

IN THE CIRCUIT COURT OF THE 18<sup>th</sup> JUDICIAL CIRCUIT  
IN AND FOR SEMINOLE COUNTY, FLORIDA

MICHAEL MALOTA and  
JEANNE MALOTA,

Plaintiffs,

CASE NO.: 11CA 3579-11-L

v.

CELEBRATE CHILDREN  
INTERNATIONAL, INC.

Defendant,

FILED IN OFFICE OF  
CLERK MICHAEL J. COOPER  
9:11 SEP 21 PM 2:30  
SEMINOLE COUNTY, FLORIDA

COMPLAINT

COME NOW the Plaintiffs, MICHAEL MALOTA and JEANNE MALOTA, (hereinafter referred to as "MALOTAS"), by and through undersigned counsel, and hereby sue the Defendant, CELEBRATE CHILDREN INTERNATIONAL, INC. (hereinafter referred to as "CCI") and state as follows:

JURISDICTION

1. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000.00) exclusive of attorney's fees, interests, or costs.
2. The causes of action alleged herein accrued in Seminole County, Florida.

THE PARTIES

3. Plaintiffs, MICHAEL C. MALOTA and JEANNE MALOTA., are sui juris adults.
4. At all times material hereto, CELEBRATE CHILDREN INTERNATIONAL, INC., was a licensed child placing agency organized and existing under the laws of the State of Florida with its principal place of business in Seminole County, Florida.

### GENERAL ALLEGATIONS

5. L.M., whose date of birth as it appeared in the adoptive papers is [REDACTED], was the prospective adoptive daughter of the MALOTAS.

6. Due to the nature of the allegations set forth herein below, L.M. and C.M. are referenced by their initials.

7. CCI is an international adoption agency, which must comply with the adoption laws of the State of Florida.

8. In February 2007, MALOTAS executed an application for adoption with CCI requesting to adopt 1-2 healthy girls, age 1-6, from Guatemala with no special needs. Attached hereto as Exhibit "A".

9. On or about February 23, 2007, CCI received a home study on the MALOTAS, which also indicated that they had no intention of adopting a special needs child. Attached hereto as Exhibit "B".

10. In February 2007, after learning that two sisters L.M. and C.M., became available for adoption, the MALOTAS, agreed to adopt the minor children from Guatemala through the use of CCI's services.

11. The MALOTAS thereafter entered into a contract with CCI entitled International Adoption Services Agreement. Attached hereto as Exhibit "C".

12. CCI was aware of the high risks involved in adopting children from Guatemala and never informed MALOTAS of these risks.

13. CCI falsely reported that L.M. was a healthy child with no special needs.

14. CCI failed to properly advise the MALOTAS of L.M.'s extensive special needs prior to placement of this child with the MALOTAS.

15. CCI failed to report that L.M.'s biological mother had severely abused L.M.
16. CCI failed to report that L.M. exhibited aggressive and violent behaviors.
17. CCI failed to report that L.M. suffers with serious psychological and psychiatric needs requiring a lifetime of extensive treatment.
18. In late November 2007, CCI, by and through its agents, placed L.M. and her sister C.M. with their adoptive family.
19. Shortly after placement, L.M. began displaying aggressive and violent behaviors.
20. The MALOTAS procured medical and psychological treatment for L.M. to no avail.
21. L.M. thereafter had multiple fits of rage and had to be hospitalized.
22. The MALOTAS were not able to care for this special needs child who they and their children bonded with, and the adoption was halted, and L.M. was removed from their care.
23. The MALOTAS and their children had also bonded with C.M. C.M. who had not displayed violent or expressive behavior prior to the removal of her sister, became extremely upset and resentful that she was separated from her sister, and her adoption accordingly was also halted thereafter.

#### COUNT I- NEGLIGENCE

24. The MALOTAS hereby reaver and reallege paragraphs 1 through 23 as if fully set forth herein.
25. CCI, through its agents and employees, owed the MALOTAS the following duties:
  - a. To include in the adoption home study "[a]ny special characteristics or limitations of [MICHAEL C. MALOTA and JEANNE MALOTA] regarding

children placed for adoption in their home" pursuant to Florida Administrative Code Rule 65C-15.028;

b. To "thoroughly assess the suitability and eligibility of prospective parents with the understanding that some clients may not be appropriate for . . . the challenges inherent in the adoption of children with special needs. Based on the assessment, the home study document shall include a recommendation as to the nationality, age range, medical condition, and special circumstances of the child to be placed" pursuant to JCSIS Standards of Practice;

c. To disclose the known risks, based upon CCI's experiences with Guatemalan adoptions, inherent in adopting children from Guatemala and the abuse faced by children in the Guatemalan foster care system including that:

i. Guatemalan foster care providers are not regulated or checked by the Guatemalan government for compliance with any standards;

ii. Public oversight of Guatemalan foster homes was minimal;

iii. Prior to the adoption, there were cases in which American adoptive families who have completed a Guatemalan adoption later learned that the foster care provider or others in the household had physically or sexually abused the children;

iv. Monetary incentives and high fees drive completion of the adoptions in Guatemala more than protecting the children, the birth parents, and the prospective adoptive parents;

v. Adopting a child from a system that is based on conflict of interest and that unduly enriches facilitators, such as that established in Guatemala, is a very uncertain proposition with potential serious life-long consequences;

vi. At the time of L.M.'s adoption, Guatemala had at least a five year history of serious issues concerning adoption because the Guatemalan adopting system was fraught with corruption and the lack of governmental regulation creating risks to children and parents;

d. To prepare the MALOTAS for placement of L.M. by including "information about the child's background and birth family" pursuant to Florida Administrative Code Rule 65C-15.029;

e. To conduct a study of L.M. which included "all available social and medical history," developmental history, family history, personality traits of the child, "actual or potential impact of past abuse, [p]sychological or psychiatric evaluations of child known or suspected of having mental health problems," and complete physical examination when matching and placing the adoptive child pursuant to Florida Administrative Code Rule 65C-16.002(7);

f. To incorporate into the adoption placement process the "[p]resentation of the information to the family regarding the child" pursuant to Florida Administrative Code Rule 65C-16.009;

g. To "[p]rovide to prospective adoptive parents all information received to date and allowed by law pertaining to children eligible for international adoption [including] medical, social, legal, and psychological and/or developmental information" pursuant to JCSIS Standards of Practice;

h. To "comply with all applicable adoption laws of [L.M.'s] country of origin and the State of Florida" pursuant to Florida Administrative Code Rule 65C-15.036(2).

26. CCI negligently breached its duty in that:

a. The home study, which indicated that MALOTAS did not seek to adopt a child with special needs, did not address the ability of MALOTAS to care for a child with special needs and to thoroughly assess the suitability and eligibility of the prospective adoptive parents pursuant to Florida Administrative Code Rule 65C-15.028 and the JCSIS Standards of Practice;

b. MALOTAS were not provided with relevant information pertaining to L.M.'s special needs and family history.

c. CCI did not disclose risks inherent in adopting L.M. from Guatemala and the abuse suffered by L.M. in Guatemala and further did not disclose that:

i. L.M. was a victim of physical abuse;

ii. L.M. had severe psychological, psychiatric, and behavioral needs requiring a lifetime of extensive treatment;

d. CCI failed to completely disclose L.M.'s known history of abuse, behaviors, and extensive psychiatric and psychological needs to ensure that L.M. was matched with a prospective adoptive home that would meet her special needs pursuant to Florida administrative code Rules 65c-16.002(7), 65C-16-009; Florida Statutes §§ 63.085(2)(a), and the JCSIS Standard of Practice.

e. CCI failed to provide a complete medical history of the child pursuant to Florida Statutes § 63.085(2)(a);

f. CCI did not comply with the laws of Florida when facilitating this international adoption pursuant to Florida Administrative Code Rule 65C-15.036(2).

27. CCI further negligently breached its duty pursuant to Florida Administrative Code Rules 65C-16.002(7) and 65C-16.009 and Florida Statutes §§ 63.085(2)(a), in that the study of L.M. and the information provided to MALOTAS did not include the aforementioned social, medical, developmental, educational, and family history.

28. As a result of CCI's negligence and other unreasonable conduct, the MALOTAS, sustained damages including, but not limited to, mental anguish, loss of capacity for the enjoyment of life, expenses of psychiatric and psychological therapy for L.M, and the legal expenses associated with the placement and disruption of the adoption. The losses are permanent and continuing and the MALOTAS will continue to suffer the losses in the future.

WHEREFORE, MALOTAS demand judgment for damages against CCI for compensatory damages, costs, and all other such relief as the Court may deem just and proper.

#### **COUNT II BREACH OF CONTRACT**

29. The MALOTAS hereby reaver and reallege paragraphs 1 through 23 as if fully set forth herein.

30. The MALOTAS and CCI entered into a contract attached as Exhibit "C" on or about February 20, 2007.

31. CCI agreed per said contract that it would "obtain and supply available information about the child" to the MALOTAS.

32. CCI further agreed per said contract to "[c]ollaborate with overseas facilitators and officials to identify and present a child(ren) for adoption referral which meets the A/P criteria as stated in the home study".

33. CCI further agreed per the contract that it "shall make its best, good faith effort to collaborate within facilitating organization to identify a child eligible for adoption which meets the A/P criteria as stated in the home study. CCI shall present to A/P all available medical and social information concerning the child to be adopted for consideration by the A/P".

34. CCI breached said contract by presenting and facilitating placement of L.M. with the MALOTAS while failing to inform MALOTAS of the known extensive special needs and predictors of L.M. including her known aggressive and violent behaviors, and history of abuse.

35. MALOTAS have performed all conditions precedent to bringing this action.

36. MALOTAS have been damaged thereby.

37. In addition to general damages suffered by the MALOTAS as a result of CCI's breach of contract, the MALOTAS have suffered special and consequential damages as follows:

- a. payments made by the MALOTAS to CCI;
- b. attorneys' fees paid for the adoption;
- c. court costs incurred for the adoption;
- d. administrative costs incurred for the adoption and disruption;
- e. personal effects purchased for L.M.; and
- f. medical, psychological, and dental expenses for L.M.

WHEREFORE, MALOTAS demand judgment for damages against CCI for compensatory damages, costs, and all other such relief as the Court may deem just and proper.




**DEMAND FOR JURY TRIAL**

Plaintiffs demand trial by jury of all issues triable by a jury.

Respectfully submitted this 20<sup>th</sup> day of September, 2011.

**FILSON & PENGE, P.A.**



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