

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

The College of Charleston Foundation,	)	Case No. 2:17-cv- 667-PMD
	)	
Plaintiff,	)	
	)	
v.	)	<b><u>COMPLAINT</u></b>
	)	
Benjamin Ham,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff, The College of Charleston Foundation, complaining of the Defendant herein, would respectfully show unto the Court as follows:

**THE PARTIES**

1. Plaintiff, The College of Charleston Foundation (“the Foundation”) is a 501(c)(3) corporation, a non-profit organization organized and existing under the laws of the State of South Carolina and doing business in the State of South Carolina.

2. Defendant, Benjamin Ham (“Ham”), is a citizen and resident of the State of South Carolina and is a photographer and the owner of a website known as Ben Ham Images, <https://www.benhamimages.com>. According to the website, in 2005 Ham entered the fine art world, and “millions of dollars of his art have since been sold worldwide.”

3. In 1995, an 862-acre tract of land known as Dixie Plantation was bequeathed to Plaintiff for private, educational, and research purposes and use by the College of Charleston’s staff, faculty, students, and invited guests.

4. Dixie Plantation is private property located in Charleston County.

5. As discussed in further detail below, the jurisdiction and venue of this action are proper.

**FACTS**

6. Plaintiff incorporates all previous paragraphs by reference as if fully set forth herein.

7. On August 8, 2007, the Foundation filed a Complaint in Charleston County Court of Common Pleas against Ham in a matter captioned *The College of Charleston Foundation v. Benjamin Ham*, Civil Action No. 2007-CP-10-3475 (“Civil Action”), seeking, among other things, damages arising from Mr. Ham’s trespass onto Dixie Plantation, located off of Hwy. 162 on Dixie Plantation Road in Charleston County and as described in Paragraph 3 of this Complaint (the “Property”), and injunctive relief prohibiting the continued sale of photographs created by Mr. Ham while Mr. Ham was on the Property.

8. In the underlying Civil Action, the Foundation alleged that Ham entered the Foundation’s “private property intentionally, and without permission, for the purposes of taking photographs for his artistic and commercial gain and benefit” and that “Defendant thereafter developed photographs taken of scenic property located on Dixie Plantation, at least one of which was shot while he was trespassing on Plaintiff’s property.”

9. On September 28, 2007, the Civil Action was removed to the United States District Court for the District of South Carolina (Civil Action No. 2:07-CV-03264-PMD).

10. On November 10, 2008, the Foundation and Ham participated in mediation with Sam Clawson, Esq. that resulted in a settlement of the case.

11. On December 15, 2008, the Foundation and Ham entered into a *Confidential Settlement Agreement and Release* (“Settlement Agreement”). The Settlement Agreement is attached as **Exhibit A** and its terms are incorporated herein by reference.

12. Sections 1.2 and 1.3 of the Settlement Agreement provide for the following settlement terms:

Settlement Terms

1.2 As of November 10, 2008, Mr. Ham agrees to immediately cease and desist from any and all reproduction of all copies, photographs, prints, images and likenesses which were taken and/or originally created while Mr. Ham was on the Property, except as to the distribution of copies of a photographic giclee, as set forth in Paragraph 1.3, and in connection with electronic and print materials for the marketing and sales thereof, including but not limited to uses on Internet pages, brochures and as part of a compilation of Mr. Ham's works.

1.3 Notwithstanding any provision to the contrary, Mr. Ham may continue sales of current planned run of limited edition prints of all photographs or prints that he created as a result of his photography taken while he was on the Property until said sales are completed or November 10, 2013, whichever occurs earlier.

13. Simply stated, Ham agreed that as of November 10, 2008, he would immediately cease and desist from any and all reproduction of all copies, photographs, prints, images and likenesses which were taken and/or originally created while Mr. Ham was on the Property except that he was permitted to continue sales of a planned run of limited edition prints of all photographs or prints that he created as a result of his photography taken while he was on the Property until said sales were completed or November 10, 2013, whichever occurred earlier.

15. Despite the terms of the Settlement Agreement, Ham developed a photograph of Dixie Plantation that he obtained while trespassing on the Property, and the photograph was published in the Winter 2014 issue of *Charleston Style & Design Magazine*. At no point did Ham, or anyone associated with the photograph, ever contact the Foundation to request permission to either take, develop, reproduce, publish and/or attempt to use this photograph for Ham's personal gain. A copy of the pertinent pages from *Charleston Style & Design Magazine* is attached as **Exhibit B**.

16. Despite the terms of the Settlement Agreement, in 2016, Ham unlawfully displayed on his website, Ben Ham Images (<https://www.benhamimages.com>), a photograph that Ham created as a result of his photography taken while he was on trespassing on the Property. A printed screen shot of Ben Ham Image’s website is attached as **Exhibit C**.

17. Specifically, the image is entitled “Plantation Road” and can (as of the date of this pleading) be found at <https://www.benhamimages.com/lowcountry>. Below is a screen grab of the image that is unlawfully displayed on Ben Ham Image’s website:



18. The Foundation was made aware of various unauthorized uses of the photograph by Ham.

19. On August 9, 2016, the Foundation wrote to Ham and requested that Ham immediately “take any and all photographs of Dixie Plantation off of the commercial market and return these photographs to the Foundation . . . [t]his request extends not only to photographs published on your website, but to any other photographs that you may have taken while trespassing on Dixie Plantation.” A copy of the August 9, 2016, letter is attached as **Exhibit D**.

20. The August 9, 2016, letter ended by stating, “I look forward to hearing from you at your earliest convenience. My client and I are hopeful that this matter can be resolved without the need for any litigation.”

21. On November 8, 2016, Ham’s former counsel emailed counsel for the Foundation and confirmed that he had provided the August 9, 2016, letter to Ham.

22. Ham ignored the August 9, 2016, letter and refused to remove the unlawful image from his website despite the terms of the Settlement Agreement.

23. On November 29, 2016, the Foundation again wrote to Ham, requesting that he cease and desist from using the images he unlawfully photographed while trespassing at Dixie Plantation and requested that Ham contact the Foundation to “schedule a time to meet with us to discuss this matter further.” A copy of the November 29, 2016, letter is attached as **Exhibit E**.

24. Again, Ham ignored the November 29, 2016, letter and refused to remove the unlawful image from his website despite the terms of the Settlement Agreement.

25. The Foundation made good faith requests to Ham to avoid litigation as a mechanism to enforce the Settlement Agreement. However, Ham ignored all such requests, and forced the Foundation to bring this litigation and incur legal fees and associated court costs.

26. Section 12 of the Settlement Agreement provides the following as it relates to enforcement of the Settlement Agreement:

12.1 In the event that legal action is commenced by either party to enforce or defend its rights under this Agreement, such action shall only be brought in the District Court, Charleston Division, South Carolina. The parties hereby agree to the exclusive jurisdiction in this venue, and each party irrevocably waives any objection which it may have at any time to the laying of venue of any proceedings brought in any such court, waives any claim that such proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such proceedings, that such court does not have sufficient jurisdiction over such party. **The prevailing party in any such litigation will be entitled to**

**recover all reasonable costs and expenses, including reasonable attorneys' fees and court costs incurred in addition to any other relief granted.** (emphasis added).

**FOR A FIRST CAUSE OF ACTION**

**(Breach of Contract/Enforcement of Settlement Agreement/Recovery of Attorneys' Fees)**

27. Plaintiff realleges and reiterates each and every allegation above as if fully set forth herein verbatim.

28. The Settlement Agreement between the Foundation and Ham was binding and enforceable.

29. The Foundation has performed its obligations under the Settlement Agreement.

30. On multiple occasions, Ham intentionally breached the Settlement Agreement with the Foundation by continuing to develop, reproduce, publish and attempt to use photographs of the Property obtained while trespassing for Ham's own personal gain and profit after November 10, 2013.

31. Upon information and belief, Ham has continued to sell and market images of the Property in breach of the Settlement Agreement for significant personal financial gain and profit.

32. The Foundation made good faith requests to Ham to avoid litigation as a mechanism to enforce the Settlement Agreement. However, Ham ignored all such requests, and forced the Foundation to bring this litigation and incur legal fees and court costs.

33. The Settlement Agreement provides for the recovery of "all reasonable costs and expenses, including reasonable attorneys' fees and court costs incurred in addition to any other relief granted."

34. As a direct and proximate result of Ham's various breaches, the Foundation has and continues to suffer damages and has been forced to incur substantial attorneys' fees, courts costs, and other expenses of bringing this action to enforce the Settlement Agreement.

WHEREFORE, the Foundation prays for a judgment against Defendant Ham as follows:

- a. that the Foundation recover from Defendant Ham, an amount of actual and consequential damages to be determined by the Court;
- b. that the Foundation recover from Defendant Ham the costs of this action, including litigation costs, court costs and attorneys' fees; and
- c. for such other and further relief as the Honorable Court deems just and proper to enforcing the Settlement Agreement.

*s/ Stafford J. McQuillin III*

Stafford J. McQuillin III, Fed ID #10715

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March 10, 2017  
Charleston, South Carolina