

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

ROBERT H. BRAVER, an individual,)
)
 Plaintiff,)
)
 v.) Case No. CIV-04-1013-W
)
 AMERIQUEST MORTGAGE COMPANY, a)
 Delaware corporation, INNOVATIVE MARKETING,)
 INC., d/b/a LEAD EXTREME, a Washington corporation,)
 THE LOAN PAGE, INC., a Delaware corporation, GO)
 APPLY, INC., d/b/a ELEADZ, a Nevada corporation,)
 JOHN DOES 1-50)
)
 Defendants.)

AMERIQUEST MORTGAGE)
 COMPANY, a Delaware corporation,)
)
 Cross-Complainant,)
)
 v.)
)
 INNOVATIVE MARKETING, INC. d/b/a)
 LEAD EXTREME, a Washington Corporation;)
 VISIUM SOLUTIONS CORPORATION, a)
 Florida corporation; and PROFESSIONAL)
 EQUITY MARKETING, a California)
 Corporation, and ROES I-50, inclusive,)
)
 Cross-Defendants.)

**LEAD EXTREME’S ANSWER AND COUNTERCLAIMS TO AMERIQUEST
MORTGAGE COMPANY’S AMENDED CROSS-COMPLAINT
FOR DECLARATORY RELIEF FOR INDEMNITY**

Innovative Marketing, Inc., d/b/a Lead Extreme, for its answer to Ameriquest Mortgage Company’s Amended Cross-Complaint For Declaratory Relief For Indemnity (the “Amended Cross-Complaint”), denies each and every allegation except those which it specifically admits, and responds in correspondingly numbered paragraphs as follows:

1. Lead Extreme is without sufficient information to form a belief as to the truth of the allegations of paragraph 1 of the Amended Cross-Complaint, and therefore denies the same.

2. Admitted.

3. Lead Extreme is without sufficient information to form a belief as to the truth of the allegations of paragraph 3 of the Amended Cross-Complaint, and therefore denies the same.

4. Lead Extreme is without sufficient information to form a belief as to the truth of the allegations of paragraph 4 of the Amended Cross-Complaint, and therefore denies the same.

5. Lead Extreme is without sufficient information to form a belief as to the truth of the allegations of paragraph 5 of the Amended Cross-Complaint, and therefore denies the same.

6. Denied.

7. Admitted.

8. Admitted.

9. Admitted.

10. Lead Extreme is without sufficient information to form a belief as to the truth of the allegations of paragraph 10 of the Amended Cross-Complaint, and therefore denies the same.

11. Lead Extreme is without sufficient information to form a belief as to the truth of the allegations of paragraph 11 of the Amended Cross-Complaint, and therefore denies the same.

12. Admitted.

13. Lead Extreme denies that Ameriquest has previously demanded that Lead Extreme defend Ameriquest in this action. Lead Extreme admits that paragraph 13 constitutes a demand that the Cross-Defendants defend and indemnify Ameriquest in this action. Lead Extreme denies that it has refused to defend and indemnify Ameriquest.

14. Lead Extreme is without sufficient information to form a belief as to the truth of the allegations of paragraph 14 of the Amended Cross-Complaint, and therefore denies the same.

FIRST CAUSE OF ACTION

(Declaratory Relief for Indemnity)

15. Lead Extreme restates the answers in paragraphs 1-14 above.

16. Lead Extreme denies that an actual controversy has arisen and now exists between Ameriquest and Cross-Defendants. Lead Extreme denies the allegations in paragraphs 16 (a) and 16 (b).

17. Denied.

18. Denied.

AFFIRMATIVE DEFENSES

19. Ameriquest is estopped from asserting the claims raised in the Amended Cross-Complaint.

20. Ameriquest is not entitled to any relief or recovery by reason of unclean hands.

21. Ameriquest has materially breached the Ameriquest Mortgage Company Lead Purchase Agreement.

COUNTERCLAIMS

For its Counterclaims against Cross-Complainant Ameriquest Mortgage Company (“Ameriquest”), Cross-Defendant Lead Extreme alleges as follows:

JURISDICTION AND VENUE

1. This court has supplemental jurisdiction over this counterclaim under 28 U.S.C. § 1367.

FIRST COUNTERCLAIM: Breach of Contract

2. Ameriquest and Lead Extreme entered into the “Ameriquest Mortgage Company Lead Purchase Agreement” (the “Agreement”) dated January 28, 2002.

3. Paragraph 5.1 of the Agreement reads as follows:

Confidential Information. Any confidential information or proprietary information provided by one party, including, without limitation, any description of advertising, and the pricing of any such advertising, shall be deemed “Confidential Information” of the disclosing party. Confidential Information shall be kept in the strictest confidence and shall be protected by all reasonable and necessary security measures. Confidential Information shall not be released by the receiving party to anyone except an employee, or agent who has a need to know same, and who is bound by confidentiality obligations. Neither party will use any portion of Confidential Information provided by the other party hereunder for any purpose other than those provided for under this Agreement.

4. Ameriquest attached to its original Cross-Complaint for Declaratory Relief for Indemnity two addendums to the Agreement, dated February 2, 2004 and October 27, 2003. These addendums disclose the fees that Ameriquest agreed to pay Lead Extreme for each Qualified Lead.

5. Ameriquest's disclosure of Lead Extreme's pricing information in publicly-available documents is a breach of Paragraph 5.1 of the Agreement.

**SECOND COUNTERCLAIM:
Misappropriation of Trade Secrets (78 O.S. § 85 *et seq.*)**

6. Lead Extreme realleges and incorporates by reference paragraphs 1-5 of the Counterclaim.

7. Lead Extreme's pricing information constitutes a trade secret.

8. By publishing Lead Extreme's pricing information in the Cross-Complaint for Declaratory Relief for Indemnity, Ameriquest disclosed Lead Extreme's trade secret.

9. At the time of Ameriquest's disclosure, Ameriquest knew or should have known that the pricing information was acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use.

10. Ameriquest's disclosure of Lead Extreme's trade secret constitutes a misappropriation of Lead Extreme's trade secret under 78 O.S. § 85 *et seq.*

WHEREFORE, Lead Extreme respectfully requests that Ameriquest take nothing by reason of its Amended Cross-Complaint, and that judgment on the Amended Cross-Complaint be entered in favor of Lead Extreme together with its costs and attorneys' fees. Lead Extreme further requests that this Court enter the following relief:

A. Award judgment in its favor and against Ameriquest for Lead Extreme's breach of contract and misappropriation of trade secrets claims;

B. Award Lead Extreme its actual damages;

C. Award Lead Extreme exemplary damages for the willful and malicious conduct of Ameriquest;

D. Award Lead Extreme all of its legal costs and expenses in bringing these Counterclaims; and

E. Award Lead Extreme all further relief to which it is entitled.

s/ Marie S. Johnston

PHILLIP L. FREE, JR., OBA # 15765

MARIE S. JOHNSTON, OBA #19847

Attorneys for Defendant, Innovative

Marketing, Inc. d/b/a Lead Extreme

CROWE & DUNLEVY

A Professional Corporation

20 North Broadway, Suite 1800

Oklahoma City, Oklahoma 73102

Telephone: (405) 235-7700

Fax: (405) 272-5282

E-mail: freephil@crowedunlevy.com

Johnstom@crowedunlevy.com

CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2005, I electronically transmitted the attached document to the Clerk of Court using ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Kalley R Aman
Michael J Cereseto
Buchalter Nemer Fields & Younger
601 Figueroa St., Suite 2400
Los Angeles, CA 90017
kaman@buchalter.com
mcereseto@buchalter.com
Attorneys for Defendant Ameriquest Mortgage Co.

Terry D Kordeliski
Robert A Nance
Riggs Abney Neal Turpen Orbison Lewis
5801 N. Broadway Ave., Suite 101
Oklahoma City, OK 73118
TKordeliski@RiggsAbney.com
rnance@riggsabney.com
Attorneys for Defendant Ameriquest Mortgage Co.

Michael R McKee
McKee Law Firm
Post Office Box 1351
Norman, OK 73070
mike@mckeelawfirm.com
Attorney for Plaintiff Robert H. Braver

David Humphreys
Luke J Wallace
Humphreys Wallace Humphreys
1724 E 15th St
Tulsa, OK 74104
918-747-5300
David@hwh-law.com
Luke@hwh-law.com
Attorneys for Plaintiff Robert H. Braver

s/ Marie S. Johnston

Marie S. Johnston