

IN THE CIRCUIT COURT OF COUNTY, MISSISSIPPI

, PLAINTIFF

VS.

CAUSE NO.

, Individually,
and D.B.A. ,
DEFENDANT

COMPLAINT

COMES NOW Plaintiff , by and through counsel, and files this Complaint against Defendant, , individually and against D.B.A. , and, in support hereof, states as follows:

PARTIES

- 1. Plaintiff is an adult resident citizen of County, Mississippi.
- 2. Defendant is an adult resident citizen of County, Mississippi who may be served with service of process by this Court at the following address: , , MS .

RELEVANT FACTS

- 3. Some time prior to , Defendant began doing business as and engaged in the business for commercial and residential clients.
- 4. During the same approximate time frame, Plaintiff was engaged in the operation of a business commonly known as .
- 5. On or about , the Mississippi Secretary of State accepted Articles of Incorporation for (" "). 's officers were as follows: , President/Secretary and , Vice President/Treasurer. In addition, 's registered agent was who utilized the following address in his/her capacity as registered agent: , MS .
- 6. On or about , President/Secretary of , withdrew from the corporation. However, on , a Bill of Sale was executed between (" ") and (" ") which effectively transferred to the () interest in formerly owned by . transferred to , Vice President of , the sum of \$ for this () interest in . A true and correct copy of the Bill of Sale is attached hereto as Composite Exhibit " " .
- 7. In return for capital contribution, represented to that would immediately issue an appropriate amount of common stock to in order that \$ investment would be officially recognized in 's corporate records.

refused/failed to issue any common stock to even though made numerous demands on to do so.

8. In addition to the cash involved in the purchase of the interest of , also agreed to merge his/her existing business with . To effectuate such agreement, brought his/her clients, equipment and goodwill into the corporation and allowed , as a principal of , a () interest in all of the clients, assets, equipment, accounts and goodwill brought into the corporation. , at all times pertinent hereto, shared in the income generated from the business. , in return for actions, agreed to cause a cash payment of \$ to be made to . As with the corporate stock, failed/refused to make any payments toward the \$ owing to although , as a principal of , accepted, used and exercised general control over the customer list and all the assets placed at disposal.

9. Although operated in good faith by honoring all written and oral agreements with , successfully created and operated a scheme whereby represented that would take the above described actions regarding business interests when no such actions were ever contemplated by or authorized by . Actually , as the only remaining principal of , failed to maintain any corporate formalities as required by law including but not limited to the failure to file annual franchise taxes, maintain corporate minutes and the failure to execute any corporate resolutions giving the power to buy and sell assets on behalf of or to enter into contracts on its behalf. Furthermore, was responsible for withholding employee taxes which directly created a tax liability in the approximate amount of \$ for and, in addition, established separate bank accounts other than that maintained by in which placed corporate and/or partnership funds which were never accounted to although owned a () interest in the assets of .

10. On , , communicated with and defined their prior business relations as those relative to a general partnership, not a corporation. Furthermore, declared the partnership to be dissolved and that he/she would continue the business as " D.B.A. " without the assistance of .

11. 's fraudulent conduct forced to withdraw from his/her association with / and, on , , demanded by and through his/her attorney that he/she be repaid his/her initial investment of \$, together with a share of the profits, receivables, and other corporate assets existing at the time of his/her withdrawal. In addition, certain equipment, accounts and goodwill for which was to be compensated in the amount of \$ remained with / and, accordingly, requested payment of reasonable compensation based on the influx of clients, assets and equipment to , as a principal of . failed and/or refused to meet any of demands.

12. On or about , , the Mississippi Secretary of State administratively dissolved and on this date, was the only principal holding any position and/or title with .

13. To date, has failed/refused to honor any and all contracts/agreements with , failed and/or refused to repay any sums demanded by and has failed and/or

refused to return any equipment rightfully owned by _____ subsequent to the upon the dissolution of _____ and/or any alleged general partnership.

COUNT I

BREACH OF CONTRACT

14. Plaintiff _____ adopts, realleges and incorporates his/her allegations set forth in Paragraphs 1-13 of this Complaint.

15. The above and foregoing actions of Defendant _____ give rise to a cause of action for breach of contract as _____ breached his/her contract with _____ by failing to issue to _____ corporate stock in _____ to officially reflect _____ capital contribution to _____. In addition, _____ breached his/her oral contract with _____ by accepting a _____ (_____) interest in _____ equipment, accounts, customer lists, etc. without the commensurate payment of \$ _____ to _____ as due and owing under their contract.

16. All of the foregoing conduct constitutes a breach of contract, which has resulted in damages to _____.

COUNT II

BREACH OF GOOD FAITH AND FAIR DEALING

17. Plaintiff _____ adopts, realleges and incorporates his/her allegations set forth in Paragraphs 1-16 of this Complaint.

18. The above and foregoing actions of Defendant _____ give rise to a cause of action for breach of fiduciary duty, good faith and fair dealing as _____ was principal of _____ and/or was a general partner with Plaintiff in a _____ business.

19. _____ has intentionally breached all contracts with _____ and in so doing evidenced an intent never to have honored his/her agreements with _____ in spite of direct, affirmative, representations to _____ that those agreements should be honored, all of which has resulted in damage to _____.

COUNT III

TORTIOUS INTERFERENCE

20. Plaintiff _____ adopts, realleges and incorporates his/her allegations set forth in Paragraphs 1-19 of this Complaint.

21. The above and foregoing actions of Defendant _____ give rise to a cause of action for tortious interference with prospective business relations and/or tortious interference with contract as _____ intentionally misrepresented his/her relationship with _____ in order to gain an interest in _____ customer list, _____ equipment, accounts and inventory. All of the

foregoing has specifically caused damage, including but not limited to, monetary damages in an amount not less than \$.

22. has misappropriated and converted clients, physical assets and funds and in so doing interfered with ability to serve clients generated, maintained and serviced by prior to his/her association with .

COUNT IV

FRAUD

23. Plaintiff adopts, realleges and incorporates his/her allegations set forth in Paragraphs 1-22 of this Complaint.

24. The above and foregoing actions of Defendant gives rise to a cause of action for fraud due to the knowing and intentional misrepresentations made by to regarding the issuance of corporate stock and also regarding 's misrepresentations concerning the \$ payment for 's interest in equipment in the following particulars:

(a) On or about , , was offered an interest in a business represented by to be a Mississippi corporation;

(b) On or about , , was told that he/she would be issued stock in the corporation;

(c) On or about , , was induced to pay \$ based on an affirmative representation that the payment would cause the purchase of assets and issuance of stock of the company to ;

(d) On or about , , was promised that would purchase () of the assets of for \$;

(e) All of the foregoing representations were made by to induce to furnish \$ in cash, physical assets, client list, good will and all other assets of business;

(f) All of the foregoing affirmative representations caused to share () of all profits and were generated by business with ;

(g) At the time of the foregoing affirmative representations, had no intention of meeting his/her obligations to ;

(h) At the time of affirmative representations, misrepresented the corporate status of and 's value as a going concern and/or 's ability to issue stock;

(i) All of the foregoing representations were for the sole purpose of enticing to transfer his/her interest in cash and other assets to ; and

(j) All of the foregoing representations constitute fraud and have resulted in damages to .

COUNT V

CONVERSION

25. Plaintiff adopts, realleges and incorporates his/her allegations set forth in Paragraphs 1-24 of this Complaint.

26. The above and foregoing actions of Defendant give rise to a cause of action for conversion of ownership interests regarding the subject equipment, accounts and related monetary proceeds as forced out of his/her association with and/or the general partnership and caused such business organizations to be dissolved without any payment and/or return of equipment to and as retained such proceeds and equipment irrespective of () interest in such assets.

27. has continued to use assets, equipment, capital and goodwill of to generate income to himself/herself, having appropriated these assets to his/her own use and benefit. is entitled to an award of () of the income generated by since was forced from the business association, plus an award of punitive damages and attorney's fees.

COUNT VI

28. Plaintiff adopts, realleges and incorporates his/her allegations set forth in Paragraphs 1-27 of this Complaint.

29. The above and foregoing actions of Defendant give the remedy of "accounting" against for the converted proceeds and/or equipment by individually and/or D.B.A. .

COUNT VII

30. Plaintiff adopts, realleges and incorporates his/her allegations set forth in Paragraphs 1-29 of this Complaint.

31. The above and foregoing actions of Defendant constitute a violation of the Mississippi Uniform Trade Secrets Act, Miss. Code Ann. Sec. 75-26-1, et seq., as 's misrepresentations were calculated to and did cause to disclose to a customer list which was not generally known to the public or ascertainable by proper means and because said list derives independent economic value in the marketplace.

32. The violation of the Mississippi Uniform Trade Secrets Act has resulted in damages to .

COUNT VIII

33. Plaintiff adopts, realleges and incorporates his/her allegations set forth in Paragraphs 1-32 of this Complaint.

34. In the alternative, the above and foregoing actions of Defendant justify this Court's order that has all rights and remedies defined in Miss. Code Ann. Sec. 79-12-79 as was forced out of the partnership with due to 's fraud and misrepresentations.

COUNT IX

35. Plaintiff adopts, realleges and incorporates his/her allegations set forth in Paragraphs 1-34 of this Complaint.

36. The above and foregoing actions of Defendant constitute an independent tort justifying the imposition of exemplary and/or punitive damages.

37. should be adjudged liable to for exemplary and/or punitive damages in an amount to be set at the trial of this cause but believed not to be less than \$.

WHEREFORE, PREMISES CONSIDERED, Plaintiff demands judgment of, from and against Defendants , Individually and d/b/a in the following particulars:

A. For monetary damages arising from a breach of contract in an amount to be set at the trial of this cause;

B. For an order requiring a \$ payment plus legal interest running on and after , arising from Defendants retention of Plaintiff's equipment, inventory, accounts and other additional assets;

C. For payment(s) constituting Plaintiff's () interest in , the general partnership or d.b.a. regarding any retained and unpaid profits, receivables or other liquidated corporate assets;

D. For the return of Plaintiff's \$ initial investment plus interest in and/or the partnership;

E. For an Order requiring the return of the equipment owned by Plaintiff yet retained by Defendants;

F. Prejudgment and post judgment interest, along with attorney's fees to be set by the Court at the trial of this cause;

G. For civil damages for Defendants knowing violations of the Mississippi Uniform Trade Secrets Act, Miss. Code Ann. Sec. 75-26-1, et seq.;

H. For all rights and remedies offered by law pursuant to Miss. Code Ann. Sec. 79-12-79;

I. For additional relief as is justified under the circumstances of this case;

J. For an award of punitive and/or exemplary damages to be set at the trial of this cause but believed to be in an amount not less than \$.

Dated, this the day of , .

Respectfully submitted,

Attorney for

Of counsel:

Telephone:
MSB #
Attorney for