

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

WILSHIRE PUBLISHING COMPANY

PLAINTIFF

AND

RAY JUTKINS and ROCKINGHAM JUTKINS MARKETING,  
INC.

DEFENDANTS

STATEMENT OF CLAIM

1. The Plaintiff, Wilshire Publishing Company ("Wilshire"), is a limited company duly incorporate pursuant to the laws of California, one of the United States of America, and is extra provincially registered under the laws of British Columbia with its head office in British Columbia at Suite 1200, 1190 Hornby Street, Vancouver, in the said Province.
2. The Defendant, Ray Jutkins ("Jutkins"), is a businessman and resides at Rockingham Ranch, Roll, Arizona, one of the United States of America.
3. The Defendant, Rockingham Jutkins Marketing, Inc. ("Marketing"), is a limited company duly incorporated pursuant to the laws of the State of Arizona, and has its head office at Rockingham Ranch, Roll, Arizona, one of the United States of America.
4. At all material times, Jutkins was an officer of Marketing acting within the scope of his authority, and the agreements and representations hereinafter referred to were made on behalf of both Defendants, or alternatively, each or one of them, and all references hereinafter to "the Defendants" shall mean both and, alternatively, each of the Defendants.

5. Pursuant to an agreement in writing dated May 25, 2000 (the "Agreement"), the Plaintiff and the Defendants agreed that the Defendants would produce and provide certain advertising copy, layout and artwork for the Plaintiff to be inserted in the Holiday 2000 issue of Skymall magazine, and the Plaintiff would pay the Defendants the sum of \$8,500 (U.S.) to be paid in three stages as follows:

- (a) \$2,833.33(U.S.) upon the Defendants agreeing to the said fee arrangement and to produce the said advertising copy pursuant to the said fee arrangement;
- (b) \$2,833.33(U.S.) upon submission by the Defendants of the advertising copy and layout to the Plaintiff;
- (c) \$2,833.34 (U.S.) upon submission of the advertising artwork to the said magazine.

6. It was an express term of the Agreement, and, further, or alternatively, an implied term thereof, that the first payment was contingent on the Defendants agreeing to do the work and to the fee arrangement and, further, that the second and third payments thereunder would only be made in stages, namely, as each of conditions for payment thereof was satisfied.

7. On or about June 6, 2000, the Defendant Jutkins forwarded, by e-mail to the Plaintiff in Vancouver, British Columbia, a memorandum requesting payment of the initial payment pursuant to the Agreement, and on June 13, 2000, the said Defendant forwarded, also by e-mail to the Plaintiff in Vancouver, a further memorandum stating, *inter alia*, "Will begin on it [i.e. the work to be done pursuant to the Agreement] when the payment arrives", thereby representing to the Plaintiff that the Defendants were prepared to proceed with the work pursuant to the terms of the Agreement (the "Representations").

8. The Plaintiff received the Representations in Vancouver, British Columbia, and, in reliance on same, forwarded from Vancouver to the Defendants the sum of \$2,833.33(U.S.) ("the Payment") as the first payment in order that the Defendants would proceed to produce the said advertising copy.

9. In fact, the Defendants, at the time of the Representations, had no intention of proceeding with the Agreement but, rather, intended that the Plaintiff would forward the first

payment to them, whereupon the Defendants would convert the said funds to their own use, either not intending to perform the Agreement at all, or intending only to perform their obligations if they were paid all three payments in advance, all contrary to the terms of the Agreement.

10. In the premises, the Representations were false and were known by the Defendants to be false or, alternatively, were made by the Defendants negligently, not caring whether they were true or false in the circumstances.

11. On or about June 17, 2000, the Defendants acknowledged receipt of the Payment and converted same to their use but, at the same time, forwarded by e-mail to the Plaintiff in Vancouver a memorandum stating that they would proceed only if they received all three payments without any conditions, all in breach of the Agreement.

12. In the premises, the Defendants have breached the Agreement.

13. On or about June 19, 2000, the Plaintiff advised the Defendants that they were in breach of the Agreement and demanded return of the Payment, but the Defendants have refused to repay same.

14. Because the Defendants have failed to honour the Agreement and further, or alternatively, to produce the agreed-upon advertising copy, layout and artwork, the Plaintiff was unable to insert its proposed advertisement in the said magazine and, as a result, the Plaintiff has lost anticipated revenue exceeding \$500,000 (U.S.) and accordingly, has suffered substantial damages inasmuch as the revenue to be generated as a result of the advertisement has been permanently lost to it.

15. The Defendants have conducted themselves in a dishonest and high handed manner intended to cause harm to the plaintiff and, further, or alternatively, in total disregard of their obligations at law and pursuant to the Agreement, all of which merits the displeasure of this Honourable Court by the award of punitive damages.


16. The Defendants' wrongful acts as hereinbefore set out have caused the Plaintiff humiliation, as should reasonably be foreseen by the Defendants, such that the Plaintiff has suffered aggravated damages.

WHEREFORE THE PLAINTIFF CLAIMS:

- (a) a sum equivalent to \$2,833.33 (U.S.);
- (b) interest;
- (c) damages for fraudulent misrepresentation;
- (d) damages for negligent misrepresentation;
- (e) damages for breach of contract;
- (f) punitive damages;
- (g) aggravated damages;
- (h) interest;
- (i) such further or other relief as to this Honourable Court may seem meet.

PLACE OF TRIAL: Vancouver, British Columbia

July 6, 2000  
Dated



Solicitor for the Plaintiff