



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ADNAN ADAMJI and	)
STEVEN SCHNALL,	)
	)
Plaintiffs,	)
	)
v.	)
	)
KENNETH CHESSICK, M.D. and	)
ELLEN CHESSICK,	)
	)
Defendants,	)
	)
RESTAURANT.COM, INC.,	)
	)
Nominal Defendant.	)

C.A. No.:

**VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT  
ALLEGING BREACHES OF FIDUCIARY DUTIES**

Plaintiffs, Adnan Adamji (“Adamji”) and Steven Schnall (“Schnall”, or collectively with Adamji, “Shareholder Plaintiffs”), by and through their undersigned counsel, do hereby bring the following Verified Complaint against Individual Defendants, Kenneth Chessick, M.D. (“Chessick”) and Ellen Chessick (“Mrs. Chessick”, or collectively with Chessick, “Director Defendants”) and Restaruant.com, Inc. (“Company”) as Nominal Defendant. In support thereof, Plaintiffs aver the following, upon information and belief:

1. Plaintiffs bring this action on behalf of Restaurant.com, Inc. seeking equitable and declaratory relief, as well as monetary damages, based on the Director

Defendants' self-interested and disloyal conduct. As Directors Defendants cannot exercise independent objective judgment in deciding whether to bring this claim, a demand to litigate this matter upon the Board of Directors would be futile.

### PARTIES

2. Plaintiff Adamji, an individual residing in the State of Illinois, was employed by the Company starting in 2004. Adamji served as the Company's Chief Information Officer and oversaw technology infrastructure, including the re-architecture of the Restaurant.com website. Adamji has and continuously owns approximately 400,000 shares of Common Stock in the Company.

3. Plaintiff Schnall, an individual residing in the State of New York, is one of the Company's original investors. Schnall has and continuously owns approximately 700,000 shares of Common Stock in the Company.

4. Defendant Chessick, an individual residing in State of Illinois, is, according to the Company's website, governance documents, filings with the S.E.C. and other investigation, the Company's Chief Executive Officer, a Director and the Company's overwhelming Majority Shareholder.

5. Defendant Mrs. Chessick, an individual residing in State of Illinois, is married to Chessick and serves as an Officer and the other Director of the Company.

6. Nominal Defendant, Restaurant.com, Inc., is a Delaware Corporation with a formation date of April 1, 1999 and registered agent: National Registered Agents, Inc., 160 Greentree Drive, Suite 101, Dover, Delaware 19904.

### JURISDICTION AND VENUE

7. Jurisdiction over the subject matter is proper because of the equitable nature of claims raised (10 *Del. C.* § 341), and injunctive relief requested (10 *Del. C.* § 343). This Court may also hear related legal claims, if any, pursuant to the clean-up doctrine.

8. Jurisdiction over the persons of the individual Defendants is proper because both are Directors and Officers and, as a matter of Delaware Law, thereby, consent to personal jurisdiction with the Registered Agent of the Company serving as their agent for service of process. *See* 10 DEL C. § 3114 (Director and Officer Implied Consent Statute).

9. Jurisdiction over Nominal Defendant is proper because it is a domestic Corporation.

10. Venue is properly laid before this Court because this matter concerns the internal affairs of a Delaware Corporation, Delaware law governs and the Company's Bylaws contain a forum selection clause designating Delaware Courts as the sole and exclusive venue for this variety of litigation.

FACTS  
The Business of Restaurant.com, Inc.

11. The Company is a pioneer in the restaurant deal space and the nation's largest restaurant-focused digital deals brand. Founded in 1999, the Company connects digital consumers, businesses and communities. Presently, the Company purportedly offers over 200,000 dining and merchant deal options nationwide at 187,000 restaurants and retailers to over 7.8 million customers.

12. The Company had experienced financial success, for a time. Total revenues climbed steadily each year from only \$6.3M in 2005 to \$63M in 2011. Exhibit "A", Restaurant.com, Inc. Financial Statements for Years 2010 and 2011. Revenues increased 15% from 2010 to 2011 alone, the fourth straight year that revenues increased by double digit percentages.

The Company Is Dominated by Chessick

13. Chessick started as the Company's CEO in January 2012. In that same year, while concurrently the Majority Shareholder and Chairman of the Board, he instituted drastic changes to the Company's business model. Chessick did so, despite the fact that he did not understand the Company's business and never intended to devote sufficient time to the Company to maintain the success of its business.

14. Certain of the changes Chessick implemented include: (a) terminating the entire sales team and instead employing a tele-sales call center; (b) changing the

restrictions on restaurants that may participate; (c) focusing the business on selling the \$10.00 certificates rather than the \$25.00 certificates that had a proven history of growing revenues; (d) cutting back on an e-mail marketing campaign used to drive sales, instead implementing technology and marketing programs that had to be discontinued shortly after their launch; (e) reducing the amounts of commissions; and (f) revising contracts to his personal preferences.

15. All of these moves caused a significant number of restaurants to leave the Company's program. In May 2013, a year and a half after Chessick ascended to the role of CEO, nearly 6,000 restaurants had left the program.

16. In addition, the Company's revenues dropped significantly under Chessick's stewardship from \$63M in 2011, down to \$44M in 2012, \$41M in 2013 and to approximately \$30M in 2015.

#### Chessick's Divided Loyalties

17. Prior to becoming CEO, Defendant Chessick had no experience managing a large corporate organization. Rather, he had an established practice as a medical doctor and attorney in the State of Illinois. He obtained his licenses to practice medicine (1969) and prescribe controlled substances (1981), both of which remain active.

18. Chessick earned a law degree from Northern Illinois University in 1984 and founded his own law firm, the Law Offices of Kenneth C. Chessick, M.D., Ltd.,

which remains an active entity. Additionally, Chessick is affiliated with the Clifford Law Offices, P.C. as an Of Counsel attorney. That affiliation remains active.

19. During his tenure as CEO and Director, while instituting major changes to business operations and direction, Chessick was not concentrating his best efforts for the benefit of the Company and its Shareholders. Rather than working in a full-time capacity at the Company, Chessick was also practicing law for his law firm and, presumably, for the Clifford Law Offices, P.C. as well.

20. Chessick changed the business address of his law firm to the same offices as the Company, so that he could continue working on his law practice simultaneously with the business of the Company.

21. For example, Chessick filed the case of *Biolotto v. Aileen Go and Loyola University Medical Center*, case number 13 L 10805, on September 27, 2013 and, presumably, worked on that matter (and others) in his law practice. This was time that should have been devoted to the Company for the benefit of Shareholders.

22. It appears that Chessick may have also been practicing medicine, while practicing law and endeavoring to function as the Company's CEO and Board Chairman.

Motivated by Self-Interest  
Chessick Turns Away Outside Investors

23. In 2010, a joint venture composed of Battery Ventures VIII, L.P. and Norwest Venture Partners, XI, L.P., offered to purchase a portion of the Company for \$75M in cash. Exhibit “B”, Summary Term Sheet of Battery/Norwest Purchase Offer (“Battery Offer”).

24. That term sheet specified that up to \$70M would be used to purchase the Company’s Common Stock from the founders and current investors, with \$5M for working capital. This offer was based on a \$120M value of the Company on a fully diluted basis, including shares issuable pursuant to the Company’s stock option plan. The form of this sale/investment was to be in return for Series C convertible preferred stock.

25. If accepted, that offer would result in Chessick becoming one of five Directors, with two being Restaurant.com, Inc. outsiders. Despite the significance of the offer, Chessick, as the Majority and Controlling Shareholder (as well as Chairman of the Board and CEO) refused to accept.

26. In the fall of that same year, another offer of significance was presented to the Company. The offer, which was provided with the assistance of investment bank, Credit Suisse, was to provide \$75M in cash and was secured by a \$125M business valuation.

27. If accepted, this offer contemplated someone other than Chessick becoming CEO. Again, as the Majority and Controlling Shareholder, Chessick refused to accept the offer.

Chessick Purchases Series C Preferred Stock Himself and  
Further Increases Control over Company

28. Rather than have an outside investor acquire an equity position of significance and voice on the Board, Chessick sought to seize suffocating control of the Company for himself.

29. In or about April or May 2012, Chessick caused the Company to offer for sale Series C preferred stock by way of a private sale. Pursuant to a Private Placement Memorandum, the Company was seeking to sell a maximum number of 8,988,764 shares for the maximum offering amount of \$8M at a \$0.89 per share. Exhibit "C", Private Placement Memorandum.

30. This Memorandum provides that the Majority Shareholder, Chessick, is not only allowed to buy as part of the offering, but that an earlier advancement of \$1M from Chessick to the Company will be put toward Chessick's purchase of the Series C preferred shares.

31. The Series C ranked higher, for liquidation purposes than the Common, but lower than the Series A and B. Interest was to be paid on the Series C at the prime rate of 3.25%, plus an additional 5%, for an effective interest rate of 8.25%,



which was a much higher rate of return than routinely available at the time, due to the recession.

32. Additionally, this offering had a very short deadline, so that few to no other investors would be located. That way, Chessick would be sure to purchase most, if not all, of the Series C Preferred.

33. His self-interested plan worked: Chessick bought nearly all of the Series C Preferred Stock that was offered. This resulted in the dilution of other Shareholders' interests, while Chessick's equity increased from 65.66 % to 73.44%.

34. In unilateral exercise of his swollen control over the Company, Chessick increased his salary and other compensation as a self-interested means of offsetting his investment. This salary increase was neither based on his work as the CEO nor approved by a duly noticed meeting of the Board.

#### Chessick's Plan to Maximize His Personal Benefits Backfires

35. After purchasing the Series C Preferred and further increasing his controlling interest in the Company, Chessick planned to captain the Company to financial success. Then, he would keep mostly for himself the proceeds of a future sale of the Company, having to pay very little, if anything, to the Common Stockholders.

36. Chessick does not, however, have the managerial and leadership abilities necessary to make the Company successful. To the contrary, Chessick has caused further harm to the Company.

37. For example, in 2015, the Company received a purchase offer that was based on a business valuation of only \$2M, which is approximately \$120M less than the offer Chessick refused just three years earlier. That was an unfair and undervalued purchase price. Moreover, at least at that time, Chessick still believed he had the wherewithal to make the Company prosperous.

38. Also in 2015, Chessick caused his wife to Amend the Company's Bylaws. Exhibit "D", Amended and Restated Bylaws of Restaurant.com, Inc., dated April 24, 2015. Within the Bylaws is a Fee Shifting Provision that purports to shift attorney fees and costs to Shareholders that are unsuccessful in litigation, as an apparent attempt to chill claims asserted against the Director Defendants.

39. In 2016, Chessick sought to increase the amount of working capital by terminating the employment of 20 - 25 employees. However, instead of strategically repurposing the newly found capital to stimulate business growth, at a time when the Company's profitability was down-trending, Chessick unilaterally caused his salary to be increased again, this time by \$50,000.00 and his personal expenses to be reimbursed by the Company.

40. Certain of Chessick's personal expenses, which have no relation to his work, that he has caused the Company to reimburse include: flying himself and his family to Florida and other locations to attend Northern Illinois University football games; travelling to Europe on a cruise for vacation; paying for other vacations and personal trips; and in other ways that discovery will reveal.

41. Chessick's most recent irrational attempt to make the Company profitable was increasing the price of certificates offered for sale to business customers at a 300% price mark-up. Earlier this year (2019), when he was specifically advised that such a move was ill-advisable and likely to hurt revenue, Chessick terminated the senior executive that provided that advice.

42. The marked-up prices resulted in further harm to the business-to-business sales division and reputation in that sales space.

Chessick Now Wants Out and is Pursuing an  
Asset Sale at an Unfair Price to Minority Shareholders

43. In July 2019, Chessick caused an Asset Sale Advertisement sheet to be publicized seeking potential buyers. Exhibit "E", Corporate Asset Sale Advertisement, dated July 2019. This Advertisement presents for sale the entirety of the Company's most essential assets: intellectual property, customer databases, restaurant relationships, technology and sales platforms.

44. Chessick has, apparently, now recognized his limitations as a CEO and desires to sell off his personal, ownership interests in the Company at whatever price. He has communicated his plan to consummate a purchase/sale transaction by the end of this calendar year, that is, by the end of next month (December 2019).

45. Presently, a potential buyer is performing due diligence in connection with a purchase price of \$2M.

46. Further, that price is a mere fraction of what had been earlier offered to the Company, but was refused by Chessick out of an entrenchment motive. Indeed, the Company's profitability and perceived value has lessened due to Chessick's self-interest. The significance of the hurtful impact caused by Director Defendants' disloyalty and wrongdoing, in refusing to accept higher offers and increasing Chessick's compensation without justification, is now readily discernible.

#### DERIVATIVE AND DEMAND ALLEGATIONS

47. Plaintiffs bring this action derivatively in their right and for the benefit of Restaurant.com, Inc., to redress the injuries suffered, and to be suffered, by the Company as a direct result of the breaches of fiduciary duty and wrongful conduct by the Director Defendants.

48. The Company is antagonistic to and aware of Plaintiffs' claims. Indeed, Plaintiffs have already asserted certain of these claims in the Circuit Court of Cook County, Illinois, Country Department, Chancery Division. That case bears number

17 CH 14264. It was dismissed last year, without prejudice, due to the Court's enforcement of a Forum Selection provision bylaw provision.

49. Chessick has represented to the prospective buyer, who is presently undergoing due diligence, that the Plaintiffs' lawsuit is over.

50. The Board of Directors is comprised of Chessick and his wife. Chessick is interested because he will receive, and has already received, personal financial benefits from the transactions asserted herein, which will not equally be shared by the minority Common Stockholders. Further, Chessick has seen to it that there are no outside or independent Directors that would lower the volume of his voice on the Board.

51. Mrs. Chessick is not known to make meaningful business decisions, certainly none contrary to her Husband. Mrs. Chessick's close family relationship with her Husband would heavily influence her ability to exercise impartial judgment. She is likely to make decisions based on her Husband's influence, rather than the corporate merits of the subject before the Board.

52. Further, a Books and Records Demand, pursuant to 8 Del. C. § 220, seeking additional information that would inform Plaintiff's claims in this lawsuit was issued to the Company on November 7, 2019. Exhibit "F", Books and Records Demand. The response received is incomplete and indicates documents are being

refused. It is, therefore, reasonable for the Court to presume that the Board is not in possession of any exculpatory documents.

53. It is also reasonable for the Court to doubt the Defendant Directors are disinterested and independent and the challenged transactions are otherwise the product of a valid exercise of business judgment.

54. Accordingly, the Court should find Plaintiffs excused from demanding the Board of Directors commence this litigation. Plaintiffs, as continuous holders of stock in the Company, will fairly and adequately represent the interests of the Company in, derivatively, enforcing the rights of Restaurant.com, Inc.

COUNT I  
BREACH OF FIDUCIARY DUTY OF LOYALTY:  
WILLINGNESS TO SELL AT UNFAIR PRICE FOR PERSONAL GAIN

55. Plaintiffs restate paragraphs 1 through 54 as if fully set forth herein.

56. Since, at least, July 2019, Director Defendants are actively looking to sell the principal assets of the Company. Exh. E. Specifically, the Director Defendants have put on the market the “crown jewels” of the business; without these, there is no Restaurant.com.

57. Defendant Chessick is motivated by self-interest to sell the Company by the end of the year. Accordingly, in this circumstance, the Director Defendants’ primary fiduciary duty should be that of an auctioneer responsible for selling to the highest bidder.

58. To the contrary, the sale price under discussion with a prospective buyer - - presently conducting due diligence - - is only \$2M. From the minority, Common Stockholders' perspective, who will not receive favorable cash-out terms, this a severely unfair and undervalued sales price.

59. That sales price cannot include the value of Plaintiffs' derivative claims. Indeed, the prospective buyer does not know these claims exist. Also, this purchase price is significantly less than the offer Chessick selfishly refused in 2010 *See* Exh. B (\$75M).

60. Further still, the purchase proceeds will undoubtedly add to the overall compensation already received by Chessick through his Preferred Shares payment preference, while minority Common Shareholders' equity interests may not be worth anything. *See* Exh. C.

61. Defendant Directors are breaching their primary fiduciary duty of loyalty by moving forward with a sale at an undervalued and unfair price. As a direct and proximate result of this violation of the fiduciary duty of loyalty, the Company will suffer irreparable harm and is without an adequate remedy at law.

COUNT II  
BREACH OF FIDUCIARY DUTY OF LOYALTY:  
REFUSAL TO SELL AT FAIR PRICE TO RETAIN PERSONAL CONTROL

62. Plaintiffs restate paragraphs 1 through 61 as if fully set forth herein.

63. At a time when investment banking firms were retained to locate potential institutional investors into the Company, Defendant Directors refused two fair and reasonably priced purchase offers: first, in 2010, the Battery Offer was to provide \$70M to purchase Common Stock, based on a \$120M enterprise valuation (Exh. B); the second, presented by investment bank, Credit Suisse, was a purchase of 85.7% of Company shares with \$77.1M, based on a \$90M enterprise valuation.

64. If either offer was accepted, however, Chessick would no longer be able to dominate the Company. Specifically, if the Battery Offer was accepted, Chessick would become but one of five Directors, two being Company outsiders. If the offer financed by Credit Suisse was accepted, it was contemplated that someone other than Chessick would be the CEO.

65. When presented with offers to purchase control of the Company, the Director Defendants' primary fiduciary duty should have been that of an auctioneer responsible for selling to the highest bidder.

66. Rather than call for meetings of Shareholders or the Board to consider the offers, Chessick, being motivated by self-interest, caused the offers to lapse. This resulted in Chessick remaining in control, while the minority Shareholders lost valuable corporate opportunities.

67. Defendant Directors breached their primary fiduciary duty of loyalty by refusing to sell at a fair price, in order to preserve longevity of Chessick's



dominating control. As a direct and proximate result of this violation of the fiduciary duty of loyalty, the Company has suffered damages and are without an adequate remedy at law.

COUNT III  
BREACH OF FIDUCIARY DUTY OF LOYALTY:  
UNFAIR COMPENSATION INCREASE TO DOMINANT DIRECTOR

68. Plaintiffs restate paragraphs 1 through 67 as if fully set forth herein.

69. After causing the Board of Directors to refuse to accept investment offers that would have provided significant capital infusions into the Company, Chessick caused the Company to sell him Series C Preferred Shares.

70. After his \$8M purchase of Series C Preferred, Chessick then took salary increases and other compensation to offset his investment. These compensation increases were neither based on his work as the CEO nor approved by a duly noticed meeting of the Board of Directors.

71. Further, in 2016, Defendant Chessick sought to increase the amount of working capital by terminating the employment of 20 - 25 employees.

72. Rather than strategically repurposing the newly found capital to stimulate business growth, at a time when the Company's profitability was down-trending, Chessick increased his own salary by \$50,000.00.

73. Defendant Chessick unilaterally increased his compensation, which included his receipt of reimbursements for personal expenses with Company funds, without obtaining approval from the Board of Directors.

74. Chessick received this increase in salary despite splitting his time practicing: (a) law with his own firm, as well as in an Of Counsel capacity with another Chicago law firm, and (b) medicine.

75. Chessick's decision to increase his own compensation falls outside of the protections of the business judgment rule. Chessick is not able to make an affirmative showing that this compensation decision was fair to the Company.

76. As a direct and proximate result of this violation of the fiduciary duty of loyalty, the Company has suffered damages and is without an adequate remedy at law.

COUNT IV  
UNJUST ENRICHMENT:  
UNFAIR COMPENSATION INCREASE TO DOMINANT DIRECTOR

77. Plaintiffs restate paragraphs 1 through 76 as if fully set forth herein.

78. In the alternative to Count III, Director Chessick was enriched by his receipt of a compensation increase from the Company.

79. The Company's payment of Chessick's increased salary, that is, at least, \$50,000.00 per year since 2016 (\$150,000.00 sub-total) plus the reimbursements for personal expenses (amount to be determined), as well as the salary and additional

compensation increases Chessick awarded himself after he purchased the Series C Preferred Shares is an impoverishment to the Company.

80. The enrichment is directly related to the impoverishment, because Defendant Chessick unjustly caused the moneys to be issued to himself, which negatively affects the Company's finances; it is a diminishment of the Company's capital that could have be used for any number of legitimate corporate purposes.

81. There is no justification for Defendant Chessick's salary increase and expense reimbursements, especially under the financial circumstances of the Company and Chessick's division of loyalties.

82. There is no adequate remedy at law available to the Company to recover the damages caused by Chessick.

COUNT V  
DECLARATORY JUDGMENT:  
FACIALLY INVALID FEE-SHIFTING BYLAW

83. Plaintiffs restate paragraphs 1 through 82 as if fully set forth herein.

84. Director Defendants amended the Company's Bylaws to include Article X, which is entitled "Attorneys' Fees in Stockholder Actions". Exh. D.

85. That provision purportedly obligates a stockholder who brings any claim against the Company "and/or any director, officer or affiliate thereof (each, a 'Company Party')" and does not obtain a favorable judgment to pay Company Parties' attorney fees and costs of litigation.

86. Under the Delaware law, “[t]he bylaws may not contain any provision that would impose liability on a stockholder for the attorneys' fees or expenses of the corporation or any other party in connection with an internal corporate claim, as defined in § 115 of this title.” 8 DEL. C. § 109(b).

87. Section 115 of the DGCL defines “internal corporate claim[s]” as “claims, including claims in the right of the corporation, (i) that are based upon a violation of a duty by a current or former director or officer or stockholder in such capacity, or (ii) as to which this title confers jurisdiction upon the Court of Chancery.” 8 DEL. C. § 115.

88. All of the claims asserted in this Verified Complaint are internal corporate claims for which the Company’s Bylaws, under Delaware, cannot contain a fee-shifting provision.

89. Article X of the Company’s Bylaws are prohibited.

WHEREFORE, Plaintiffs, Adnan Adamji and Steven Schnall, pray for the following relief against the Defendants, Kenneth Chessick, M.D. and Ellen Chessick, on behalf of Restaurant.com, Inc.:

A. A Declaration that Plaintiffs may maintain this derivative action on behalf of Restaurant.com, Inc.;

B. An Injunction preventing Chessick from transferring, conveying, selling or encumbering any of his direct or indirect interests in the Company;

C. An Imposition of a Constructive Trust over Chessick's shares in the Company;

D. Entry of Judgment for Plaintiffs and against Defendants, that awards the Company damages in an amount to be proven at Trial;

E. An Order that Defendant Kenneth Chessick, M.D. disgorge all unjustly obtained compensation, expense reimbursement and ill-gotten gains received during the time period of his misconduct;

F. A Declaration that the Company's purported Fee Shifting Bylaw is facially invalid under Delaware Law;

G. An Order stripping Director Defendants from their corporate titles (Directors and Officers) and appointing a Receiver or Custodian to assume management control of the Company;

H. As award of punitive damages in favor of the Company due to the willful misconduct of Defendant Kenneth Chessick, M.D.;

I. Pre- and post-judgment interest on any monetary award;

J. Reasonable Attorney Fees, accountants and expert fees, plus expenses and costs of suit;

K. For such other and further relief, in equity or law, that this Court deems just and appropriate under the circumstances.

(Signature block on the following page.)

**Kollias Law, LLC**

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