

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
17-CVS-306

NORMAN L. SLOAN, JOHN T. ROOT,
CANDACE A. TRUMBULL, CANDACE
WERNICK, WONEEYA THUNDERING
HAWK, and BIZROBE TRUST, BY ITS
TRUSTEE DOUBLEBENT, LLC,

Plaintiffs,

v.

INOLIFE TECHNOLOGIES, INC.,
MANHATTAN TRANSFER REGISTRAR
COMPANY, MTRCO, and JOHN CHARLES
AHEARN III,

Defendants.

**SECOND AFFIDAVIT OF
MATTHEW H. MALL**

The Affiant, Matthew H. Mall, after being first duly sworn, deposes and says:

1. I am over 18 years of age, suffer from no known disability, and have personal knowledge of the facts set forth herein.
2. I am a partner at the law firm of Parker Poe Adams & Bernstein LLP, which represents Defendants in the above-captioned matter.
3. I am providing this Affidavit in support of the Defendants' Motion to Dismiss and for Attorneys' Fees in the case referenced above.
4. Attached to this Affidavit as Exhibit 1 is a true and accurate copy of a letter I emailed to Norman Sloan, counsel of record for Plaintiffs, on March 10, 2017.
5. Attached to this Affidavit as Exhibit 2 is a true and accurate copy of a letter I received from Mr. Sloan on March 14, 2017.

Further, the Affiant sayeth not.

[Signature on following page]

This the 6th day of April , 2017.

Matthew Mall

Matthew Mall

Wake County, North Carolina

Signed and sworn to before me this day by Matthew Mall.

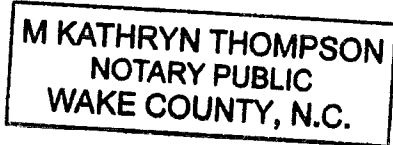
Date: 4/6/17

M. Kathryn Thompson
Official Signature of Notary Public

M. Kathryn Thompson Notary Public

My commission expires: 2-8-19

(Official Seal)



CERTIFICATE OF SERVICE

This is to certify that on this date the foregoing **SECOND AFFIDAVIT OF MATTHEW H. MALL** was electronically filed with the North Carolina Business Court and served upon counsel of record via the North Carolina Business Court's electronic filing and service system in accordance with BCR Rule 3.9, as follows:

Norman L. Sloan
N.C. State Bar No. 4027
3540 Clemmons Road, Suite 110
Clemmons, NC 27012
Telephone: (336) 748-0008
Fax: (336) 766-0903
nlsloanlaw@aol.com

Attorney for Plaintiffs

This the 6th day of April, 2017.

PARKER POE ADAMS & BERNSTEIN LLP

/s/ Eric C. Cottrell
Eric. H. Cottrell
NC State Bar No.: 21994
Matthew H. Mall
NC State Bar No. 36014
Katherine H. Graham
NC State Bar No. 50119
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*Attorneys for Defendants Inolife Technologies, Inc.,
Manhattan Transfer Registrar Company, MTRCO,
and John Charles Ahearn III*

NORMAN SLOAN, ET AL.,
V.
INOLIFE TECHNOLOGIES, INC., ET AL.
17-CVS-306 (NC Business Court)

SECOND AFFIDAVIT OF MATTHEW H. MALL

EXHIBIT 1



Matthew H. Mall

Partner

Telephone: 919.835.4626

Direct Fax: 919.834.4564

matthewmall@parkerpoe.com

Atlanta, GA
Charleston, SC
Charlotte, NC
Columbia, SC
Greenville, SC
Raleigh, NC
Spartanburg, SC

March 10, 2017

VIA ELECTRONIC MAIL

Norman L. Sloan
3540 Clemmons Road, Suite 110
Clemmons, NC 27012
nlsloanlaw@aol.com

Re: *Sloan, et al. v. InoLife Technologies, Inc., et al.*

Dear Mr. Sloan:

I write to request that you withdraw the Unfair and Deceptive Trade Practices claim you asserted on behalf of the Plaintiffs in the above case. As you know, the Plaintiffs filed an Amended Complaint on March 7th. The Amended Complaint asserts a number of new claims, including a Sixth Claim for Relief for Unfair and Deceptive Trade Practices pursuant to N.C. Gen. Stat. § 75-1.1. According to the Amended Complaint, this claim is based on conduct regarding the Plaintiffs' alleged "Preferred Series B and D shares of stock." See Amended Complaint, ¶ 57.

Since 1985, it has been well established that claims involving securities cannot support a Chapter 75 claim. See, e.g., *Skinner v. E.F. Hutton & Co.*, 314 N.C. 267, 275, 333 S.E.2d 236, 241 (1985) (holding that securities transactions cannot be the basis for a Chapter 75 claim); *HJMM Co. v. House of Raeford Farms, Inc.*, 328 N.C. 578, 594, 403 S.E.2d 483, 493 (1991) (same); *Sterner v. Penn*, 159 N.C. App. 626, 634–35, 583 S.E.2d 670, 676 (2003) (same); *Oberlin Capital, L.P. v. Slavin*, 147 N.C. App. 52, 554 S.E.2d 840 (2001) (same); *Loftin v. QA Investments LLC*, No. 03 CVS 16882, 2015 WL 2069713, at *10 (N.C. Super. Apr. 30, 2015) (same); *DeGorter v. Capitol Bancorp Ltd*, No. 11 CVS 20825, 2011 WL 3300304, at *7 (N.C. Super. July 29, 2011) (same); *NNN Durham Office Portfolio 1, LLC v. Grubb & Ellis Co.*, No. 10 CVS 4392, 2016 WL 7489690, at *33 (N.C. Super. Dec. 29, 2016) (same); *Latigo Investments II, LLC v. Waddell & Reed Fin., Inc.*, No. 06 CVS 18666, 2007 WL 2570753, at *5 (N.C. Super. May 22, 2007) (same). Under well-established North Carolina precedent, the Plaintiffs' Unfair and Deceptive Trade Practices claim has no basis.

N.C. Gen. Stat. § 75-16.1 allows a defendant to recover its attorneys' fees if the party asserting a Chapter 75 claim "knew, or should have known, the action was frivolous and malicious." If the Plaintiffs do not dismiss their Chapter 75 claim by March 17th, the Defendants will seek to recover the attorneys' fees they incur in defending

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against this claim. A dismissal after this date will not avoid a motion by the Defendants to recover their attorneys' fees because, by that time, the Defendants will have unnecessarily incurred expenses to defend against this groundless claim. Accordingly, please dismiss the claim no later than March 17th.

Sincerely,

A handwritten signature in blue ink, appearing to read "mhall", is positioned below the word "Sincerely,".

Matthew H. Mall

NORMAN SLOAN, ET AL.,
V.
INOLIFE TECHNOLOGIES, INC., ET AL.
17-CVS-306 (NC Business Court)

SECOND AFFIDAVIT OF MATTHEW H. MALL

EXHIBIT 2

NORMAN L. SLOAN
ATTORNEY AT LAW

3540 CLEMMONS ROAD, SUITE 110
CLEMMONS, NORTH CAROLINA 27012
TELEPHONE 336.748.0008
FACSIMILE 336.766.0903
nlsloanlaw@aol.com

March 14, 2017

VIA EMAIL ATTACHMENT matthewmall@parkerpoe
AND FIRST CLASS U.S. MAIL

Matthew H. Mall, Esq.
Parker Poe Adams & Bernstein LLP
PNC Plaza
301 Fayetteville Street, Suite 1400
Raleigh, NC 27602-0389

Re: *Sloan, et al. v. Inolife Technologies, Inc. et al.*
 17 CVS 306, Forsyth County, N.C. Business Court

Dear Matthew:

I am in receipt of your March 10, 2017 letter in which you request that I withdraw the Unfair and Deceptive Trade Practices claim that I asserted on behalf of the Plaintiffs in the above referenced litigation. I have carefully reviewed your letter, the cases upon which you rely, and disagree that there is any applicability of these cases that you cite in the matter *sub judice*.

The allegation ¶ 57 is the basis for the N.C. Gen. Stat. § 75-1.1 claim that states: “Defendants knowingly deprived Plaintiffs of its Preferred Series B and D shares of stock, and engaged in conduct to steal the Preferred Series B and D shares of stock from Plaintiffs.” The basis of the claim is not one in which the stock was sold or purchased, i.e., a securities transaction. It involves theft of stock by your client, not a securities transaction. Your client did not offer to purchase any stock from my clients or purchase any stock from my clients. It has been alleged in the Complaint that there is a breach of fiduciary duty owed to the Shareholders by the Corporation.

The case that you have cited of *Skinner v. E.F. Hutton & Co.*, 314 N.C. 267, 275, 333 S.E.2d 236, 241 (1985) is a matter where it was claimed that the defendant stockbrokers induced plaintiffs to buy securities by representing that they have “inside information” which will result in those securities increasing in value. This case involved a purchase, a security transaction by way of purchase. This is unlike the claim in the present matter. The claim is based upon your

client converting equity that is owned by the Plaintiffs in InoLife Technologies, Inc. I do not disagree with your analysis, from the litany of cases you cite that securities transactions are beyond the scope of N.C.G.S. 75-1.1, but you are entirely incorrect in the applicability of those cases to the present litigation.

However, there is a substantial basis for the Plaintiff's Unfair and Deceptive Trade Practices claim. There is a claim of breach of fiduciary duty, and the allegations extend beyond the purchase and sale of securities, and there was no purchase of a security involving your clients' actions, that of your client wrongfully converting the securities that my clients own. There was no interaction of market participants in the present matter in the sense of buying and selling. There was theft on the part of your client.

Kure Corp., v. Peterson, 2017 NCBC 1, 2017 WL 61969, 16 CVS 13776 (January 5, 2017) sets it out quite well regarding a Chapter 75 Claim in which Judge Bledsoe states, in applicable part:

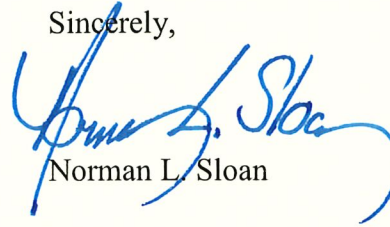
“Nevertheless, the Court concludes that Plaintiff made a reasonable determination after a reasonable inquiry that the claim was warranted under existing law. The Complaint also asserts a claim for breach of fiduciary duty, and Smith has asserted that, based upon his inquiry into the law, he understood the securities exception but believed that the Chapter 75 claim was merited because of his understanding that ‘[Chapter 75] applied to interactions between market participants, which CDS and KURE certainly were, and [I] understood that it applied in instances in which the defendant breached fiduciary duties.’ . . . The Court concludes that Smith’s belief that the claim was warranted by existing law was reasonable because; (1) Plaintiff’s allegations extended beyond the purchase and sale of securities; and (2) in certain instances, North Carolina Courts have upheld unfair and deceptive trade practices claims on the basis of an alleged breach of fiduciary duty. *See, e.g., Sara Lee Corp. v. Carter*, 351 N.C. 27, 31-33, 519 S.E.2d 308, 311-12 (1999) (upholding trial courts finding that conduct underlying plaintiff’s breach of fiduciary duty claim also gave rise to a Chapter 75, claim); *Governor’s Club Inc. v. Governors Club Ltd. P’ship*, 152 N.C. App. 240, 250, 567 S.E.2d 781, 788 (2002) (reversing dismissal of a Chapter 75 claim where the trial court erred in dismissing breach of fiduciary duty claim. In light of this case law and the scope of Plaintiff’s allegations, the Court concludes that Smith formed a reasonable belief that the Chapter 75 claim was warranted by existing law.”

Based upon the foregoing, if the Defendants seek to recover attorneys’ fees they incur in defending against this entirely legitimate and meritorious claim, I will seek on behalf of the Plaintiffs attorney’s fees from the Defendants. There is nothing frivolous and malicious about the Chapter 75 claim. In plain English, I am eagerly awaiting to learn why the Defendants believe that they can commit larceny and theft with impunity.

If the Defendants are so concerned about the Chapter 75 claim, which is warranted in existing law, then perhaps they would want to consider providing the Plaintiffs with paper

certificates for the Preferred Series B and D shares of stock rather than Defendant Inolife Technologies, Inc. waging peril to the Plaintiffs' legitimate claims, its continuing presageful behavior, and threats to some of the Plaintiffs of criminal action against the Plaintiffs, which is entirely specious, spurious, and fallacious. That will be the subject of a letter that will follow to Mr. Cottrell.

Sincerely,

A handwritten signature in blue ink, appearing to read "Norman L. Sloan", with a large, sweeping flourish extending to the right.

Norman L. Sloan

NLS/abh

cc: Eric H. Cottrell, Esq. (via facsimile and US Mail)