

Alan J. ...
CLERK OF THE COURT

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Attorneys for Plaintiff
PHILLIP DENNIS IVEY, JR.

DISTRICT COURT
CLARK COUNTY, NEVADA

PHILLIP DENNIS IVEY, JR., an individual,)
)
)
Plaintiff,)
)
)
v.)
)
)
TILTWARE, LLC, a California Limited Liability)
Company,)
)
DOE INDIVIDUALS ONE THROUGH 10)
INCLUSIVE; ROE CORPORATIONS ONE)
THROUGH 10 INCLUSIVE.)
)
)
Defendants.)

A- 11 - 642387 - C
Case Number:
Dept. Number: 1

ARBITRATION EXEMPT
INJUNCTIVE RELIEF REQUESTED

COMPLAINT FOR INJUNCTIVE RELIEF, DECLARATORY RELIEF AND DAMAGES

Plaintiffs allege as follows:

THE PARTIES

1. Plaintiff PHILLIP DENNIS IVEY, JR., hereinafter referred to as "Phil Ivey" or "Plaintiff" is and was at all times relevant a resident of Las Vegas, State of Nevada;
2. Tiltware, LLC, is and at all relevant times was a Limited Liability Company formed in the State of California;
3. That the true names, identities or capacities, whether individual, corporate, associate

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or otherwise of the Defendants DOES I through X, and ROES I through X, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is informed and does believe, and thereupon alleges, that each of the Defendants designated herein as DOE and/or ROE are responsible in some manner for the events and happenings herein referred to; that Plaintiffs will ask leave of this Court to amend this Complaint to insert the true names and capacities of said Defendants DOES I through X and/or ROES I through X when same have been ascertained by Plaintiffs, together with appropriate charging allegations, and to join Defendants in this action;

4. That at all times herein mentioned, Defendants, DOES I through X, and/or ROE CORPORATIONS I through X, inclusive, were the agents, partners, servants, employees, contractors, and investors of Defendants, and each of them were acting within the course and scope of their agency, employment, contract or investor relationship;

JURISDICTION AND VENUE

5. This Court has jurisdiction in this matter in that the causes of action arising herein and the harm to Plaintiff has and will continue to occur within the State of Nevada, County of Clark, and the amount in controversy is in excess of \$10,000.00;

FACTS COMMON TO ALL CLAIMS

6. The game poker has existed for hundreds of years. In the last decade the popularity of poker has spiked to the extent that almost every major casino has opened poker rooms, there have been movies produced regarding the game, and there have been numerous television productions of poker tournaments;
7. As a result of the increase in popularity of poker, the great poker players have become celebrity figures, appearing regularly on television productions of poker tournaments. The celebrity status attributed to these poker players is akin to the

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celebrity status of professional athletes who receive endorsements as a result of their popularity in their respective professions;

8. Phil Ivey is a professional poker player, he has won Eight World Series of Poker bracelets, and is regarded as the best poker player in the world;
9. Phil Ivey is highly regarded in his profession and is highly recognized publicly as a result of his professional success;
10. Plaintiff entered into an agreement with Defendant in or around February of 2004, whereby Defendant would provide software and related support for the conduct of legal online poker and Plaintiff would endorse said product with his name and likeness. On information and belief the software was then provided by Defendant to Full Tilt Poker;
11. As a result of the agreement reached between Plaintiff and Defendant, Plaintiff became widely recognized as being associated with Defendant, with Defendant's product, and with Full Tilt Poker;
12. The Agreement entered into between Plaintiff and Defendant contained a section entitled "Non-Competition Covenant" which Defendant now asserts prevents Plaintiff from engaging or investing in, individually or with others, any activity that is in direct or indirect competition with Defendant;
13. Defendant asserts that for the entire existence of the Company, Plaintiff is prevented from owning, acquiring, assuming or participating in any investment or interest that is adverse or otherwise in conflict with the Defendant's business or prospects, financial or otherwise, without prior written consent of the Board of the Defendant, which consent may be withheld in the Boards' sole and absolute discretion;
14. As a result of conduct described below, Plaintiff has requested that he be relieved from the Non-Competition Covenant, and Defendant has denied said request;
15. On or about April 15, 2011, the United States Attorney for the Southern District of New York disclosed that an Indictment had been issued against certain individuals involved with Full Tilt Poker;

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16. The Indictment alleges that "Principals of the Poker Companies...deceived or directed others to deceive United States banks and financial institutions into processing billions of dollars in payments for the Poker Companies, by, among other things, arranging for the money received from United States gamblers to be disguised as payments to hundreds of non-existent online merchants and other non-gambling businesses";
17. The Indictment further alleges that Full Tilt Poker "used fraudulent methods to avoid these (banking) restrictions";
18. The Indictment contains a Forfeiture Allegation in the amount of at least \$1 billion U.S. currency as it relates to Count Six of the Indictment and Full Tilt Poker;
19. As a result of the Indictment, poker players that had money on deposit with Full Tilt Poker publicly made demand for return of their funds;
20. On or about April 20, 2011, the United States Attorney for the Southern District of New York issued a press release that outlined that they expect Full Tilt Poker to return the money that "U.S. players entrusted to them", and that they will work with the poker companies to facilitate the return of funds to players. The press release further outlined that the government would allow for Full Tilt Poker to use the fulltiltpoker.com domain name to facilitate the withdrawal of U.S. player's funds held in account with Full Tilt Poker;
21. The Press Release further stated that the Defendants named in the Indictment had been provided "repeated warnings and clear notice that their conduct was illegal in the United States";
22. Nobody from the Defendant entity or Full Tilt Poker advised the Plaintiff of the "repeated warnings" or "clear notice" that had been provided to them;
23. Nobody from the Defendant entity or Full Tilt Poker advised the Plaintiff that Full Tilt Poker was allegedly using "fraudulent methods" to avoid banking restrictions;
24. Notwithstanding that the United States Attorney for the Southern District of New York's press release indicates that they have advised Full Tilt Poker that it expects

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- the player's funds to be returned, Full Tilt Poker has not returned said funds;
25. On information and belief there is approximately \$150,000,000 owed to U.S. players by Full Tilt Poker;
26. On information and belief, and unbeknown to Plaintiff, Full Tilt Poker failed to maintain a reserve account sufficient to satisfy the return of funds to U.S. players;
27. The above described conduct is a breach of the agreement entered into between Plaintiff and Defendant whereby Defendant would "provide software and related support for the conduct of legal online poker". This breach by Defendant relieves the Plaintiff of the Non-Competition Covenants;
28. As a result of Plaintiff's name and likeness being associated with and endorsing Defendant pursuant to their agreement, and as a result of Plaintiff being recognized as one of the faces of Full Tilt Poker, along with the above described conduct of Defendant and Full Tilt Poker in failing to return player's funds to the players and failing to maintain adequate reserve accounts, Plaintiff's reputation and professional reputation have been irreparably damaged;
29. U.S. players that have demanded return of their funds from Full Tilt Poker made public statements against Phil Ivey, under the mistaken belief that Phil Ivey has the ability to cause Full Tilt Poker to return the player's funds;
30. As recent at May 30, 2011, public comments related to Full Tilt Poker's failure to return U.S. player's funds have included, but are not limited to "I hope any sponsored pro at the WSOP catches hell until you (Full Tilt Poker) pay up", "No F'ing way Ivey...will be seen at the WSOP", "Plz tell me that no full tilt pros are going to play in the WSOP until you guys pay out", "The fact that they need to "raise capital in order to payout the US players" means they never had all the money on them in the first place. Scary". Additionally, people are demanding that Plaintiff pay the owed player's funds personally;
31. As a result of the conduct of Defendant as described herein, Plaintiff has suffered public ridicule, humiliation, and loss of personal and professional reputation;

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FIRST CAUSE OF ACTION

INJUNCTIVE RELIEF

32. Plaintiff repeats and re-alleges each and every allegation contained above and incorporates the same herein by reference;
33. Defendant's breach of the above stated agreement has caused and will continue to cause the Plaintiff irreparable harm;
34. Plaintiff cannot be deprived of his livelihood by the Non-Competition Covenants when Defendant has violated the terms of the agreement containing said Non-Competition Covenants. Plaintiff is entitled to Injunctive Relief enjoining and preventing the Defendant from enforcing the Non-Competition Covenants;
35. Plaintiff is entitled to a permanent and mandatory injunction ordering the Defendant, and/or any person associated with the Defendant from enforcing the Non-Competition Covenants against Plaintiff. Plaintiff requests that the Honorable Court exercise its equitable power to check immediate, irreparable harm, by a Temporary Restraining Order and Preliminary Injunction to prevent, until the litigation is concluded or until such other order of the Court, the Defendant or any other person or entity associated with the Defendant from enforcing the Non-Competition Covenants against Plaintiff;
36. Plaintiff has been forced to retain the services of an attorney to prosecute this matter and is entitled to recover reasonable costs and attorneys fees incurred herein as special damages;

SECOND CAUSE OF ACTION

BREACH OF CONTRACT

37. Plaintiff repeats and re-alleges each and every allegation contained above and incorporates the same herein by reference;
38. Defendant entered into an agreement with Plaintiff whereby Defendant warranted that the software it provided to Full Tilt Poker and related support was for the conduct of legal online poker;

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- 39. In exchange for the above stated consideration, the Plaintiff agreed to lend his name and likeness to the Defendant and further agreed to certain Non-Competition Covenants;
- 40. Defendant has breached the agreement entered into with Plaintiff and according to the United States Attorney for the Southern District of New York has engaged in illegal conduct related to its banking practice;
- 41. According to the United States Attorney for the Southern District of New York, Defendant was placed on notice that they were engaging in conduct that was described as illegal. Defendant failed to provide that notice to Plaintiff and failed to remedy their conduct. Notwithstanding the foregoing, Defendant continued to use the Plaintiff's name and likeness;
- 42. Plaintiff had satisfied all of his requirements under the agreement;
- 43. Defendant has breached the agreement;
- 44. As a direct and proximate result of the conduct and action of Defendant, as fully set forth hereinabove, Plaintiff has suffered general and special damages in an amount in excess of Ten Thousand Dollars, the exact amount to be proven at the time of trial. Plaintiff has been damaged by lost business opportunity, lost income, and damage to his personal and professional reputation all in an amount that exceeds \$150,000,000;
- 45. Plaintiff has been required to obtain the services of an attorney to prosecute this action, and therefore he is entitled attorney's fees and costs of suit;

THIRD CAUSE OF ACTION

BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

- 46. Plaintiff repeats and re-alleges each and every allegation contained above and incorporates the same herein by reference;
- 47. Defendant promised and agreed to perform their contractual obligations. Defendant had a duty to act in good faith and in accordance with the terms of the agreement;
- 48. According to the United States Attorney for the Southern District of New York the

1 Defendant operated an illegal gambling business. The Defendant's conduct, along
2 with the failure to maintain sufficient player's reserves to return player's funds, is a
3 breach of Defendant's Covenant of Good Faith and Fair Dealing;
4

5 49. As a direct and proximate result of the conduct and action of Defendant, as fully set
6 forth hereinabove, Plaintiff has suffered general and special damages in an amount
7 in excess of Ten Thousand Dollars, the exact amount to be proven at the time of
8 trial;

9 50. Plaintiff has been required to obtain the services of an attorney to prosecute this
10 action, and is therefore entitled to attorney's fees and costs of suit;

11 **FOURTH CAUSE OF ACTION**

12 **DECLARATORY RELIEF**

13 51. Plaintiff repeats and re-alleges each and every allegation contained above and
14 incorporates the same herein by reference;

15 52. A justiciable controversy exists between the Plaintiff and the Defendant as it relates
16 to the Defendant's breach of the agreement and the Non-Competition Covenants;

17 53. There is a ripe dispute between Phil Ivey and the Defendant and Phil Ivey has a
18 legally recognizable right in his name, likeness, reputation, and his ability to earn a
19 livelihood;

20 54. There exists a substantial controversy of sufficient immediacy and reality to warrant
21 the issuance of a declaratory judgment;

22 55. In addition to the breach of the agreement by Defendant, which renders the Non-
23 Competition Covenants null and void, the Non-Competition Covenants violate
24 public policy and are over-broad in geographic restriction, scope, and duration, and
25 are unduly harsh and oppressive;

26 56. Plaintiff's seeks a Judgment from this Honorable Court declaring the Non-
27 Competition Covenants null and void;

28 57. Plaintiff has been required to obtain the services of an attorney to prosecute this
action, and is therefore entitled to attorney's fees and costs of suit;

FIFTH CAUSE OF ACTION

NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

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4 58. Plaintiff repeats and re-alleges each and every allegation contained above and
5 incorporates the same herein by reference;
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7 59. Defendant is aware of Plaintiff's celebrity status in the Poker world and otherwise;
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9 60. Defendant has knowledge of Plaintiff's opportunities to receive financial
10 compensation for use of his name, likeness, and for endorsing businesses/products;
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12 61. According to the United States Attorney for the Southern District of New York the
13 Defendant operated Tiltware in a manner that negligently interfered with Plaintiff's
14 prospective economic advantage. Additionally, by failing to return player's funds to
15 the player's, Defendant has operated Tiltware in a manner that negligently interfered
16 with Plaintiff's prospective economic advantage;
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18 62. Plaintiff has suffered damage to his personal and professional reputation as a result
19 of Defendant's conduct;
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21 63. As a direct and proximate result of the conduct and action of Defendant, as fully set
22 forth hereinabove, Plaintiff has suffered general and special damages in an amount
23 in excess of Ten Thousand Dollars, the exact amount to be proven at the time of
24 trial;
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26 64. Plaintiff has been required to obtain the services of an attorney to prosecute this
27 action, and therefore he is entitled attorney's fees and costs of suit;
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SIXTH CAUSE OF ACTION

TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

- 65. Plaintiff repeats and re-alleges each and every allegation contained above and incorporates the same herein by reference;
- 66. As a result of Plaintiff's celebrity status in the Poker World, Plaintiff has prospective contractual relationships with third party's along with endorsement opportunities;
- 67. The Defendant has knowledge of these opportunities and the prospective relationships;
- 68. The Defendant intends to harm Plaintiff by preventing the relationships;
- 69. There is no privilege or justification by the Defendant in light of Defendant's prior breach of the agreement which contains the purported Non-Competition Covenants, nor is the Non-Compete Covenant enforceable in geographic restriction, scope, duration, or under public policy;
- 70. As a direct and proximate result of the conduct and action of Defendant, as fully set forth hereinabove, Plaintiff has suffered general and special damages in an amount in excess of Ten Thousand Dollars, the exact amount to be proven at the time of trial;
- 71. Plaintiff has been required to obtain the services of an attorney to prosecute this action, and therefore he is entitled attorney's fees and costs of suit;

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2 **WHEREFORE, Plaintiffs pray for judgment as follows:**

- 3 1. **For general and special damages in excess of Ten Thousand Dollars;**
4 2. **For damages to the loss of reputation in an amount that exceeds \$150,000,000;**
5 3. **For Injunctive Relief;**
6 4. **For Declaratory Relief;**
7 5. **For reasonable attorney's fees;**
8 6. **For costs of suit incurred herein; and**
9 7. **For such other and further relief as the Court may deem proper;**

10
11 Dated this 31 day of May, 2011.

12 Respectfully submitted,

13 **CHESNOFF & SCHONFELD**

14
15
16 By 

17 **DAVID Z. CHESNOFF, ESQ.**

Nevada Bar #2292

RICHARD A. SCHONFELD, ESQ.

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