

FILED  
09 JAN 13 PM 3:21  
KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

**JULIE SPECTOR**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

BRADLEY KLOCK,

Plaintiff,

v.

CLEARLY LASIK, INC., a Nevada corporation; MICHAEL MOCKOVAK and HEATHER MOCKOVAK, and the marital community compose thereof; and JOSEPH KING AND HOLLY KING, and the marital community composed thereof,

Defendants.

No. **09-2-03018-9 SEA**

COMPLAINT FOR BREACH OF CONTRACT, WAGES, DEFMATION AND MALICIOUS PROSECUTION

COMES NOW Plaintiff Bradley Klock ("Klock"), by and through his counsel of record, alleges as follows:

**I. PARTIES, JURISDICTION AND VENUE**

1. Klock resides in Vancouver, British Columbia, and is a Canadian citizen. As explained more fully below, Klock was employed by Defendant Clearly Lasik, Inc. ("Clearly Lasik") in Renton, Washington and Surrey British Columbia as its President and Chief Executive Officer.

2. Defendant Clearly Lasik, Inc. ("CLI") is a Nevada corporation registered to do business in the State of Washington. CLI's principal place of business is Renton, Washington.

COMPLAINT - 1

CONNOR & SARGENT PLLC  
1200 5th Ave., Suite 1650  
Seattle WA 98101  
(206) 654-5050 • FAX (206) 624-0011

**ORIGINAL**



1           7.       During 2005, the business of CLI expanded pursuant to a business model  
2 established by the Board of Directors. Klock was instrumental in the opening of five new  
3 clinics.

4           8.       In January, 2006, discussions were held among Don Cameron (CLI's CFO),  
5 Mockovak, King, and Klock concerning Klock's 2005 bonus. It was agreed by King and  
6 Mockovak that Klock had earned a \$130,000 bonus. Klock offered to take only a small  
7 portion of the bonus in cash--\$20,000—if he could reinvest the remaining portion of his  
8 bonus in the business. Klock made clear that he was only willing to do so if, in the event his  
9 employment was terminated for any reason or the company changed direction, he could have  
10 his money back in cash. Mockovak and King agreed to do so and CLI's attorney, Chris  
11 Marsh, was instructed to draft a document reflecting that agreement. Marsh did so.  
12

13           9.       In early 2006, the compensation structure for the following year was set and  
14 approved at Board and memorialized by the corporate meeting minutes. Klock was to  
15 receive a base salary of \$170,000 with a bonus based on an approved formula and a  
16 provision for \$340,000 in severance pay on termination, plus other benefits. During this  
17 time it was agreed that formal employment agreements should be entered into with the CEO  
18 and CFO, and attorney Marsh commenced to draft such documents. Klock consented to  
19 continue working provided progress was being made to memorialize the terms of his  
20 employment.  
21

22           10.      As the drafts of Klock's employment agreement were being prepared and  
23 reviewed, King and Mockovak first raised objections to the agreed severance amount. (King  
24 and Mockovak never expressed objection to any of the other terms of the documents drafted  
25 by Marsh.) King initially indicated that he believed that an appropriate severance would be

1 six weeks. Klock disagreed and suggested that an independent consultant be retained to  
2 ascertain what a reasonable and appropriate severance amount was. The Board consented to  
3 the retention of such a consultant.

4 11. The consultant retained by CLI prepared a report indicating that an  
5 appropriate amount of severance for somebody occupying the CEO position held by Klock  
6 would be three years of base salary, bonus and remaining Long Term Incentive.  
7

8 12. Despite having procured the recommendations of the consultant, Mockovak,  
9 King and CLI failed to finalize the employment agreement with Klock. Rather, in an  
10 apparent effort to renege on obligations owing to Klock, Mockovak and King began a  
11 campaign to undermine Klock by seeking negative input about him from staff. On  
12 November 29, 2006, Mockovak and King informed Klock that they were terminating  
13 Klock's employment.  
14

15 13. At the time that they terminated his employment, Mockovak and King told  
16 Klock that they had decided to "detract" rather than expand the business and had decided  
17 that there was no need to have a "high powered executive" like Klock. Both stated that they  
18 had tried to make things work and that through nobody's fault things had not turned out as  
19 planned. They both told Klock that they had the utmost respect for him and Mockovak  
20 assured Klock that the decision was not about him personally or his performance. They  
21 requested that Klock stay on for a three-month transition. At the end of the meeting, Klock  
22 was handed a separation and release agreement asking him to waive his rights in exchange  
23 for a salary continuance denominated as severance.  
24

25 14. Because the proposed severance was not an appropriate amount of severance  
and did not contemplate payments of amounts already owing to Klock, Klock retained

1 counsel to advise him how he should proceed to protect his interests. To this end Russell  
2 Perisho communicated on Klock's behalf in early December, 2006, with Jeff James, counsel  
3 for CLI.

4 15. Following communications by Mr. Perisho, Mr. James announced on  
5 December 19, 2006, that his clients had terminated Klock for cause for (1) improperly  
6 instructing employees not to communicate with Mockovak and King, and (2) for improper  
7 expenses. Prior to the communications from King's counsel, King and Mockovak had never  
8 indicated that Klock's termination had been for cause but had indicated the opposite.

9 16. The expenses incurred by Klock were either regular or necessary business  
10 expenses incurred in the performance of Klock's duties, or were personal expenses Klock  
11 incurred using a corporate credit card and had been reimbursed or would have been  
12 reimbursed in due course in keeping with the normal practices of CLI.

13 17. Following their "for cause" claim, King and Mockovak, as part of a strategy  
14 to deter Klock from collecting money properly owed to him, began telling third parties that  
15 Klock had stolen money and was under criminal investigation for fraud and embezzlement at  
16 a time prior to the initiation of any such investigation. As part of this scheme, Mockovak,  
17 King and CLI retained an "investigator," Rose Winquist, who communicated similarly false  
18 and defamatory statements about Klock. All actions of Winquist addressed herein were  
19 done for the benefit of the defendants and the defendants are liable for all such actions.

20 21 22 23 24 25 18. The false statements made by and on behalf of Defendants about Klock  
caused Klock substantial emotional distress as well as economic damages by injuring his  
reputation.

1 19. Mockovak's and King's malignant campaign against Klock did not stop with  
2 their slanderous statements to private parties. Rather, Mockovak and King filed charges  
3 with the Renton police department making similarly false claims. Those claims were filed  
4 with the police for the malicious purpose of further deterring Klock from pursuing his claims  
5 against Defendants.  
6

7 20. As a consequence of the false charges alleged against Klock by Mockovak  
8 and King, which charges were without probable cause, Klock was arrested, arraigned,  
9 handcuffed, fingerprinted, photographed, and placed in jail for seven hours.

10 21. In addition to the emotional distress suffered by Klock as a consequence of  
11 his wrongful arrest, Klock was forced, at considerable expense, to procure counsel and  
12 dedicate substantial time and energy to rebut the false charges.  
13

14 22. The King County Prosecutor has now dismissed the charges brought against  
15 Klock as a consequence of the false and malicious allegations made against Klock.  
16

### 17 III. CAUSES OF ACTION

18 23. Klock realleges and incorporates the foregoing paragraphs as though fully set  
19 forth herein.

#### 20 A. Breaches of Contract.

21 24. Defendants breached their contracts with Klock to pay him bonuses owing for  
22 2005 and 2006 and to pay him a reasonable severance upon his termination.

23 25. Klock has been damaged by Defendants' breaches in amounts to be proved at  
24 time of trial.

#### 25 B. Quantum Meruit.

26. In the alternative, Klock rendered services to Defendants from which they  
have benefited and for which he has not been fully compensated.

1           27.     The amount of compensation owing for the services rendered by Klock will  
2 be proved at time of trial.

3 **C.     Wrongful Withholding of Wages.**

4           28.     The failure to pay Klock amounts owing to him for services rendered  
5 constitutes a wrongful and intentional withholding of wages in violation of RCW 49.52.050.

6           29.     Klock has been damaged by such wrongful failure to pay wages in amounts  
7 to be proved at time of trial.

8 **D.     Defamation.**

9           30.     The false statements made by Defendants about Klock described above  
10 constitute defamation and defamation *per se*.

11           31.     Klock has been damaged by Defendants' defamation in amounts to be proved  
12 at time of trial.

13 **E.     Malicious Prosecution.**

14           32.     Defendants' actions in initiating the prosecution of Klock, as described  
15 above, constitute malicious prosecution.

16           33.     Klock has been damaged by Defendants' malicious prosecution in amounts to  
17 be proved at time of trial.

18 **IV. PRAYER FOR RELIEF**

19           WHEREFORE Klock requests that the court enter judgment against Defendants as  
20 follows:  
21

22           A.     Awarding him the full amount of his damages for Defendants' breaches of  
23 contract;


24           B.     Awarding him liquidated damages under RCW 49.52.070 in the amount of  
25 wages wrongfully withheld;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

- C. Awarding him damages for the emotional distress he has suffered as a consequence of Defendants' defamation and malicious prosecution;
- D. Awarding him presumed and penalty damages for Defendants' *per se* defamations;
- E. Awarding him damages in the amount of attorney's fees he incurred as a consequence of Defendant's malicious prosecution;
- F. Awarding him prejudgment interest on any awards;
- G. Awarding him statutory costs and fees;
- H. Awarding him his actual and reasonable attorneys' fees and litigation expenses under RCW 49.48.030; and
- I. Awarding him such other and further relief as the court deems just and equitable.

DATED this 13<sup>th</sup> day of January, 2009.

CONNOR & SARGENT PLLC

By   
Stephen P. Connor, WSBA No. 14305  
Anne-Marie E. Sargent, WSBA No. 27160  
Attorneys for Plaintiff Bradley Klock