

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT

The Mortgage Specialists, Inc.
2 Main Street
Plaistow, NH 03865

v.

Implode-Explode Heavy Industries, Inc.
5348 Vegas Drive
Las Vegas, Nevada 89108

**VERIFIED PETITION FOR TEMPORARY, PRELIMINARY
AND PERMANENT INJUNCTIVE RELIEF**

NOW COMES the Petitioner, The Mortgage Specialists, Inc., by and through its attorneys, Devine, Millimet & Branch, Professional Association, and hereby submits this Verified Petition for Temporary, Preliminary and Permanent Injunctive Relief. In support of its Petition, Petitioner states as follows:

Preliminary Statement

1. This action arises from Respondent's unauthorized and unlawful posting of Petitioner's confidential financial information, including a confidential loan summary document, on Respondent's website, www.ml-implode.com. Petitioner submitted the confidential document and information at issue to the New Hampshire Banking Department ("NHBD") and the Massachusetts Division of Banking ("MDB") as part of the regulatory examination process. Petitioner did not submit the document or information to Respondent or any other party. Pursuant to both New Hampshire and Massachusetts law, documents and information submitted to the NHBD and the MDB as part of an examination are confidential and privileged and "shall not be made public."

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2. Respondent nevertheless posted the confidential loan summary document and Petitioner's confidential financial information on its website in direct violation of the New Hampshire and Massachusetts banking department statutes. Although Respondent recently removed the confidential document and information from its website after receiving notice of Petitioner's intent to file this lawsuit, Respondent will not confirm that it will not re-post Petitioner's confidential document and information in the future nor has it agreed to disclose the source of the document and information as specifically requested by Petitioner.

3. Petitioner now seeks an injunction prohibiting Respondent from posting Petitioner's confidential records and information on its website, or elsewhere, and directing Respondent to identify the individual and/or entity that provided it with Petitioner's confidential records and information. Petitioner also requests that the Court issue an injunction prohibiting Respondent from re-posting certain false and defamatory comments about Petitioner and its President, Michael Gill, previously posted on its website by an individual using the username "Brianbattersby" and also order Respondent to disclose the identity of "Brianbattersby."

What's the underlying wrong that requires i.d. of source?

Parties

4. Petitioner The Mortgage Specialists, Inc. ("Petitioner") is a New Hampshire corporation licensed by the NHBD and the MDB to engage in mortgage brokering and mortgage banking services. Petitioner has a principal place of business at 2 Main Street, Plaistow, New Hampshire.

5. Respondent Implode-Explode Heavy Industries, Inc. ("Respondent") is a Nevada corporation with a business address of 5348 Vegas Drive, Las Vegas, Nevada. Defendant operates a website, www.ml-implode.com, which ranks various businesses in the mortgage

Nevada have shield law? Anti Slapp law?

industry, including Petitioner, on a ranking device that Respondent calls "The Mortgage Lender Implode-O-Meter."

Venue and Jurisdiction

6. Venue is proper in Rockingham County Superior Court pursuant to RSA 507:9 in that Petitioner's offices are located in Plaistow, New Hampshire

7. This Court has jurisdiction over this matter pursuant to RSA 498:1.

*Personal
juris -*

Factual Background

8. In 2008, Petitioner submitted numerous documents to the NHBD and the MDB as part of the regulatory examination process in New Hampshire and Massachusetts.

9. Among the documents Petitioner submitted to the NHBD and the MDB was a chart with a breakdown of the number and monetary value of Petitioner's 2007 loan transactions (the "2007 Loan Chart").

10. The documents that Petitioner submitted to the NHBD and the MDB, including the "2007 Loan Chart," are confidential and privileged documents, and New Hampshire and Massachusetts law specifically provide that these documents shall not be made public. RSA 383:10-b; RSA 397-A:12; M.G.L. c. 255E § 8.

11. Respondent operates a website, www.ml-implode.com, which ranks various businesses in the mortgage industry on a ranking device Respondent calls "The Mortgage Lender Implode-O-Meter." The website identifies mortgage companies that it claims are "at risk" and places them on one of two lists: the "Imploded Lenders" or the "Ailing/Watch List Lenders." The website also includes articles about the businesses identified on the lists. Each article is reached by clicking on the business's name.

12. Petitioner has learned that it is included on Respondent's "Ailing/Watch List Lender." Respondent's website includes an article about Petitioner. Prior to receiving notice of this lawsuit, the article stated that it was based, at least in part, on an "unverified report" Respondent received concerning Petitioner's 2007 loan production. The article also included a link to the "unverified report."

13. The "unverified report" previously found on Respondent's website is a scanned image that is in the exact same format and includes virtually identical information to that found in the 2007 Loan Chart that Petitioner filed with the NHBD and the MDB. In fact, the only difference between the 2007 Loan Chart and the "unverified report" on Respondent's website is that in the "unverified report" the two zeros following the decimal point in the second loan column have been whited out.

14. Petitioner did not provide the 2007 Loan Chart, or the information contained therein, to Respondent and, to the best of its knowledge, has only provided this information to the NHBD and the MDB. It is unclear, therefore, how Respondent came to possess a copy of the 2007 Loan Chart.

15. In addition to the lists, Respondent's website also includes a feature that allows users to post comments about the various lenders identified on the website. A user who wants to post a comment must register on the website and create a username.

16. Petitioner has learned that on October 4, 2008, an individual using the username "Brianbattersby" posted false and defamatory comments about Petitioner and its President, Michael Gill, on the website, including a statement that Mr. Gill "was caught for FRAUD back in 2002 FOR SIGNING BORROWERS NAMES and bought his way out."

*Privacy
policy*

17. "Brianbattersby" also posted a nonsensical comment on October 7, 2008, which reads "Mortgage Specialists Fraud Michael Gill Fraud Mortgage Specialists NH Fraud Michael Gill NH Fraud" in an effort to insure that his post turns up on the prominent internet search engines. Indeed, Respondent's website is the second hit when the words Michael, Gill and Fraud are entered into a google search.

18. On November 6, 2008, Petitioner sent copies of a Verified Petition that Petitioner intended to file seeking, among other things, a Temporary Restraining Order and Preliminary Injunction directing Respondent to remove its confidential document and information from its website and to disclose the identity of the confidential document and information.

19. Upon receiving the Verified Petition, Respondent agreed to "temporarily" remove the confidential document and information from its website. Respondent also agreed to "temporarily" remove the false and defamatory comments posted on its website by "Brianbattersby."

20. Respondent, however, has not agreed to refrain from re-posting or re-publishing Petitioner's confidential document and information in the future, and has refused to disclose the identity of the source of the confidential document and information or the identity of "Brianbattersby."

COUNT I
(Injunctive Relief)

21. Petitioner re-alleges as though fully set forth herein the allegations contained in the preceding paragraphs of this Petition.

22. New Hampshire law specifically provides that information and documentation disclosed during the course of an examination by the NHBD are confidential and privileged and shall not be made public. In this regard, RSA 383:10-b states that:

All records of investigations and reports of examinations by the banking department, including any duly authenticated copy or copies thereof in the possession of any institution under the supervision of the bank commissioner, shall be confidential communications . . . and shall not be made public unless, in the judgment of the commissioner, the ends of justice and the public advantage will be subserved by the publication thereof.

RSA 383:10-b (2008). RSA 397-A:12 further provides that “[a]ll reports pursuant to [examinations of nondepository mortgage bankers and brokers] shall be absolutely privileged and although filed in the department . . . shall nevertheless not be for public inspection.” RSA 397-A:12 (2008).

23. Massachusetts law provides similar protection for documents produced during an examination by the MDB. In this regard, M.G.L. c. 255E § 8 states:

All records of investigation and reports of examination by the [Massachusetts commissioner of banks], including work papers, information derived from such reports or in response to such reports, and any copies thereof in the possession of any licensee under the supervision of the commissioner, shall be confidential and privileged communications, shall not be subject to subpoena and shall not be a public record.

M.G.L. c. 255E § 8 (2008).

24. Respondent is in possession of a confidential document that was produced during the course of the NHBD’s and MDB’s examination of Petitioner and has previously posted a copy of that document on its website, www.ml-implode.com.

25. Respondent’s public disclosure and posting of this confidential document on its website is in direct violation of the protections afforded to Petitioner pursuant to RSA 383:10-b, RSA 397-A:12, and M.G.L. c. 255E § 8.

why?

26. Petitioner has suffered irreparable harm as a result of Respondent’s unlawful posting of its confidential document and information. Indeed, Petitioner has been informed by

why?

multiple lenders that they will no longer provide loans through Petitioner based, at least in part, on the unlawfully disclosed confidential information found on Respondent's website.

Week?

27. Although Respondent has removed the confidential document and information from its website, Respondent has stated that the removal is only "temporary" and that it reserves the right to re-post the document and information in the future. The re-posting of Petitioner's confidential document and information is unlawful and will cause irreparable harm to Petitioner. As a result, Petitioner is entitled to a temporary, preliminary and permanent injunction prohibiting Respondent from re-posting Petitioner's confidential document and information.

28. Petitioner also is entitled to an order directing Respondent to disclose the identify of the individual(s) and/or entit(ies) that provided it with the 2007 Loan Chart. As explained above, Petitioner only produced the 2007 Loan Chart to the NHBD and the MDB as part of their examinations of Petitioner. The disclosure of the source of the documentation/information is necessary to protect and maintain the integrity of banking department examinations and will allow Petitioner, and the Court, to determine whether banking department officials are the source of the confidential information found on Respondent's website.

*} Reason
to identify
source*

29. Petitioner has also suffered irreparable harm as a result of the false and defamatory comments posted on Respondent's website by "Brianbattersby," including the statement that Mr. Gill "was caught for fraud in 2002" and that he "bought his way out," and will continue to suffer such harm if Respondent is permitted to re-post these statements on its website. As a result, Petitioner is entitled to an injunction directing Respondent not to re-post these false and defamatory statements on its website, and also directing the Respondent to disclose the identity of "Brianbattersby," including his full-name, address, email address, phone number, and any other personal information it possesses about "Brianbattersby."

*Petitioner
or
Gill*

WHEREFORE, Petitioner respectfully requests that this Honorable Court:

A. Issue a temporary, preliminary and permanent injunction:

(1) enjoining Respondent, and all of its agents, servants, employees, and representatives, from displaying, posting, publishing, distributing, linking to and/or otherwise providing any information for the access or other dissemination of copies of and/or images of the 2007 Loan Chart and any information or data contained therein, including on the website operated at www.ml-implode.com and any other websites under Respondent's ownership or control;

(2) directing Respondent to disclose the identify of the individual and/or entity that provided it with the 2007 Loan Chart;

(3) directing Respondent to produce all documents that it received from the individual or entity so identified that pertain to Petitioner;

(4) directing Respondent not to re-post or re-publish the October 4, 2008, and October 7, 2008, false and defamatory postings by "Brianbattersby;" and

(5) directing Respondent to disclose the identity and location of "Brianbattersby," including his full name, address, email address, phone number, and any other personal information Respondent possesses; and

B. Grant Petitioner such other and further relief as may be just and proper.

Respectfully submitted,

THE MORTGAGE SPECIALISTS, INC.

By its attorneys,

DEVINE, MILLIMET & BRANCH
PROFESSIONAL ASSOCIATION

Date: November 12, 2008

By: Donald L. Smith

Alexander J. Walker (No. 9404)

Donald L. Smith (No. 13525)

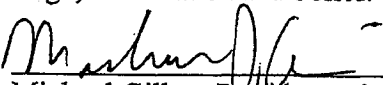
111 Amherst Road

Manchester, NH 03101

(603)669-1000

VERIFICATION

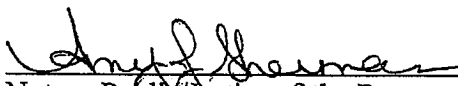
I hereby verify that I have read the allegations set forth in the foregoing Verified Petition and such allegations are true to the best of my knowledge, information and belief.

By: 
Michael Gill, as President of The Mortgage Specialists, Inc.

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

Personally appeared before me, this 10th day of November, 2008, Michael J. Gilland made solemn oath that the statements made above are true and accurate to the best of his knowledge and belief.




Notary Public/Justice of the Peace