK
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Defendant.

SUMMONS AND COMPLAINT

Signature (Rule 130-1.1-a)

Print name beneath

DAVIS & GILBERT LLP

Attorneys for

PLAINTIFF

Office and Post Office Address, Telephone

1740 Broadway

NEW YORK, N.Y. 10019

Area Code (212) 468-4800

To

Attorney(s) for

Service of a copy of the within is hereby admitted.

Dated

Attorney(s) for