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FILED

DEC 07 2016
Cherissa Branson 2:31pm
SHERRY WARD, CLERK

ATTORNEY FOR PLAINTIFF

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF ADAMS**

DEBRA E. HANSON,

Plaintiff,

vs.

NICKIE L. HERTZOG, a/k/a Nickie
Frasier Hertzog, individually and
d/b/a The Park at Claircrest; PN
MANAGEMENT, LLC, a Missouri
limited liability company, d/b/a The Park
at Claircrest; and CLAIRE HERTZOG,

Defendants.

Case No. CV 2016- 3654

**COMPLAINT
AND
DEMAND FOR JURY TRIAL**

NOW COMES the Plaintiff, DEBRA E. HANSON (hereinafter referred to as "Hanson"), by and through her attorneys, the Law Office of Sean P. Smith, by Sean P. Smith, and for her Complaint against the Defendant, NICKIE L. HERTZOG, a/k/a Nickie Frasier Hertzog, individually and d/b/a The Park at Claircrest (hereinafter "Hertzog"), against the Defendant, PN MANAGEMENT, LLC, a Missouri limited liability company, d/b/a The Park at Claircrest (hereinafter referred to as "PN Management"), and against CLAIRE HERTZOG, states and alleges as follows:

INTRODUCTION

1. This in action for recovery of damages suffered by Debra E. Hanson as the result of the

COPY

Defendants' breach of contract, negligence, conversion, fraud, trespass to chattel, and disparagement of title to property.

PARTIES

2. At all times material hereto, Debra E. Hanson was an individual living and transacting business in Adams County, Idaho.
3. At all times material hereto, Nickie Hertzog, personally or through her agent, Claire Hertzog, was an individual living in Missouri and transacting business in Idaho.
4. At all times material hereto, PN Management was a Missouri limited liability company transacting business in Idaho through its agents, Nickie Hertzog and Claire Hertzog.
5. At all times material hereto, Nickie Hertzog was the managing member of PN Management, LLC.

JURISDICTION AND VENUE

6. Jurisdiction is proper, as the parties engaged in the making or performance of a contract substantially connected with the State of Idaho.
7. Jurisdiction is proper, as to the Defendants, because they transacted business in Idaho within the meaning of Idaho's Long Arm Statute, Idaho Code § 5-514.
8. Jurisdiction in the District Court is proper as the amounts sought for damages in this litigation exceed \$10,000.00.
9. Venue is proper in Adams County, Idaho, as Hanson is a resident hereof and a substantial portion of the transaction which is the subject of this cause of action occurred herein.

FACTS COMMON TO ALL COUNTS

10. At all times material hereto, Hanson was an individual engaged in the business of breeding, showing, and selling Golden Retriever dogs.

11. At all times material hereto, Hertzog was an individual engaged in the business of, inter alia, showing Golden Retriever dogs on behalf of the owners of such dogs.
12. At all times material hereto, Hertzog was an individual, doing business under the fictitious business name of The Park at Claircrest, engaged in the business of, inter alia, showing Golden Retriever dogs on behalf of the owners of such dogs.
13. At all times material hereto, Hertzog was doing business under the corporate name of PN Management, LLC, and engaged in the business of, inter alia, showing Golden Retriever dogs on behalf of the owners of such dogs.
14. At all times material hereto, Hertzog was the member and manager of PN Management, LLC.
15. PN Management, LLC is a Missouri limited liability company that was organized by Hertzog on November 12, 2010.
16. On March 2, 2011, Hertzog, identifying herself as the "Owner" of PN Management, LLC, registered the fictitious name "The Park at Claircrest" on behalf of PN Management, LLC.
17. Upon information and belief, and at all times material hereto, Hertzog's daughter, Claire Hertzog, was an employee and/or business affiliate and/or agent of Hertzog, The Park at Claircrest, and/or PN Management, LLC.
18. Both Nickie Hertzog and Claire Hertzog are professional dog handlers.
19. Both Nickie Hertzog and Claire Hertzog are Golden Retriever breeders.
20. PN Management, LLC employs professional dog handlers and breeds Golden Retrievers.
21. At all times material hereto, Hanson was the owner of a certain American Kennel Club (hereinafter referred to as "AKC") registered Golden Retriever dog named "Sherwood's Super Heroine" that was nicknamed "Diva" (hereinafter referred to as "Diva").

22. At all times material hereto, Hanson was the owner of a certain AKC registered Golden Retriever dog named "Sherwood's Super Powers Unleashed" that was nicknamed "Twister" (hereinafter referred to as "Twister").
23. On or about June 24, 2015, Hanson turned over possession of Diva to Hertzog and PN Management, LLC.
24. On or about May 21, 2016, Hanson demanded the return of Diva from Hertzog and PN Management, LLC.
25. As of the date of the filing of this Complaint, Hertzog has failed and refused to return Diva to Hanson.
26. Upon information and belief, Diva died while in the possession of Hertzog or her agents, or, in the alternative, Hertzog has converted or intends to covert Diva to Hertzog's exclusive possession and control.

COUNT I
BREACH OF CONTRACT BY NICKIE HERTZOG RE: DIVA

27. Plaintiff incorporates and adopts by reference all of the facts and allegations stated above as though fully set forth herein.
28. On or about May 15, 2015, Hanson entered into an oral contract with Hertzog.
29. Under the terms of the contract, Hanson was to pay Hertzog the sum of \$500.00 per month, and in exchange therefor, Hertzog was to show Diva at all AKC dog shows around the country.
30. In addition, Hanson was to pay the actual costs of all AKC show entry fees, photo fees, and veterinary expenses for Diva.
31. At the time of contracting:
 - A. Both Hanson and Hertzog were legally competent;

- B. They contracted for a legal purpose;
 - C. They agreed to valid and mutual consideration; and
 - D. There was mutual agreement by both as to all essential terms of the contract.
32. A valid contract existed between Hanson and Hertzog.
33. Hertzog breached that contract when she failed to show Diva in dog shows as required by the contract.
34. Hanson suffered damages on account of Hertzog's breach.
35. The amount of damages suffered by Hanson are not less than:
- A. Handling fees: \$3,050.00; and
 - B. AKC show entry fees: \$443.38.

COUNT II
NEGLIGENCE BY NICKIE HERTZOG RE: DIVA

36. Plaintiff incorporates and adopts by reference all of the facts and allegations stated above as though fully set forth herein.
37. It was the duty of Hertzog, before and at the time of the death of Hanson's dog, Diva, to use ordinary care for the safety Hanson's property, namely, Diva.
38. Hertzog failed to use ordinary care, that is the care a reasonably careful person would use under the circumstances, in the management of Hanson's property.
39. Hertzog breached the duty of care owed to Hanson when she allowed Diva to die while in her care.
40. Hertzog's actions and/or omissions were the actual and proximate cause of Diva's death.
41. Hanson, in fact, has suffered damages as result of Hertzog's breach of duty, as follows:
- A. The fair market value of Diva: \$20,000.00; and

B. The fair market value of puppies Diva would have provided over her lifetime:

$$40 \text{ puppies} \times \$2,000.00/\text{puppy} = \$80,000.00.$$

COUNT III
CONVERSION BY NICKIE HERTZOG RE: DIVA

42. Plaintiff incorporates and adopts by reference all of the facts and allegations stated above as though fully set forth herein.
43. Hertzog has unlawfully converted Diva to her own possession for her own use, enjoyment and profit.
44. Hertzog, without the implicit or explicit authorization of Hanson, wrongfully assumed control, dominion, and/or ownership over Hanson's property.
45. Hanson had an absolute right to the control, dominion, and ownership of Diva.
46. Hanson had and has an absolute right to the immediate possession of Diva, absolutely and unconditionally.
47. Hanson has demanded from Hertzog that Diva be immediately returned to Hanson's possession.
48. Notwithstanding Hanson's demand for the same, Hertzog has failed and refused to return Diva to Hanson.
49. Hertzog has no legal or equitable basis for retaining possession of Hanson's property and for failing and refusing to return Diva to Hanson.
50. Hanson has suffered damages as a result of the loss of her property, as follows:
- A. The fair market value of Diva: \$20,000.00;
- B. The fair market value of puppies Diva would have provided over her lifetime:
 $40 \text{ puppies} \times \$2,000.00/\text{puppy} = \$80,000.00$; and

- C. The reasonable costs and expenses incurred in connection with Hertzog's taking the property and in connection with Hanson's attempts to recover the property.

COUNT IV
FRAUD BY NICKIE HERTZOG RE: DIVA

51. Plaintiff incorporates and adopts by reference all of the facts and allegations stated above as though fully set forth herein.
52. Hertzog stated to Hanson that, upon completion of showing Diva as prescribed by the parties' contract that Hertzog would return Diva to the possession of Hanson.
53. Hertzog's statement to Hanson that, upon completion of showing Diva as prescribed by the parties' contract that Hertzog would return Diva to the possession of Hanson was false.
54. Said statement was a material fact, in that Hanson would not have relinquished possession of Diva to Hertzog if Hanson knew Hertzog would not return possession of Diva to Hanson.
55. Hertzog knew the statement was false at the time the statement was made.
56. Hanson did not know that the statement was false.
57. Hertzog intended for Hanson to rely upon the statement and to act upon the statement in a manner reasonably contemplated.
58. Hanson did rely upon the truth of the statement.
59. Hanson's reliance was reasonable under all of the attendant circumstances.
60. Hanson suffered damages proximately caused by reliance on the false statement.
61. The amount of damages suffered by Hanson are not less than:
- A. The fair market value of Diva: \$20,000.00; and
- B. The fair market value of puppies Diva would have provided over her lifetime:
- 40 puppies x \$2,000.00/puppy = \$80,000.00.

COUNT V
BREACH OF CONTRACT BY PN MANAGEMENT, LLC RE: DIVA

62. Plaintiff incorporates and adopts by reference all of the facts and allegations stated above as though fully set forth herein.
63. On or about May 15, 2015, Hanson entered into an oral contract with PN Management, LLC.
64. Under the terms of the contract, Hanson was to pay PN Management, LLC the sum of \$500.00 per month, and in exchange therefor, PN Management, LLC was to show Diva at all AKC dog shows around the country.
65. In addition, Hanson was to pay the actual costs of all AKC show entry fees, photo fees, and veterinary expenses for Diva.
66. At the time of contracting:
- A. Both Hanson and PN Management, LLC were legally competent;
 - B. They contracted for a legal purpose;
 - C. They agreed to valid and mutual consideration; and
 - D. There was mutual agreement by both as to all essential terms of the contract.
67. A valid contract existed between Hanson and PN Management, LLC.
68. PN Management, LLC breached that contract when it failed to show Diva in dog shows as required by the contract.
69. Hanson suffered damages on account of PN Management, LLC's breach.
70. The amount of damages suffered by Hanson are not less than:
- A. Handling fees: \$3,050.00; and
 - B. AKC show entry fees: \$443.38.

COUNT VI
NEGLIGENCE BY PN MANAGEMENT, LLC RE: DIVA

71. Plaintiff incorporates and adopts by reference all of the facts and allegations stated above as though fully set forth herein.
72. It was the duty of PN Management, LLC, before and at the time of the death of Hanson's dog, Diva, to use ordinary care for the safety Hanson's property, namely, Diva.
73. PN Management, LLC failed to use ordinary care, that is the care a reasonably careful person would use under the circumstances, in the management of Hanson's property.
74. PN Management, LLC breached the duty of care owed to Hanson when it allowed Diva to die while in its care.
75. PN Management, LLC's actions and/or omissions were the actual and proximate cause of Diva's death.
76. Hanson, in fact, has suffered damages as result of PN Management, LLC's breach of duty, as follows:
- A. The fair market value of Diva: \$20,000.00; and
- B. The fair market value of puppies Diva would have provided over her lifetime:
- 40 puppies x \$2,000.00/puppy = \$80,000.00.

COUNT VII
CONVERSION BY PN MANAGEMENT, LLC RE: DIVA

77. Plaintiff incorporates and adopts by reference all of the facts and allegations stated above as though fully set forth herein.
78. PN Management, LLC has unlawfully converted Diva to its own possession for its own use, enjoyment and profit.

79. PN Management, LLC, without the implicit or explicit authorization of Hanson, wrongfully assumed control, dominion, and/or ownership over Hanson's property.
80. Hanson had an absolute right to the control, dominion, and ownership of Diva.
81. Hanson had and has an absolute right to the immediate possession of Diva, absolutely and unconditionally.
82. Hanson has demanded from PN Management, LLC that Diva be immediately returned to Hanson's possession.
83. Notwithstanding Hanson's demand for the same, PN Management, LLC has failed and refused to return Diva to Hanson.
84. PN Management, LLC has no legal or equitable basis for retaining possession of Hanson's property and for failing and refusing to return Diva to Hanson.
85. Hanson has suffered damages as a result of the loss of her property, as follows:
- A. The fair market value of Diva: \$20,000.00;
 - B. The fair market value of puppies Diva would have provided over her lifetime:
40 puppies x \$2,000.00/puppy = \$80,000.00; and
 - C. The reasonable costs and expenses incurred in connection with Hertzog's taking the property and in connection with Hanson's attempts to recover the property.

COUNT VIII
FRAUD BY PN MANAGEMENT, LLC RE: DIVA

86. Plaintiff incorporates and adopts by reference all of the facts and allegations stated above as though fully set forth herein.
87. PN Management, LLC, through its agents, stated to Hanson that, upon completion of showing Diva as prescribed by the parties' contract that PN Management, LLC would return Diva to the possession of Hanson.

88. PN Management, LLC's statement to Hanson that, upon completion of showing Diva as prescribed by the parties' contract that PN Management, LLC would return Diva to the possession of Hanson was false.
89. Said statement was a material fact, in that Hanson would not have relinquished possession of Diva to PN Management, LLC if Hanson knew PN Management, LLC would not return possession of Diva to Hanson.
90. PN Management, LLC knew the statement was false at the time the statement was made.
91. Hanson did not know that the statement was false.
92. PN Management, LLC intended for Hanson to rely upon the statement and to act upon the statement in a manner reasonably contemplated.
93. Hanson did rely upon the truth of the statement.
94. Hanson's reliance was reasonable under all of the attendant circumstances.
95. Hanson suffered damages proximately caused by reliance on the false statement.
96. The amount of damages suffered by Hanson are not less than:
- A. The fair market value of Diva: \$20,000.00; and
- B. The fair market value of puppies Diva would have provided over her lifetime:
- 40 puppies x \$2,000.00/puppy = \$80,000.00.

COUNT IX
CONVERSION BY NICKIE HERTZOG RE: TWISTER

97. Plaintiff incorporates and adopts by reference all of the facts and allegations stated above as though fully set forth herein.
98. Hertzog has unlawfully converted all, or a portion of, Twister, or Twister's value, to her own possession for her own use, enjoyment and/or profit.

99. Hertzog, without the implicit or explicit authorization of Hanson, wrongfully assumed control, dominion, and/or ownership over Hanson's property by asserting, to AKC, an invalid claim of partial ownership of Twister.
100. Hanson has an absolute and sole right to the control, dominion, and ownership of Twister.
101. Hanson has an absolute and sole right to the immediate possession of Twister, absolutely and unconditionally.
102. Hanson has demanded from Hertzog that Hertzog immediately relinquish and abandon Hertzog's invalid claim of partial ownership of Twister.
103. Notwithstanding Hanson's demand for the same, Hertzog has failed and refused to relinquish and abandon Hertzog's invalid claim of partial ownership of Twister.
104. Hertzog has no legal or equitable basis for asserting a claim of partial ownership of Hanson's property and for failing and refusing to relinquish and abandon Hertzog's invalid claim of partial ownership of Twister.
105. Hanson cannot breed or sell Twister for fair market value as a result of Hertzog's conversion.
106. Hanson has suffered damages as a result of Hertzog's actions, as follows:
 - A. The fair market value of Twister: \$20,000.00;
 - B. The fair market value of puppies Twister would have provided over her lifetime:
40 puppies x \$2,000.00/puppy = \$80,000.00; and
 - C. The reasonable costs and expenses incurred in connection with Hertzog's taking the property and in connection with Hanson's attempts to recover the property.

COUNT X
TRESPASS TO CHATTEL BY NICKIE HERTZOG RE: TWISTER

107. Plaintiff incorporates and adopts by reference all of the facts and allegations stated above as though fully set forth herein.

108. Hanson is the sole owner of Twister and has the exclusive right to use and possess Twister.
109. Hertzog has intentionally interfered with Hanson's use, possession and/or title of Twister, thereby depriving Hanson of the use of Hanson's chattel for a substantial period of time.
110. As a result of Hertzog's conduct, Hanson's chattel is impaired as to its condition, quality, or value.
111. Hanson did not consent to Hertzog's interference with Hanson's use, possession and/or title of the chattel.
112. Hanson has been damaged or harmed by Hertzog's interference with Hanson's use, possession and/or title of her chattel in that Hanson can neither breed nor sell Twister for fair market value.
113. Hertzog's conduct is the cause of Hanson's damages.
114. Hanson has suffered damages as a result of Hertzog's actions, as follows:
 - A. The fair market value of Twister: \$20,000.00; and
 - B. The fair market value of puppies Twister would have provided over her lifetime:
$$40 \text{ puppies} \times \$2,000.00/\text{puppy} = \$80,000.00.$$

COUNT XI
DISPARAGEMENT OF TITLE BY NICKIE HERTZOG RE: TWISTER

115. Plaintiff incorporates and adopts by reference all of the facts and allegations stated above as though fully set forth herein.
116. Hertzog knowingly and maliciously made a false statement of fact, asserting that she had an ownership interest Hanson's property, namely, Twister.
117. Hertzog's false statement is disparaging to Hanson's title to Hanson's property.
118. Hertzog published her false and disparaging statement to AKC.

119. Hertzog intended to disparage Hanson's title to Hanson's property and cause financial loss to Hanson.
120. Hanson has been damaged Hertzog's conduct in that Hanson can neither breed nor sell Twister for fair market value.
121. Hertzog's conduct is the cause of Hanson's damages.
122. Hanson has suffered damages as a result of Hertzog's actions, as follows:
- A. The fair market value of Twister: \$20,000.00; and
 - B. The fair market value of puppies Twister would have provided over her lifetime:
 $40 \text{ puppies} \times \$2,000.00/\text{puppy} = \$80,000.00.$

COUNT XII
NEGLIGENCE BY CLAIRE HERTZOG RE: DIVA

123. Plaintiff incorporates and adopts by reference all of the facts and allegations stated above as though fully set forth herein.
124. It was the duty of Claire Hertzog, individually and/or as an agent of Nickie Hertzog and/or PN Management, LLC, before and at the time of the death of Hanson's dog, Diva, to use ordinary care for the safety Hanson's property, namely, Diva.
125. Claire Hertzog failed to use ordinary care, that is the care a reasonably careful person would use under the circumstances, in the management of Hanson's property.
126. Claire Hertzog breached the duty of care owed to Hanson when she allowed Diva to die while in her care.
127. Claire Hertzog's actions and/or omissions were the actual and proximate cause of Diva's death.
128. Hanson, in fact, has suffered damages as result of Claire Hertzog's breach of duty, as follows:

- A. The fair market value of Diva: \$20,000.00; and
- B. The fair market value of puppies Diva would have provided over her lifetime:
 $40 \text{ puppies} \times \$2,000.00/\text{puppy} = \$80,000.00.$

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, Debra E. Hanson, prays for judgment against the Defendants as follows:

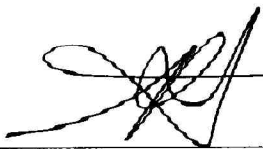
- A. For Judgment against NICKIE L. HERTZOG, a/k/a Nickie Frasier Hertzog, as to County I, in an amount of not less than \$3,493.38;
- B. For Judgment against NICKIE L. HERTZOG, a/k/a Nickie Frasier Hertzog, as to County II, in an amount of not less than \$100,000.00;
- C. For Judgment against NICKIE L. HERTZOG, a/k/a Nickie Frasier Hertzog, as to County III, in an amount of not less than \$100,000.00;
- D. For Judgment against NICKIE L. HERTZOG, a/k/a Nickie Frasier Hertzog, as to County IV, in an amount of not less than \$100,000.00;
- E. For Judgment against PN MANAGEMENT, LLC, as to County V, in an amount of not less than \$3,493.38;
- F. For Judgment against PN MANAGEMENT, LLC, as to County VI, in an amount of not less than \$100,000.00;
- G. For Judgment against PN MANAGEMENT, LLC, as to County VII, in an amount of not less than \$100,000.00;
- H. For Judgment against PN MANAGEMENT, LLC, as to County VIII, in an amount of not less than \$100,000.00;

- I. For Judgment against NICKIE L. HERTZOG, a/k/a Nickie Frasier Hertzog, as to County IX, in an amount of not less than \$100,000.00;
- J. For Judgment against NICKIE L. HERTZOG, a/k/a Nickie Frasier Hertzog, as to County X, in an amount of not less than \$100,000.00;
- K. For Judgment against NICKIE L. HERTZOG, a/k/a Nickie Frasier Hertzog, as to County XI, in an amount of not less than \$100,000.00;
- L. For Judgment against CLAIRE HERTZOG, as to County XII, in an amount of not less than \$100,000.00;
- M. For Judgment against NICKIE L. HERTZOG, a/k/a Nickie Frasier Hertzog; PN MANAGEMENT, LLC; and CLAIRE HERTZOG for costs and reasonable attorneys' fees as permitted by law; and
- N. For such other relief the Court determines is equitable and proper.

DEMAND FOR JURY TRIAL

The Plaintiff hereby demands a trial by a jury of 12 persons on all contested issue in this case which are triable of right by a jury.

Debra E. Hanson, Plaintiff

By: 

Sean P. Smith
Attorney at Law

VERIFICATION

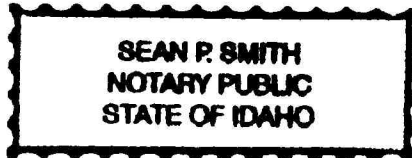
I swear I have read the foregoing Complaint and state that all facts included therein are true, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

Date: December 6, 2016



Debra E. Hanson, Plaintiff

SUBSCRIBED AND SWORN before me on this 6th day of December, 2016.



Notary Public for Idaho
Residing at Indian Valley, Idaho
Commission Expires: September 9, 2021