

IN THE CIRCUIT COURT OF ESCAMBIA COUNTY, FLORIDA

BRIAN McBROOM,

Plaintiff,

v.

**THE PENSACOLA BAY AREA CHAMBER
OF COMMERCE, INC. d/b/a GREATER
PENSACOLA CHAMBER, and JAMES N.
HIZER, individually, and as chief executive
officer of THE PENSACOLA BAY AREA
CHAMBER OF COMMERCE, INC.,**

Defendants.

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Case No.CV-2013-_____

COMPLAINT

COMES NOW Plaintiff, BRIAN McBROOM (hereinafter "Mr. McBroom"), by and through undersigned counsel, and respectfully files this Complaint against the Defendants, THE PENSACOLA BAY AREA CHAMBER OF COMMERCE, INC. d/b/a GREATER PENSACOLA CHAMBER ("the Chamber"), and JAMES N. HIZER, individually, and as Chief Executive Officer of THE PENSACOLA BAY AREA CHAMBER OF COMMERCE, INC. ("Defendant Hizer"), and would show unto the Court as follows:

Parties, Jurisdiction and Venue

1. Plaintiff, Brian McBroom, is over the age of 19 years, and at all times material hereto was a citizen of the United States and the State of Florida, residing in Escambia County, Florida, and was a private figure.
2. Defendant, James N. Hizer, is over the age of 19 years, and at all times material hereto was a citizen of the United States and the State of Florida, residing in Santa Rosa County, Florida.
3. Defendant, The Pensacola Bay Area Chamber of Commerce, Inc. d/b/a Greater Pensacola Chamber, is a non-profit corporation with its principal place of business in Escambia County, Florida.
4. Jurisdiction and venue are proper in Escambia County, Florida due to the fact that Defendants' wrongful conduct occurred in Escambia County, Florida and Plaintiff's monetary claims exceed the minimal jurisdictional limit of this Court.

Nature of Proceedings

5. This is a proceeding for a declaratory judgment as to Plaintiff's rights, for a permanent injunction, restraining Defendants from further wrongful acts of the nature herein complained of herein, and for damages for the wrongs done to and injuries suffered by the Plaintiff, Mr. McBroom.
6. Mr. McBroom avers that he was the victim of vicious, defamatory attacks perpetrated and committed by the Defendant Hizer in his individual capacity, and as Chief Executive Officer of the Chamber. Such wrongful acts were committed in the line and scope of performing Defendant Hizer's duties for the Chamber, and

were designed to, and did, destroy Mr. McBroom's personal and professional reputation, severely embarrassed Mr. McBroom, subjected him to severe stress, extreme mental anguish and emotional trauma, and severely limited his ability to earn a living as a certified public accountant.

7. Defendant Hizer's false and defamatory accusations have been, and are continuing to be, widely disseminated in newspaper articles, broadcast on television news programs, and published and posted on various websites on the internet, causing Mr. McBroom not only past and current harm, but perpetual harm.

Facts

8. Prior to January 7, 2013, Mr. McBroom was the Chief Operating Officer employed by the Defendant, the Chamber. Mr. McBroom also performed the functions of a Chief Financial Officer during his tenure with the Chamber.
9. At that time, Defendant Hizer was the Chief Executive Officer of the Chamber and was Mr. McBroom's immediate supervisor.
10. Prior to January 7, 2013, Mr. McBroom had a good record of employment with the Chamber. His personnel file contained only positive comments.
11. However, on January 7, 2013, Defendant Hizer, as Chief Executive Officer of the Chamber, called Mr. McBroom to his office and informed Mr. McBroom that he was terminated. This came as a surprise to Mr. McBroom, and Defendant Hizer gave no legitimate reason for the termination. At that time, Defendant Hizer did not criticize Mr. McBroom's job performance, and in fact, wrote him a positive letter of reference three days later on January 10, 2013, which stated:

“For the past 5 years, it has been my pleasure to work with Brian McBroom. In Kentucky, he served as my organization's chief financial officer and, at my invitation, he moved to Florida to serve as my chief operating officer.

Brian is one of the most capable financial analysts and planners with whom I have worked. For example, in Kentucky, we were charged with refinancing a \$25 million bond issue and Brian creatively developed a financing structure that save our organization well over \$100,000.00.

He is also an outstanding communicator. On many occasions, Brian has demonstrated the rare ability to explain complex financial arrangements in an easy-to-understand manner to elected officials and volunteer board members.

Perhaps, most importantly, Brian is a devoted family man and I have often admired his commitment to a healthy work-life balance.

While his role with our organization has changed over the past several months, we continue to rely on his expertise and guidance in financial matters.”

12. A copy of the letter of reference is attached as **Exhibit A**.
13. During their discussion regarding Mr. McBroom’s termination, Defendant Hizer agreed that Mr. McBroom’s ouster was not related to any performance issues, but was actually caused by the complaints of certain employees at the Chamber who did not like Mr. McBroom because he had written critical performance reviews of them in his capacity as Chief Operating Officer.
14. However, instead of terminating the poorly performing employees, Defendant Hizer chose to get rid of Mr. McBroom.
15. Eventually, Defendant Hizer offered, and Mr. McBroom accepted, a severance contract on January 11, 2013, which said contract is the subject of this lawsuit.
16. A copy of the “Separation and Release Agreement” is attached **Exhibit B**.
17. Thereafter, Mr. McBroom dutifully performed all of his obligations under the severance contract in good faith, above and beyond what was specifically called for in the written agreement.
18. Part of Mr. McBroom’s duties as Chief Operating Officer had been the responsibility for oversight of the distribution of American Express gift cards on the Gulf Coast to stimulate the economy. The Chamber distributed the gift cards to the customers of hotels or condominiums along the Gulf Coast, and also distributed the cards to other smaller chambers of commerce to do the same thing.

Funds to purchase these gift cards had been provided to the Chamber by Escambia County, which received funds from BP to mitigate damage to the coastal economy from the 2010 Deepwater Horizon oil spill in the Gulf of Mexico.

19. During his tenure at the Chamber, Mr. McBroom kept records of exactly who received these gift cards, and encountered no problems in accounting for their distribution.
20. However, after Mr. McBroom was terminated on January 7, 2013, he no longer had control over the procedure, or the responsibility to account for the gift cards. Therefore, after Mr. McBroom was no longer responsible for accounting for the cards, his accounting methods were not followed by those employees who were charged with that task in his absence. The resulting confusion at the Chamber caused Defendant Hizer to panic, and think that he might be blamed for any missing gift cards. Therefore, instead of accepting responsibility for a problem he himself created, Defendant Hizer began to publically blame Mr. McBroom for an accounting issue that had never been a problem for Mr. McBroom at all.
21. Defendant Hizer was also worried because accountants at Saltmarsh, Cleaveland & Gund were conducting a routine annual audit of the Chamber's financial records. Again, Mr. McBroom was not worried about the audit, and fully expects that the audit will not criticize his job performance as Chief Operating Officer, or his accounting for the gift cards.
22. As Defendant Hizer's panic began to grow about a perceived controversy regarding the gift cards, Defendant Hizer and the Chamber refused to pay Mr.

McBroom's final \$12,108.84 payment under the severance contract, thereby breaching the contract.

23. All of this occurred after the Defendants had already terminated Mr. McBroom on January 7, 2013.
24. Thereafter, the Defendants also breached the severance contract in another much more damaging way. The severance contract stated, in pertinent part:

“Employee and Employer agrees (sic) to refrain from making or publishing any disparaging or negative remarks, comments or writings about each other and its employees to any third parties, including but not limited to customers, vendors, prospective customers, volunteers and other business contacts and social media sites.”

25. Defendant Hizer breached the contract by repeatedly disparaging the good name and character of Mr. McBroom. The public disparagement included direct quotes in newspaper articles, as well statements recorded and broadcast by television news programs, and then widely disseminated on the internet.
26. Defendant Hizer began to falsely blame Mr. McBroom for a perceived controversy regarding the Chamber's gift card project to deflect any criticism of his own performance as Chief Executive Officer, and did so for his own personal gain. Therefore, Defendant Hizer's false and defamatory statements were made

maliciously, recklessly, in bad faith, and/or without reasonable care as to whether the statements were true or false.

27. The following paragraphs contain some examples of Defendant Hizer's publically stated false and defamatory remarks, which were then further published and widely disseminated in the media and on the internet.
28. On Friday, March 8, 2013, at a Chamber Board of Directors' meeting, Defendant Hizer responded to questions about his leadership of the Chamber by falsely accusing Mr. McBroom of failing to follow Chamber financial policies, and blaming Mr. McBroom for any problems related to the gift cards. Defendant Hizer stated:

"We have viewed financial statements over the past several months with a balance, or inventory of gift cards. Brian McBroom told our entire Executive Committee on the April 2012 meeting that he had already implemented these controls, and the checklists that you mentioned. Since that time, he has also assured me on several occasions that he was following the controls and had a complete log of every card number and where that card number went I can tell that after working on this that is not the case. That controls were not fully implemented if there was a log of where every card went, we do not have it, it is not in existence and so I relied on Brian professionalism as a CPA. CPA's lose their credentials if they do not follow the book."

Defendant Hizer continued:

“It is not clear to me that the controls recommended Saltmarsh were implemented.”

And finally, Defendant Hizer stated:

“The accounting policy we adopted in April that said it was a requirement of the Finance Department to inventory the cards monthly and reconcile those results to the general ledger that was an action item that our full Board voted to put in the accounting manual. I was assured by Brian on more than one occasion that this indeed took place. Brian was terminated by me on January 7th and I had conversations with him since this issue came up on February 5th where he again reassured me that there is a full inventory, monthly inventory of the cards that were reconciled to the general ledger, but I would submit that if that had indeed happened then answering Saltmarsh’s questions would have been fairly simple.”

Former Chamber Board Treasurer, Carol Carlen, then asked,

“So Jim, he (Brian) signed off on a checklist every month because that was one of the controls implemented?”

Defendant Hizer replied:

“Yes.”

~ Statements published by Defendant Hizer at the Chamber’s Board of Directors’ public meeting held on Friday, March 8, 2013.

29. Also on Friday, March 8, 2013, Defendant Hizer publically blamed Mr. McBroom for the Chamber’s inability to account for the gift cards in a television interview with WEAR ABC 3. Defendant Hizer’s publication was widely disseminated by WEAR in an “On-Air Interview” with Defendant Hizer on Friday, March 8, 2013.
30. Also, on Friday, March 8, 2013, Defendant Hizer publically blamed Mr. McBroom for a lack of accounting for gift cards in a separate television interview that was widely disseminated by WEAR on Friday, March 8, 2013.
31. Defendant Hizer’s disparagement of Mr. McBroom was also reported the following day, March 9, 2013, in the *Pensacola News Journal* as follows:

“In his opening remarks to the board, Hizer laid the blame for the fiasco at the feet of his former Chief Financial Officer Brian McBroom on whom he said he relied for financial controls.

Hizer fired McBroom on January 7, nearly a month before

Saltmarsh alerted him about the gift card irregularities that apparently occurred during the past two years.

'The issues with McBroom had been simmering for some time,' Hizer said.

' "Over the last two years it became increasingly obvious to me that he was not able to keep up with the work load or our standards for accuracy," ' Hizer said. ' "In any business or organization, when it comes to money, you have to deal with it precisely. He was not performing up to expected standards, and that's why I terminated him.' "

~ Published in the *Pensacola News Journal*, front-page article, above the fold, on Saturday, March 9, 2013, under headlines "*Gift card grievance*" and "*Ex-CFO Blamed.*"

32. Defendant Hizer's March 8, 2013 accusations at the Chamber meeting were also reported the following Tuesday, March 12, 2013, by the *Pensacola News Journal* as follows:

"During the chamber board meeting Friday, [March 8, 2013] Hizer blamed his former chief financial officer, Brian McBroom, for a lack of control over the gift card program's

record keeping.

Hizer fired McBroom in January, citing what he said was McBroom's increasing inability to keep up with his workload. That was before the gift card issue came to light in early February."

~ Published by the *Pensacola News Journal*, front-page article, above the fold, on Tuesday March 12, 2013.

33. Also on Friday, March 8, 2013, Defendant Hizer told a WEAR reporter that he fired Mr. McBroom in January, 2013, for "bookkeeping issues," even though Defendant Hizer knew that allegation to be false. In that same interview, Defendant Hizer also accused Mr. McBroom of incompetence and unprofessional conduct. The WEAR news report showed Defendant Hizer on camera stating:

"I had professional faith in him because he was a CPA that he was doing what he said he was going to do. He told the executive committee he was going to follow all the controls and procedures we've had in place and he continually told me both verbally and in writing he was following all controls and procedures."

~ Published by Defendant Hizer, then widely disseminated by WEAR in a television news report and on its website on March 8, 2013.

34. Defendant Hizer's false and defamatory remarks alleging Mr. McBroom mishandled gift cards was further published by the *Independent News* in the following report:

"The Greater Pensacola Chamber mishandled the BP Amex gift cards that were supposed to help building tourism. The chamber's CEO places the blame on his handpicked CFO/COO, Brian McBroom. Hizer had worked with McBroom at the Bowling Green Area Chamber of Commerce, where he has (sic) CFO Hizer removed COO from McBroom's title last year and eventually fired him on January 7, nearly a month before the auditors discovered the problem."

~ Published in *Independent News*, Monday March 14, 2013, Volume 14, Number 11.

35. As a direct and proximate result of these intentionally false, malicious, and defamatory remarks by Defendant Hizer, Mr. McBroom suffered substantial damage. Therefore, Mr. McBroom demands compensation not only for the breach of severance contract, but also for the harm to his personal reputation, for extreme personal stress, mental anguish, emotional trauma, embarrassment and very public humiliation, as well as irreparable damage to his professional

reputation, including any future potential employment, and earning capacity, in his chosen profession as a certified public accountant.

CAUSES OF ACTION

36. As to each of the following causes of action, Mr. McBroom expressly adopts the allegations of all the above paragraphs as if fully set forth under each count.
37. As to each of the following causes of action, Defendant Hizer's wrongful conduct described herein was carried out in both his individual capacity, as well as his capacity as Chief Executive Officer of the Greater Pensacola Chamber, was within the line and scope of his duties for the Chamber, and the Chamber is therefore liable for his conduct.

Count 1 – Breach of Contract

38. Through the Defendant Hizer, the Chamber entered into a severance contract with Mr. McBroom. Said agreement is attached hereto as **Exhibit B**.
39. Mr. McBroom fully performed his obligations under said contract in good faith.
40. Defendant Hizer and the Chamber did not perform their obligations under the contract, and, in fact, breached the agreement by: a) failing to pay the final installment of said contract to Mr. McBroom, and b) by repeatedly disparaging Mr. McBroom's good name and character in newspaper articles and television broadcasts. The Defendants' breach of the contract was intentional and made in bad faith.

41. The breach of the severance contract proximately caused Mr. McBroom the following damages: a) he did not receive the final installment payment under the contract, and b) severe injury to his personal reputation, extreme personal stress, mental anguish, emotional trauma, embarrassment and very public humiliation, as well as irreparable damage to his professional reputation, including any future potential employment, and earning capacity, in his chosen profession as a certified public accountant, all of which he continues to suffer to this day.

Count 2 - Defamation

42. Defendant Hizer published, or caused to have published, false and defamatory statements regarding Mr. McBroom, a private figure, as set forth hereinabove.

43. At the time of said publications, Defendant Hizer either knew that the statements were false, or acted in reckless disregard of their truth or falsity.

44. The false and unprivileged statements about Mr. McBroom by Defendant Hizer exposed Mr. McBroom to distrust, hatred, contempt, and ridicule, and caused him to be avoided by his friends and peers and irreparably injured Mr. McBroom's personal and professional reputation and earning capacity.

45. At the time of said publications, Defendant Hizer defamed Mr. McBroom for his own personal gain, and did so in bad faith and with ill will and malice.

46. The said false and defamatory statements were published to third parties, and were then also widely disseminated to the public at large through newspaper articles, television news broadcasts, and the internet, as more particularly described above.

47. The intentional and wrongful conduct of the Defendants proximately caused the following damages to Mr. McBroom: severe injury to his personal reputation, extreme personal stress, mental anguish, emotional trauma, embarrassment and very public humiliation, as well as irreparable damage to his professional reputation, including any future potential employment, and earning capacity, in his chosen profession as a certified public accountant, all of which he continues to suffer to this day.

Count 3 - Wantonness

48. The conduct of Defendant Hizer herein complained of was wanton, in that it was carried on by him consciously or deliberately, with reckless or conscious disregard of the rights or safety of Mr. McBroom.
49. The intentional wrongful conduct of the Defendants proximately caused the following damages to Mr. McBroom: severe injury to his personal reputation, extreme personal stress, mental anguish, emotional trauma, embarrassment and very public humiliation, as well as irreparable damage to his professional reputation, including any future potential employment, and earning capacity, in his chosen profession as a certified public accountant, all of which he continues to suffer to this day.

Count 4 – Negligence and Gross Negligence

50. Defendants owed a duty to Mr. McBroom.

51. Defendants owed Mr. McBroom the duty to refrain from performing any acts that would negligently, recklessly, wantonly, or willfully injure Mr. McBroom.
52. Defendants breached the said duty as described above.
53. Mr. McBroom was directly and proximately injured by Defendants breach of said duty to Mr. McBroom.
54. The intentional and wrongful conduct of the Defendants proximately caused the following damages to Mr. McBroom: severe injury to his personal reputation, extreme personal stress, mental anguish, emotional trauma, embarrassment and very public humiliation, as well as irreparable damage to his professional reputation, including any future potential employment, and earning capacity, in his chosen profession as a certified public accountant, all of which he continues to suffer to this day.

Count 5 – Invasion of Privacy

55. The conduct of Defendant Hizer complained of herein constitutes an invasion of the privacy of Mr. McBroom, in that it intrudes into his private life, and places him in a false light in the eyes of those who witnessed the publication.
56. The intentional wrongful conduct of the Defendants proximately caused the following damages to Mr. McBroom: severe injury to his personal reputation, extreme personal stress, mental anguish, emotional trauma, embarrassment and very public humiliation, as well as irreparable damage to his professional reputation, including any future potential employment, and earning capacity, in his

chosen profession as a certified public accountant, all of which he continues to suffer to this day.

Count 6 – Intentional Infliction of Emotional Distress

57. Defendant Hizer, on behalf of himself and the Chamber, acted intentionally, or in the alternative recklessly, when Defendant Hizer published false and defamatory statements as described above.
58. Defendant Hizer knew or should have known that said false statements were untrue, that Mr. McBroom bore no responsibility for any missing gift cards, and that he had performed his duties at the Chamber competently and above and beyond the call of duty.
59. The actions of Defendant Hizer are extreme and outrageous and beyond what should be accepted in a civilized society, not only because he claimed that Mr. McBroom was incompetent and unprofessional, but also because Defendant Hizer made the defamatory accusations in order to advance his own personal gain.
60. It is intolerable in this society to allow people to knowingly perpetrate a fraud upon Mr. McBroom and upon the citizens of Escambia County, and surrounding counties, by falsely depicting Mr. McBroom as incompetent and unprofessional when such was not the case.
61. The intentional wrongful conduct of the Defendants proximately caused the following damages to Mr. McBroom: severe injury to his personal reputation, extreme personal stress, mental anguish, emotional trauma, embarrassment and very public humiliation, as well as irreparable damage to his professional

reputation, including any future potential employment, and earning capacity, in his chosen profession as a certified public accountant, all of which he continues to suffer to this day.

62. **PLAINTIFF DEMANDS TRIAL BY STRUCK JURY.**

WHEREFORE, THE PREMISES CONSIDERED, Plaintiff demands:

- A) Judgment in his favor and against the Defendants, jointly, separately, and severally, in the amount of Three Million Two Hundred Sixty Two Thousand One Hundred Eight Dollars & 80/100 (\$3,262,108.80) in damages,
- B) Declaratory and injunctive relief to require a retraction of the defamatory statements, and to restrain Defendants from making any further defamatory statements,
- C) Interest and costs of this action, and
- D) Such other, further, and different legal and equitable relief as to which he may be entitled.

RESPECTFULLY SUBMITTED on this the _____ day of _____, 2013.

/s/ Harry V. Satterwhite
HARRY V. SATTERWHITE
Florida Bar No. 0111740
Attorney for Plaintiff, Brian McBroom

OF COUNSEL:
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**PLEASE ALLOW THE DEFENDANTS TO BE SERVED
BY CERTIFIED MAIL AS FOLLOWS:**

The Pensacola Bay Area Chamber of Commerce, Inc.
d/b/a Greater Pensacola Chamber
C/O Donald McMahon
375 N 9th Avenue
Pensacola, FL 32502

James N. Hizer
C/O The Pensacola Bay Area Chamber of Commerce, Inc.
d/b/a Greater Pensacola Chamber
117 West Garden Street
Pensacola, FL 32502

STATE OF ALABAMA)
)
MOBILE COUNTY)

VERIFICATION AND AFFIDAVIT

BEFORE ME, the below signed Notary Public by and for the State of Alabama at Large, personally appeared Brian McBroom who is personally known to me and, being first duly sworn upon his oath, did depose and say as follows:

"I am Brian McBroom, the Plaintiff herein. I have read the foregoing Complaint. Each and every one of the allegations contained therein is true and correct to the best of my knowledge and belief".

BRIAN McBROOM

SWORN TO AND SUBSCRIBED before me on this the _____ day of _____, 2013.

NOTARY PUBLIC
State of Alabama at Large

My commission expires _____.