

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

(17)

RICHARD M. WEXLER,

Plaintiff,

-against-

CIRCLE GROUP HOLDINGS INC., and GREGORY J.
HALPERN,

Defendants.

Index No. _____

Date Purchased: 04602625

**SUMMONS
WITH NOTICE**

Plaintiff resides at:
225 East 36th Street
County of New York

TO THE ABOVE NAMED DEFENDANTS:

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 twenty days after the service of this summons, exclusive of the day of service (or within 30 days after 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.

Plaintiff designates New York County as the place of trial. The basis of venue designated is the plaintiff's place of business.

Dated: New York, New York
August 12, 2004

Defendants' Address:

1011 Campus Drive
Mundelein, IL 60060

REITLER BROWN &
ROSENBLATT LLC

FILED
AUG 12 2004
NEW YORK
COUNTY CLERK'S OFFICE

By: Leo G. Kailas

Leo G. Kailas
Lauren K. Kluger
800 Third Avenue, 21st Floor
New York, New York 10022
Tel. (212) 209-3050
Attorneys for Plaintiff

NOTICE: The nature of this action is breach of contract:
The relief sought is \$900,000 in monetary damages.
Upon your failure to appear, judgment will be taken against you by default for the sum of \$900,000 with interest from January, 2004 and the costs of this action.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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RICHARD M. WEXLER,

Plaintiff,

-against-

CIRCLE GROUP HOLDINGS, INC., and GREGORY J.
HALPERN,

Defendants.
-----x

Index# _____

**VERIFIED
COMPLAINT**

Plaintiff Richard M. Wexler, by his attorneys Reitler Brown & Rosenblatt LLC,
for his complaint against the defendants, alleges as follows:

PARTIES

1. Richard M. Wexler is an individual residing in New York City, New York.
2. Circle Group Holdings Inc. ("Circle Group") is an Illinois corporation with offices located at 1011 Campus Drive, Mundelein, Illinois.
3. Gregory J. Halpern is the Chairman and Chief Executive Officer of Circle Group Holdings Inc. and, upon information and belief, is a resident of Illinois.

JURISDICTION AND VENUE

4. This court has personal jurisdiction over the defendant Circle Group because it transacts business in the state of New York and contracted within the state of New York for the delivery of the services at issue in this action.
5. The court has personal jurisdiction over the defendant Gregory J. Halpern because he personally made the representation to plaintiff that induced him to provide the contracted services in New York. Upon information and belief, Halpern has visited New

York on a regular basis to raise capital and to interest investors in the publicly traded shares of the Company.

6. Venue is proper in this county because the plaintiff resides in New York County and performed services for defendant Circle Group here, and because the causes of action arose in New York County.

Facts Common To All Claims

7. On or about June 24, 2003, Wexler and Circle Group entered into a Business Consulting Agreement (the "Agreement") whereby Wexler agreed to act as a consultant for Circle Group in New York. Wexler has experience in the securities markets and was retained to advise the Company and to promote the Company's business to the investment community.

8. In exchange for Wexler's services, Circle Group agreed to convey to Wexler the following consideration: (i) payment of a consulting fee of \$5,000 per month for three months, commencing June 24, 2003; (ii) issuance of 50,000 freely tradeable shares of common stock of Circle Group; and, (iii) issuance of three separate warrants to purchase three 50,000 share tranches of freely tradeable shares of common stock of the Company exercisable immediately at \$1.50 per share, at \$2.50 per share and \$3.50 per share, respectively (collectively, the "Warrants"). The Warrants recite that they are valid and exercisable for a period of two years from June 24, 2003.

9. The Warrants provide for "cashless" exercise which means that the warrants would be exercised without the payment of any consideration, and that an appropriate number of freely trading shares would be delivered to Wexler based on the spread between the exercise and market price of the shares on the date of exercise.

10. The terms of the Agreement were negotiated over a period of several days. Halpern personally was involved in the negotiations with Wexler over the consideration being offered for Wexler's services.

11. During the negotiations, Wexler insisted that the Warrants be exercisable on a cashless basis and be for freely tradeable shares. Although initially reluctant to do so, Halpern agreed both orally and in writing to these two important features of the Warrants.

12. The freely tradeable shares and the cashless exchange feature of the Agreement were a material inducement to Wexler to enter into the Agreement with Circle Group.

13. At the time Halpern offered the foregoing consideration to Wexler, he knew or certainly should have known that the Company could not fulfill the terms of the Warrants and specifically, the provision obligating the Company to deliver freely tradeable shares to Wexler.

14. Notwithstanding the knowledge that freely tradeable shares of Circle Group were not available in the event Plaintiff exercised the Warrants, Halpern agreed to convey to Wexler freely tradeable shares.

15. Wexler performed consulting services as specified in the Agreement which included introductions to broker-dealers, institutional investors, money managers and high net worth individuals.

16. In accordance with the Agreement, the Company paid Wexler a consulting fee of \$5,000 per month for three months and issued to Wexler 50,000 freely tradeable shares of the Company's common stock on or about June 24, 2003.

17. On or about January 13, 2004, Wexler attempted to exercise each of the Warrants which, under their terms, could be exchanged for freely tradeable shares on a "cashless" basis.

18. When Wexler called the Company he spoke to Dana Dabny, a representative of the Company. Dabny expressed skepticism about Wexler's cashless exercise rights. That prompted Wexler to fax a copy of the Warrant cover pages to Dabny, thereby confirming that Wexler had a cashless exercise right.

19. On or about January 30, 2004 Halpern told Wexler that the Company could not perform in accordance with the terms of the Warrants because the Company did not have freely tradeable shares to exchange for the Warrants.

20. Halpern also told Wexler that even though the Agreement and the Warrants state that the shares would be provided on a "cashless" basis, Wexler would have to pay for the shares upon exercise of the Warrants. This was entirely contrary to the basic definition of a "cashless" exercise of a warrant.

21. Between January and July 2004, Wexler repeatedly contacted Halpern and Circle Group to request that the Company honor the terms of the Agreement by delivering freely tradeable shares to Wexler.

22. On each such occasion Wexler was told that the Company did not have freely tradeable shares to exchange for the Warrants.

23. To date Wexler has been unable to exercise any of the Warrants under the term of the Agreement because of the unavailability of freely tradeable shares of the Company.

24. Circle Group and Halpern have further refused to permit Wexler to exercise the Warrants unless Wexler first paid cash consideration to the Company in violation of the express cashless exercise term of the Agreement.

25. Even after the Company had freely tradeable shares available as of mid-July 2004, Halpern still refused to deliver such shares to Wexler in accordance with the terms of the Agreement.

26. On June 24, 2003, when Wexler was retained by the Company, the price of the Company's shares was around \$1.00. By January 30, 2004 when Wexler attempted to exercise all of the Warrants, the price of the shares of Circle Group had risen to \$8.50.

27. During the ensuing months, the price of the common stock of the Company steadily declined as Wexler continued to attempt to exercise the Warrants and the Company would not permit him to do so.

28. As of August 6, 2004, the price of the common stock of Circle Group had dropped to \$2.40.

AS AND FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

29. Wexler repeats and realleges each and every allegation set forth in paragraph 1 through 28 as if fully set forth herein.

30. Pursuant to the Agreement, Wexler agreed to provide consulting and promotional services to Circle Group.

31. In return for Wexler's services, Circle Group gave Wexler Warrants to purchase three tranches of 50,000 shares each of the Company's common stock exercisable at

\$1.50, \$2.50 and \$3.50, respectively. The Agreement specifically provides that the Warrants are to be exchanged for "freely tradeable" shares and "shall have the right of a 'cash less' exercise".

32. Each Warrant delivered to Wexler states, "The right to purchase all of the Shares under the Warrant shall vest immediately upon issuance of this Warrant."

33. Wexler performed consulting and promotional services for Circle Group.

34. Circle Group has breached the terms of the Agreement and the Warrants by refusing to honor Wexler's exercise of the Warrants.

35. Circle Group has breached the terms of the Agreement and the Warrants by refusing to issue Company shares that are freely tradeable.

36. Circle Group has breached the terms of the Agreement and the Warrants by refusing to issue Company shares on a "cashless" basis.

37. Wexler has been damaged by Circle Group in an amount that is not less than \$900,000.

AS AND FOR A SECOND CAUSE OF ACTION
(Quantum Meruit)

38. Wexler repeats and realleges each and every allegation set forth in paragraph 1 through 37 as if fully set forth herein.

39. Wexler performed services for Circle Group by rendering consulting and promotional services.

40. As part of Wexler's compensation, Wexler received Warrants that had the right of exercise on a "cashless" basis.

41. Circle Group accepted the services rendered by Wexler and received the benefit of those services yet refused to allow Wexler to exercise the Warrants for freely tradeable on a "cashless basis".

42. As a result, Wexler has been damaged by Circle Group in an amount that is not less than \$900,000.

AS AND FOR A THIRD CAUSE OF ACTION
(Fraud Against Gregory J. Halpern)

43. Wexler repeats and realleges each and every allegation set forth in paragraph 1 through 42 as if fully set forth herein.

44. Halpern represented to Wexler that Wexler would be compensated for providing consulting services to Circle Group.

45. Halpern specifically told Wexler that in exchange for those consulting services, the Company would issue to Wexler Warrants that could be exercised immediately on a "cashless" basis and could be exchanged for "freely tradeable" Company shares.

46. Halpern made these representations to Wexler with intent to deceive Wexler.

47. Halpern knew that Wexler would rely on Halpern's representations and on the terms of the Agreement and Warrants.

48. The provisions in the Agreement and Warrants for the cashless exercise of the Warrants and the exchange for freely tradeable shares were false when they were made, and Halpern knew or should have known them to be false.

49. Wexler relied on Halpern's statements by promoting and providing consulting services to Circle Group and securing new investors for Circle Group.

50. Wexler's reliance on these statements and representations was reasonable.

51. Wexler would not have provided services to Circle Group had Wexler known that these representations were false.

52. As a result of the foregoing fraud, Wexler has been damaged in an amount that is not less than \$900,000.

WHEREFORE, plaintiff demands judgment of the defendants as follows:

- A. Awarding the plaintiff its actual damages;
- B. Awarding the plaintiff punitive damages;
- C. Awarding the plaintiff a reasonable attorney's fee;
- G. Awarding the plaintiff the costs and disbursements of this action; and
- H. Awarding such other and further relief as this Court deems just and

proper.

Dated: New York, New York
August 12, 2004

**REITLER BROWN & ROSENBLATT
LLC**

By: 


Leo G. Kailas
Lauren K. Kluger
800 Third Avenue, 21st Floor
New York, New York 10022
(212) 209-3050
Attorneys for Plaintiff

VERIFICATION

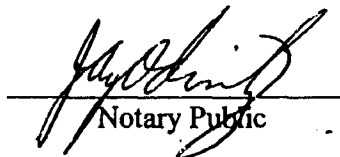
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Richard M. Wexler, being duly sworn, states:

I am the plaintiff in this action. The foregoing complaint is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true.


Richard M. Wexler

Sworn to before me on this
10th day of August 2004


Notary Public

JAY ODINTZ
Notary Public, State of New York
No. 41-4754558
Qualified in Queens County
Commission Expires May 31, 2005