

## ***Thibeau and Phone Ninjas, LLC v. Bryant***

SeiferFlatow, PLLC earns decisive victory in Mecklenburg County Superior Court which resulted in a \$200k award after presenting details in a case involving harassment against an individual and his business.

Gerald Thibeau (Jerry), and Thibeau's neighbor, Douglas Bryant (Doug), were social acquaintances until Bryant's behavior toward women on social media prompted Thibeau to take back an invitation he extended to Bryant to travel together to Las Vegas in 2015. In his complaint, Thibeau said the falling out angered Bryant, who began a vicious campaign against Thibeau that included putting skunk spray in Thibeau's car, jamming Thibeau's front door knob with blank keys, and tampering with Thibeau's mailbox. Bryant also posted an ad on Craigslist offering "man-to-man massages" with Thibeau's phone number and posted untrue comments about Thibeau on Facebook.

Bryant and his friends, sometimes under pseudonyms, posted negative reviews and ratings on the Facebook page of Thibeau's business, Phone Ninjas, causing his rating to drop from 4.8 out of 5 stars, to 3.3. Because Phone Ninja relies on online advertising and industry reputation to attract customers, the damage drove away prospective customers, Thibeau alleged. Flatow said he hired an expert who was able to trace many of the comments back to Bryant's computer, but Bryant denied the allegations, at one point saying that the concierge of his building had access to his apartment and would at times use his computer.

Fast forward to Easter of 2017, Jerry was in his unit when he heard his lock being tampered with again. Jerry looked out the window and saw Doug heading down towards the restaurant Cowfish. Jerry was infuriated- he followed Doug to the exterior of the restaurant and punched him. Jerry's punch knocked Doug into the bushes, and Jerry jumped on him. After a brief skirmish, Doug then called the police, and Jerry was arrested the next day. That same night, Doug went on Facebook and posted, in large capital letters, best Easter ever.

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This case wandered through the court systems for a while and eventually the district attorney decided that they were going to drop the charge against Jerry on the condition that he paid restitution. Doug requested \$1000 in restitution, but they agreed ultimately to \$500. Jerry paid Doug the restitution, the charges were dropped and both of them entered joint restraining orders against each other so that they would not be able to get involved with each other going forward.

Now that Doug was unable to directly mess with Jerry, he turned his attention to Jerry's business, Phone Ninjas, LLC. Jerry's business consults with companies who use cold calling tactics and critiques the phone calls through a proprietary software system in order to increase the amount of leads and conversions. Jerry's company found a foothold in the automotive industry. The company's workforce consists of sales reps, as well as coaches, and they all work remotely. In March 2018, Phone Ninjas had a stellar 4.8 rating on Facebook. On March 23, 2018, DougBryant created a fake account entitled Pappy Vanwinkle and left a one star review for Phone Ninjas. Over the next 21 days, several of Doug's friends also left poor reviews on the Facebook page.

After the 21-day digital attack, the overall rating had dropped to 3.3 stars on Facebook. In addition to the ratings siege, Doug also posted a few directly defamatory statements on the Internet against Phone Ninjas. Doug used a fake email address and created an account on Craigslist and offered massage services to the general public in Jerry's and Phone Ninja's behalf. In response to this advertisement, Phone Ninjas received many phone calls asking if they were in fact a "massage" company.

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Doug also created fake accounts in Jerry's name on adult sites and wrote inflammatory comments. In almost every comment, he invoked the name Phone Ninjas. It was the prosecution's understanding that he was attempting to manipulate the Google search algorithm by associating any search of Phone Ninjas with erotic sites.

After these fake reviews were published, the law firm of SeiferFlatow was hired to send cease-and-desist letters to stop the onslaught of reviews. SeiferFlatow had already handled the criminal case, getting the charges dismissed and entering into the joint restraining order.

A lawsuit was filed on behalf of Jerry and Phone Ninjas alleging defamation. Initially, Doug failed to respond to the lawsuit and entry of default was entered. Doug eventually hired counsel and, before a judgment could be entered in the amount of \$120,000, a judge overturned the entry of default and allowed Doug to answer the case. Doug answered the case, alleging assault and battery as a counterclaim, and requesting damages for the personal injuries he sustained.

After associating with Arcangela Mazzariello, she took over as counsel on the case and filed an amended complaint. At that time, the SeiferFlatow firm beefed up the allegations of defamation. Cause of action for civil conspiracy was also added, but later dropped before going to the jury. After this filing, Doug amended his counterclaim to add his own case for defamation. In discovery, Doug's devices were requested in order to determine if these posts and ratings came from his phone. Doug refused to turn over his devices, and a court order was filed to compel him to turn over the devices. After securing the order in September 2019, a forensic data expert, named Ryan Horton at IST, was hired to image the devices. Going through the devices, it became immediately clear that Doug Bryant had created the Pappy Vanwinkle account. In his iPhone, there were remnants of his login to the Pappy Vanwinkle account.

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In addition, his Google Chrome history linked him to the posts regarding massage services and the explicit site comments. Mr. Horton also found a series of links between Doug and the other individuals leaving reviews that made it obvious he was soliciting fake reviews. One message that was retained clearly showed Doug was messaging his friends links to the Phone Ninjas' Facebook page. Mr. Horton's work also showed that Doug had deleted hundreds of messages and browser history. We would never truly know all the links between Doug and the individuals, even with reviews, because they were permanently deleted from his devices.

In addition to Mr. Horton, Jerry allowed us to hire an expert in search engine optimization and online reputation management. Thomas Varghese reviewed the case and determined that a change in star rating from 4.8 to 3.3 is very dramatic and could have caused the company millions of dollars. Mr. Varghese believed that it would cost \$250,000 in professional online reputation management to put Phone Ninjas back to where it was previously in terms of star ratings; however he noted that it would never be the same because bad reviews are permanent, and there is nothing that could be done. Mr. Varghese said that it's very difficult to quantify the amount of damage to a business based on fake reviews because you never know who didn't hire the business. Since it's unknowable, all he could do was talk about how much it would cost to mitigate the response.

In terms of settlement, this case never really got close. Both sides believed that they were the ones who are hurt by the other and neither wanted to pay money. Therefore, this is the type of case that happens to march to trial, and this one went to trial on the week of March 9, 2020.

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*Case Note: The jury's deliberation in this case, as well as the conclusion of the six day trial, took place under extenuating circumstances. The pandemic, named COVID-19, had shuttered court operations, however this trial was allowed to conclude. The jury's deliberation lasted 90 minutes.*

Our Charlotte-based law firm is equipped to and experienced in handling a variety of business law cases. We are able to represent firms, based here and internationally, who do business in Charlotte, as well as represent individuals going head-to-head with large companies, small businesses, or individuals. In this case, our firm was retained to obtain justice for wrongs committed against an individual and his business.

The suit of Thibeau and Phone Ninjas, LLC v. Bryant resulted in an award of \$200k for loss of earnings and emotional distress. Mr. Thibeau retained Mathew Flatow, Managing Partner, and Arcangela Mazzariello, Of Counsel, to represent him in this case.

To get a clear picture on how the jury arrived at a decision in this case, please reference NC 18-CVS-7647 and several definitions in the law that are important to understand.

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### **Definitions for the Case**

#### **Defamation-**

In this case: At the close of evidence, we brought a motion for directed verdict. We argued that Doug had not made his case on the essential elements of defamation. Essentially, he could not prove that anything Jerry said about him either wasn't true or was Jerry's opinion. He also failed to prove that any of the allegations were published by 3rd parties. Finally, he failed to prove that any of the allegations occurred within the statute of limitations. The judge dismissed Doug's defamation claim against Jerry.

#### **Assault - What it is: Assault is the fear of being hit.**

In this case: Doug made it very clear on the witness stand that he was sucker punched. By being sucker punched, the SeiferFlatow team argued to the judge that he never could have seen Jerry coming, and therefore, it was not possible that he could be afraid. Since he couldn't meet the essential elements of assault, attorneys argued that the cause of action should be kicked out. Doug's attorney agreed to withdraw the assault claim.

Once the assault claim was dismissed, and the attorneys argued to the judge that the punitive damages case should also be dismissed. Even though a battery had certainly occurred, in their pleading, they only allege punitive damages for assault. Therefore, there is no way that they could present the issue of punitive damages to the jury on the basis that they had to correctly. Further, this case is not a punitive damages case as they had not reached the higher level of aggravation that is needed to show willful conduct. Once again, the judge agreed and threw out the punitive damages case.

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Battery- What it is: Battery is physically being struck.

In this case: The plaintiff was awarded a fair amount for the battery that occurred- \$500 for his initial medical visit after the fight.

### **The Bottom Line**

This case demanded stamina, an aggressive pursuit of justice, and the ability to secure expert guidance to help define elements of the case.

SeiferFlatow works for each and every client to secure the best possible outcome. We are ready, willing, and prepared to take a case to trial whenever necessary, however we also realize the value of coming to resolution before trial when possible and in the best interest of our client.

**If you are a business or individual needing representation, we are ready to help.**

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## **About the Lead Attorney**



**Rated 5 Stars on AVVO  
Named Top 40 under 40  
Business NC Legal Elite  
Named to Super Lawyers**

**Mathew E. Flatow** is the managing partner for SeiferFlatow, PLLC in Charlotte, North Carolina. Mathew is an aggressive civil litigator who represents employees, executives, small businesses and corporations.

His legal background includes over a decade of successfully representing clients facing a wide array of legal battles, including international business owners looking to do business in or hire employees in Charlotte; business owners in Charlotte looking to protect their companies from potential vulnerabilities or protect employees and trade secrets; individuals looking to maximize contracts or pursue legal options after termination; and workers who have been injured on the job.

*"I have now been working with this firm since spring of 2017. I can't begin to tell you how grateful and appreciative I am of the hard work and effort they put forth in on my case. I wasn't the easiest of clients! I truly believed they wanted to win our case just as much as I did, and their efforts paid off! I am happy to say they won a jury trial where I was awarded 201K in damages. **They were playing chess while opposing counsel was playing checkers!** If you have any legal issues whatsoever, I highly suggest you take the time to meet with them for a consultation. They are that good!!! THANK YOU MATHEW, ARCANGELA, JAMIE & JESSICA!" - Jerry T.*