

CI2021-12180

Index #: EF2021-0531

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF [Type in County]

Southside Community Center

Index No. [REDACTED]

Plaintiff(s),

-against-

Summons

Nicholas Desystemizer

Date Index No. Purchased: [REDACTED]

Defendant(s).

To the above named Defendant(s)

Nicholas Desystemizer, 110 Fifth St., Ithaca, NY 14850

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is NY CPLR § 503 (2012) Residence of the Parties
which is 503 South Plain Street for the Plaintiff and 110 Fifth St. for the Defendant

Dated: July 19, 2021

The Law Office of Serenna L. McCloud, Esq.,
PLLCby 

Serenna L. McCloud, Esq.

Attorneys for Plaintiff

Southside Community Center
408 West State/MLK St.
Ithaca, NY 14850

STATE OF NEW YORK
SUPREME COURT : COUNTY OF TOMPKINS

In the Matter of Southside Community Center,

Plaintiff

**VERIFIED
COMPLAINT**

vs.

Nicholas Desystemizer,
Defendant

Index No.:

Petitioners, by and through their attorney, *Serenna L. McCloud, Esq.*, respectfully allege as follows:

INTRODUCTION

1. Plaintiffs are commencing this proceeding seeking a Court order dissolving a misleading Doing Business As Certificate filed with the Tompkins County Clerk on May 11, 2021 in instrument number 2021-05073 (“DBA”), and Amended July 12, 2021 in instrument number 2021-07788 by the defendant herein, Nicholas Desystemizer an injunction to prevent him from holding himself out as the proprietor of Recycle Ithaca Bicycles, also known by the acronym, RIBS (hereinafter “RIBS”), and reimbursement for costs associated with this action.

PARTIES

2. The Plaintiff, South Side Community Center, Inc., (hereinafter “Southside”) is a Not-for-Profit corporation, organized in accordance with the laws of the state of New York, duly registered with the NY Office of the Attorney General, and a federally tax exempt 501(c)(3) entity, located at 305 South Plain St. in Ithaca New York.

Southside is the legacy of the work and ideals of the Francis Harper Women's Club, a group of black women leaders in the Ithaca community. In March of 1927, the Francis Harper Women's Club organized the Serve-Us League to serve the residents of the historically Black Southside neighborhood of Ithaca, NY. Founded with just \$220, raised by Mrs. Vera Irvin (President) and Mrs. Gessie Cooper, the Southside was to be a non-sectarian and non-partisan organization for the "uplifting" of every individual.

For the first seven years of its existence, Southside met in a house at 221 South Plain Street, and in 1932 purchased the property at 305 South Plain Street, the current home of the Center. In 1936 the structure was razed, and in 1937 the current facility was erected by the Works Progress Administration in cooperation with the Southside Corporation and the City of Ithaca. The building was dedicated in a ceremony attended by then First Lady, Eleanor Roosevelt, in 1938.

3. Nicholas Desystemizer, an individual, residing at 110 Fifth Street, Ithaca NY, is a former employee of South Side. He was hired on August 11, 2017, as Executive Director of the RIBS program and worked in said role until September 14, 2020, when, as a result of the Coronavirus Pandemic, South Side made the difficult decision to discontinue the employment of the majority of its staff, including Mr. Desystemizer, the defendant herein.

FACTS

4. The RIBS Program has, since its inception in 1991, been a semi-autonomous program of Southside Community Center. See the Affidavit of Paul Sayvetz in support of this Complaint for a detailed history regarding the RIBS program, submitted herewith.

5. Southside has always provided liability insurance, administrative structure, and not for profit grant related infrastructure to the RIBS program.
6. RIBS, through Southside's 501(c)(3) status, has sought and been awarded various grants over the years including, among many others, a HUD block grant in the amount of \$40,000 and a Park Foundation grant in the amount of \$10,000, the grant makers understand RIBS to be a not-for-profit sub program of Southside Community Center, and not a for profit sole proprietorship operated by the Defendant.
7. RIBS also receives small donations of bicycles and equipment from members of the community who are familiar with the historical community not for profit program called RIBS and do not understand it to be the personal DBA of any one individual.
8. RIBs is committed to Southside's larger mission of promoting black excellence while providing bicycle related services to the larger Ithaca area. The goal of RIBs is to affirm, empower, and foster Black leadership & liberation through bicycling in our community
9. In the past RIB's had an Executive Director ("ED") (directly supervised by the ED at Southside), A lead Mechanic, a bike mechanic, and several volunteers. The defendant herein was one such Executive Director.
10. Due to differences relating to the mission, vision, and inclusiveness of the RIBS program during the Defendant's tenure as RIBS Executive Director Southside leadership and the Defendant were at odds, defendant never reapplied for his job when RIBS reopened , opting instead to attempt to co-opt RIBS as his own.
11. Defendant filed a fraudulent DBA on May 11, 2021, in which he claimed to be doing business as RIBS at 530 West Buffalo Street, a facility to which he had no legal right to claim and no access to, see, **Exhibit "A"**.

12. After receiving a letter from this attorney requesting that he voluntarily dissolve the fraudulent RIBS DBA Defendant filed an Amendment, in which he ostensibly changes RIBS address to his personal address at 110 fifth Street in Ithaca, attached hereto as **Exhibits 'B' and 'C'** respectively.
13. Since it's reopening, on June 20, 2021 RIB's day-to-day operations are run by Mason Wilson, of Black Cat Cyclery, and Claire Dehm, a bike mechanic. They are directly involved with creating an open and inclusive RIBS facility and kid focused programming, as well as coordinating the basic day to day operations of the facility. Chavon Bunch the Executive Director at Southside Community Center is also the Executive Director at RIBS going forward.
14. The RIBS program is operated at 530 West Buffalo Street in Ithaca, NY, pursuant to a lease between Southside's RIBS Program, the Urban Renewal Agency, and the City of Ithaca effective 2008 – 2023. Please see said lease at **Exhibit 'D'**.
15. The original DBA filed by the Defendant lists 530 West Buffalo Street as its place of business, and as such contains completely false and fraudulent information, attached hereto as **Exhibit 'A'**. The Amended DBA attempts to move the RIBS program to Defendants personal residence at 110 State Street and is also a fraud on the public/Ithaca Community. See **Exhibit' E'**.
16. The Defendant, a disgruntled former employee has engaged in a campaign to assume ownership of the RIBS program and name, see relevant Facebook posts attached hereto as **Exhibit 'F'**.

FOR A FIRST CAUSE OF ACTION

FRAUD

17. Plaintiff's repeat, reallege and incorporate each paragraph hereinbefore mentioned.
18. Plaintiff's DBA is fraudulent in that it misrepresents the RIBS program as being operated at 110 Fifth Street, Defendant's personal residence, rather than its true location which is 530 West Buffalo, and address which is clearly leased to Southside for the RIBS program, see a copy of said lease at **Exhibit 'D'**.

FOR A SECOND CAUSE OF ACTION

THEFT OF GOOD WILL AND NAME RECOGNITION

19. Plaintiff's repeat, reallege and incorporate each paragraph hereinbefore mentioned.
20. RIBS has acquired a reputation as a valuable and beloved community program. This good will and name recognition has been built over thirty years through the dedication of volunteers, donors large and small, Southside Community Center, the City of Ithaca, among others.
21. The DBA filed by the Defendant is an attempt to capitalize on a shared community endeavor, to capture the assets of Southside and RIBS in a for-profit sole proprietorship business structure that inures solely to the benefit of one individual, the Defendant.

FOR A THIRD CAUSE OF ACTION

A VIOLATION OF THE DECEPTIVE PRACTICES ACT

22. Plaintiff's repeat, reallege and incorporate each paragraph hereinbefore mentioned.
23. The DBA filed by the Defendant allows for a deceptive and misleading business practice.
24. Upon information and belief, the deceptive use of the RIBS identity has allowed the Defendant to amass a collection of donated bicycles and materials and it appears but is unclear the extent to which those items were given to the Defendant by donors thinking they were giving to Southside's/the Ithaca Community's historic RIBS program. See,

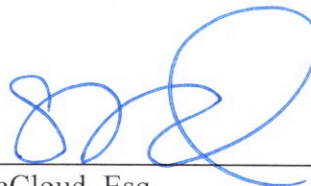
Exhibit "G" a photograph of a portion of the Defendant's bicycle and bicycle parts collection located at 114 Fayette Street, the address where Defendant keeps and work on many of said Bicycles.

WHEREFORE, the Plaintiff respectfully prays that the Court:

1. Order the Tompkins County Clerk's Office to dissolve the DBA; and
2. Enjoin any further use of the name RIBS by the Defendant; and
3. Award southside community center \$1000.00 to reimburse it for damages and costs pursuant to General Business Law §309; and
4. Such further relief as the Court deems just and proper.

DATED: July 19, 2021

Respectfully,



Serenna L. McCloud, Esq.
The Law Office of Serenna L. McCloud, Esq., PLLC
408 West State/MLK St.
Ithaca, NY 14850
607.280.7247, serennasemail@gmail.com
Attorney for the Plaintiff

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Index #: EF2021-0531

STATE OF NEW YORK
SUPREME COURT : COUNTY OF TOMPKINS

In the Matter of Southside Community Center,

Plaintiff

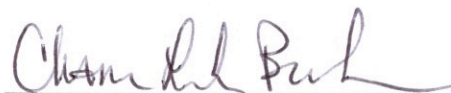
VERIFICATION

vs.

Nicholas Desystemizer,
Defendant

I, Chavon Bunch, Executive Director of the Southside Community Center, being duly sworn depose and say:

I am a representative of the Plaintiff, Southside Community Center, Inc., in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same are true to my knowledge except as to matters stated on information and belief and to those matters, I believe them to be true.



Chavon Bunch, Executive Director
Southside Community Center, Inc.

Sworn before me this 19th day of July, 2021

Notary Public

SERENNA L. MCCLOUD, ESQ.
Notary Public, State of New York
Registration No. 02MC6403734
Qualified in Tompkins County
Commission Expires February 3, 2024

STATE OF NEW YORK

SUPREME COURT : COUNTY OF TOMPKINS

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| In the Matter of Southside Community Center, <div style="text-align: right;">Plaintiff</div> <div style="text-align: center;">vs.</div> Nicholas Desystemizer, <div style="text-align: right;">Defendant</div> | DECISION & ORDER GRANTING SUMMARY JUDGMENT INDEX NO.: EF2021-0531 |
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WHEREAS, having reviewed Plaintiff's Complaint dated July 20, 2021, the supporting Affidavit of Paul Sayvetz dated July 22, 2021, and Plaintiff's Motion for Summary Judgment dated September 19, 2022, this Court finds the Defendant:

1. Has utilized the name and address of Recycle Ithaca Bicycles and its acronym "RIBS" with the intent to deceive the public; and
2. Has engaged in deceptive business practices in violation of New York State General Business Law §133 by filing a fraudulent Doing Business As Certificate on May 11, 2021, in Instrument Number 2021-05073 and the Amended Doing Business as Certificated filed on July 12, 2021 in Instrument Number 2021-0788 with the Tompkins County Clerk's Office under the name and address of Recycle Ithaca Bicycles.

NOW THEREFORE, IT IS HEREBY ORDERED:

1. Plaintiff's Motion for Summary Judgment is hereby granted in its entirety; and it is further Ordered that
2. Defendant, Nicholas Desystemizer is enjoined and restrained from holding himself out to represent or use the name of Recycle Ithaca Bicycles or "RIBS"; and it is further Ordered that
3. The Doing Business As Certificate filed by Defendant on May 11, 2021, in instrument number 2021-05073 and the Amended Doing Business as Certificate filed on July 12, 2021 in Instrument number 2021-0788 with the Tompkins County Clerk's

Office under the name and address of Recycle Ithaca Bicycles are hereby dissolved;
and it is further Ordered that

4. Pursuant to New York State General Business Law §349 the Plaintiff is entitled to
recover its costs and attorney fees in accordance with Plaintiff's Affirmation of Costs
and Attorney's Fees filed on January 11, 2023.

5. That the Plaintiff is awarded costs and disbursements and attorney's fees in the
amount of \$5,358.12. Plaintiff may submit a Judgment in accordance with this
Decision and Order for entry by the Clerk of this Court.

Date: January 18, 2023

So Ordered,



Digitally signed by Elizabeth
Aherne, Supreme Court
Justice
Location: Ithaca, NY
Date: 2023.01.18
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Elizabeth Aherne, Supreme Court Justice
Tompkins County Supreme Court