

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

JAP HOME SOLUTIONS, INC.;
GUSTAVO FRECH BARRIERO; and
JESUS ANTON PEREZ,

Plaintiffs,

v.

LOFFT CONSTRUCTION, INC.;
ALEJANDRO R. SANGUINETTI; JOHN
E. DRURY; and JOSÉ GALLEGO
ESPINA,

Defendants.

Case No. 2017-CA-003390 B

Judge: Hon. Michael L. Rankin

Next Event: Status Conference on November
17, 2017 at 10:30 a.m.

SUPPLEMENTAL DECLARATION OF KATIE TOWNSEND

I, Katie Townsend, declare as follows:

1. I am the Litigation Director at the Reporters Committee for Freedom of the Press (“Reporters Committee”), an unincorporated nonprofit association located in Washington, D.C., a position I have held since September of 2014. I am an attorney and counsel of record for Defendant José Gallego Espina in this matter. I am a member in good standing of the bar for the District of Columbia, and am admitted to practice before this Court. I have personal knowledge of the matters stated in this declaration.

2. Attached hereto as **Exhibit E** is a true and correct copy of the original Complaint filed by Lofft Construction, Inc. (“Lofft”) against JAP and Frech in D.C. Superior Court Case No. 2015 CA 5203 (B) (the “Lofft Lawsuit”). This true and correct copy was provided to me, at my request, by counsel for Lofft.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 25, 2017 in Washington, D.C.

/s Katie Townsend
Katie Townsend

EXHIBIT E

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

LOFFT CONSTRUCTION, INC.)
616 Kennedy Street, N.W.)
Washington, D.C. 20011)
Plaintiff,)

v.)

Case Number 2015 CA 005203 B

GUSTAVO FRECH BARRIERO)
2741 Unicorn Lane, N.W.)
Washington, DC 20015)

and)

JAP HOME SOLUTIONS, INC.)
Serve:)
Registered Agent)
Jesus Anton)
1841 Columbia Road, N.W.)
Unit 718)
Washington, DC 20009)
Defendants.)

COMPLAINT FOR MONEY DAMAGES

COMES NOW Lofft Construction, Inc., plaintiff, by counsel, and complains against Gustavo Frech Barriero and Jap Home Solutions, Inc., defendants for damages, compensatory and punitive, and attorneys' fees and costs for trade secret misappropriation, conversion, unjust enrichment, intentional interference with a prospective advantage, and breach of contract.

JURISDICTION

1.) Jurisdiction of this Court is based on DC Code 11-921, as all incidents occurred in Washington, D.C.

PARTIES

2.) Plaintiff Lofft Construction, Inc. ("Lofft"), a corporate entity licensed in the District of Columbia, engages in construction and home improvement projects for clients in the Metropolitan Washington area; it is licensed in the District to do home improvement repairs and improvements and holds a general contractors license.

3.) Defendant Gustavo Frech Barriero ("Frech"), an employee of JAP Home Solutions, Inc., was a salaried employee of Lofft from November 2013 to February, 2015 and a Spanish national, is married to a woman who, on information and belief, has diplomatic immunity status under 28 U.S Code § 1351.

4.) Under this complaint, Frech, however, has no diplomatic immunity under Vienna Convention on Diplomatic Relations ("VCDR") as he has been engaged in a "commercial activity," an exception to the VCDR, for activities described in the allegations made herein after.¹

5.) JAP Home Solutions, Inc. ("JAP"), a Virginia corporation since 2014, is another home improvement company with authority to do business in the District of Columbia only since December 2014; it is licensed to do home improvement repairs only and is not a general contractor.

6.) On information and belief, however, JAP advertizes itself as general contractor in violation of the licensing laws of the District of Columbia.

EMPLOYMENT

7.) Lofft hired Frech in November 2013 and, trained Frech in the business of the home improvement and the general contracting business; the financial intricacies of estimating of

¹ See Gonzalez Paredes v. Vila, 479 F.Supp. 2d 187, 191 (D.D.C. 2007); see a/so Sabbithi v. Al Saleh, 605 F.Supp. 2d 122, 130 (D.D.C. 2009), vacated in part on other grounds, No. 07 Civ. 115 (D.D.C. Mar. 8, 2011).

costs, expenses, profit quotient; in customer relations; the need for developing business during his term of employment, and entrusting him with a familiarity in each area of work and providing him exclusive access to Lofft's "trade secrets," to wit: its proprietary network, its computer system, its lists of customers, subcontractors and affiliated architects, its "in house" marketing information, its software, its specialized "estimating" software, formulas and recipes, techniques, processes, and other business information that provide Lofft with a business edge to turn a profit.

8.) In December, 2014, Lofft handed Frech a document incorporating clauses which included a covenant not to compete, non-solicitation of clients and confidentiality and asked him to sign it. He agreed to its terms and conditions, but delayed signing and ultimately did not sign it. Frech knew that this document defined the terms and conditions of his continued employment with Lofft.

END OF EMPLOYMENT

9.) In January, 2015, Frech informed Lofft officials that he was leaving his employment with the company, but he assured Lofft that he would not compete with Lofft, he would not solicit its clients, he would respect the confidentiality of Lofft's customers, subcontractors and affiliated architects, and, he stated he understood the terms and conditions of the document handed to him December 2014 and would abide by its terms.

10.) Rather than departing immediately, Lofft agreed to keep him at Frech's request on the payroll for a period of not less than thirty (30) days as long as Frech committed to finishing all pending work for which he was entrusted as a condition of being paid through February 3, 2015.

11.) Lofft carried out its part of this commitment and paid him through the last day of his employment.

12.) Frech however failed to complete the projects including but not limited to the Milagros Freyre renovation, he had been entrusted which caused Lofft to finish the jobs Frech did not complete at considerable additional expense.

13.) Frech, however, intentionally and maliciously undertook an active, on-going business conspiracy with JAP to transfer trade secrets (as defined above in ¶ 7) and to divert business from Lofft to JAP for Frech's financial benefit and thus damaging Lofft.

**CONSPIRACY TO MISAPPROPRIATE TRADE SECRETS
AND DENY PROSPECTIVE ADVANCE**

14.) During the time of Frech's employment with Lofft, Frech and JAP conspired together to transfer Lofft's trade secrets in the form of digital files and paper records to JAP, by "improper means" as defined in the District of Columbia Trade Secrets Act, 36 D.C. Code § 401 *et seq.*,

15.) During Frech's employment with Lofft, Frech and JAP, without Lofft's knowledge or authorization, exchanged trade secrets and insider business information of Lofft's business particulars to Lofft's monetary detriment.

16.) During Frech's employment with Lofft, Frech undertook the preparation of construction estimates for JAP using Lofft software, solicited business for JAP while employed by Lofft, used his business contacts to divert construction and home improvement business to JAP while employed by Lofft; resulting in monetary damage to Lofft.

17.) After Frech's employment with Lofft, Frech and JAP, without Lofft's knowledge or authorization, used Lofft's trade secrets and insider business information of the company's business details to its monetary detriment; which trade secrets and business insider information had been improperly removed, taken and purloined from Lofft's network

and computers before Frech left employment; to wit: days after leaving Lofft, Frech transferred by email three (3) highly confidential specifics of Lofft's financial data to JAP.

18.) After Frech's employment with Lofft, Frech and JAP, without Lofft's knowledge or authorization, finalized business arrangements together and entered into construction contracts; which business was developed and pursued during Frech's employment and which was purposely and improperly diverted to JAP in contravention to the terms and conditions of Frech's employment status. In the process, Frech used the company's trade secrets and inside business information of Lofft's business and financial particulars to its monetary detriment which trade secrets and business information has been improperly removed, taken and purloined from Lofft's network and computers.

19.) Frech's and JAP acts, described above, violated of 36 D.C. Code § 401 *et seq.*

MISAPPROPRIATION OF TRADE SECRETS (COUNT I)

20.) Paragraphs 1 through 19 are incorporated by reference here.

21.) Plaintiff incurred substantial expense and other burdens in developing these trade secrets (described in ¶7) which were, at all pertinent times, kept in the strictest confidence and considered to be "trade secrets" belonging solely to Plaintiff.

22.) From November 2013 onward, Frech obtained plaintiff's trade secrets from the company which were for Lofft's exclusive use; those trade secrets were obtained under circumstances giving rise to a duty not to use or disclose the trade secret without Plaintiff's permission.

23.) Since obtaining Plaintiff's trade secrets, Defendant Frech possessed these trade secrets and information for purposes of competing with Lofft and benefiting himself with these trade secrets and did, in fact, transfer these trade secrets to JAP and did, in fact,

conspire with officials at JAP to obtain those trade secrets to benefit JAP and himself.

24.) Officials at JAP knew of this misappropriation and conspired with Frech knowing that these trade secrets belonged to Lofft and were its proprietary information.

25.) As a result of defendants' unlawful misappropriation of plaintiff's trade secrets, and unjust enrichment as alleged, defendant possesses money that belongs to plaintiff, and will receive future monies rightfully belonging to plaintiff.

26.) Plaintiff incurred substantial damage as a direct and proximate result of Defendants' use of Plaintiff's trade secrets including but not limited to loss of revenues and business opportunities. Plaintiff is entitled to recover these damages from Defendant.

27.) Defendants' conduct was committed intentionally, knowingly, and with callous disregard of Plaintiff's legitimate rights, Plaintiff is entitled to and now seeks to recover exemplary damages as allowed in 36 D.C. Code § 403.

28.) As a result of defendants' unlawful misappropriation of plaintiff's trade secrets, and unjust enrichment, as alleged, defendant possesses money belonging to plaintiff, and will receive future monies rightfully belonging to plaintiff.

29.) A constructive trust to prevent unjust enrichment should be imposed against defendants, and should require that any revenues and profits derived from the above-mentioned misappropriation of trade secrets be placed in that constructive trust in favor of plaintiff.

WHEREFORE, plaintiff requests judgment against defendants, as follows:

- a. For the imposition of a constructive trust in favor of plaintiff, consisting of all profits derived from the misappropriation of plaintiff's trade secrets, as alleged above, together with interest at the maximum legal rate;
- b. For damages, constructive and punitive damages as the fact finder may determined accrued as a result of the misappropriation of these trade secrets;

c. For all costs of suit and reasonable attorney's fees incurred by plaintiff to the extent provided by law (36 D.C. Code § 404); and

d. For such other and further relief as the court deems just and proper.

CONVERSION (COUNT II)

30.) Paragraphs 1 through 29 are incorporated by reference herein.

31.) Defendants converted trade secrets and property belonging to Lofft and said property or its value should be returned to Lofft.

32.) Defendants converted business opportunities and prospective advantages improperly undertaken during Frech's employment to their financial benefit thus causing financial damage to Lofft.

WHEREFORE, plaintiff requests judgment against defendants in the return of those items, their value and the value of those lost and converted business opportunities as may be shown; and for all costs of suit and reasonable attorney's fees incurred by plaintiff to the extent provided by law; and or such other and further relief as the court deems just and proper.

RESTITUTION (COUNT III)

33.) Paragraphs 1 through 32 are incorporated by reference herein.

33.) Lofft seeks restitution for the value of all trade secrets illegally and improperly taken from him.

34.) Lofft seeks restitution for the value of all lost business opportunities illegally and improperly taken from him.

WHEREFORE, Plaintiff Lofft seeks compensatory damages in sums as may be determined against Frech and JAP, defendants, for compensatory damages, and for attorneys' fees and costs expended herein.

TORTUOUS INTERFERENCE WITH A PROSPECTIVE ADVANTAGE (COUNT IV)

35.) Paragraphs 1 through 34 are incorporated by reference herein.

36.) Lofft had a business expectancy that work developed by Frech during his term of employment would become construction work of the company.

37.) It was commercially reasonable to assume that construction and home improvements jobs from various clients, including but not limited to a large construction roof repair job for an unidentified foreign embassy for which Lofft had previously done work would become construction work for Lofft or that it would have the opportunity to "bid" on that work.

38.) Frech actively solicited these jobs, including the aforementioned roof job (¶ 36), during his employment with Lofft, knew that Lofft expected that all work developed during his employment would belong to Lofft, that Lofft expected to bid on that work; and that he had benefitted these earlier embassy jobs during the term of his employment with Lofft.

39.) Frech intentionally, wrongfully and maliciously diverted that work, and other jobs, to JAP, using insider financial information he has taken from Lofft during and after his employment with the company.

40.) Lofft's prospective advantage for this work was interfered with and diverted by Frech; his actions financially damaged Lofft.

41.) Lofft was financially harmed by this interference.

42.) After Frech left his employment, he transferred this work and other work jobs to JAP with JAP's active and knowing participation.

WHEREFORE, Plaintiff Lofft seeks compensatory and punitive damages in sums as may be determined against Frech and JAP , defendants, and for compensatory damages for work which would have come to it, and for attorneys' fees and costs expended herein.

BREACH OF CONTRACT (COUNT V)

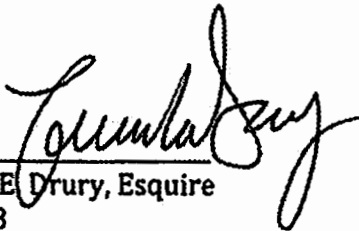
43.) Paragraphs 1 through 42 are incorporated by reference herein.

44.) Lofft had to reassign other employees from jobs to complete the jobs left un-completed by Frech at the time of his departure from Lofft on February 3, 2015.

45.) Lofft seeks damages for all moneys expended in completing the jobs not done by Frech by the time of his departure including but not limited to the Milagros Freyre renovation which he had been compensated for and which he had committed to complete prior to February 3, 2015 when he departed the company.

WHEREFORE, Plaintiff Lofft seeks compensatory damages in sums as may be determined against Frech for compensatory damages for commissions due him, and for attorneys' fees and costs expended herein.

Respectfully Submitted,
LOFFT CONSTRUCTION, INC.
Plaintiff



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