

IN THE CHANCERY COURT OF COUNTY, MISSISSIPPI

and

vs.

CASE NO.

and

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO AMEND**

COMES NOW Plaintiffs, , and by and through counsel and file this their Response to Defendants' Motion to Amend, pursuant to Rule 15(a) of the Mississippi Rules of Civil Procedure and in support of said motion would show the following, to-wit:

1.

In Paragraph 1. of Defendant's Motion, it is stated that Plaintiffs owe the sum of \$ . The Defendants further state that this liability was transferred in the sale. The Plaintiffs deny the valid existence of this debt as a true debt to the corporation and further deny that any such debt was transferred in the sale. This debt does not appear on the liability listing as printed from the accounts payable computer as provided to Plaintiffs at closing. Further, has never contacted Plaintiffs, nor have the Defendants, regarding the payment of this debt. The sale took place on , and no mention has been made until now.

This debt was discussed prior to the sale and the Plaintiffs informed the Defendants that they would in no way assume this debt as part of the sale. informed on two (2) separate occasions that they (the Sellers) would take care of this note. No mention of this note appears in the reviews of , the Plaintiff's CPA, regarding the review of the financial information provided by Defendants prior to closing. See Exhibit " "

It is Defendants' belief, as informed by and , that this debt was on the books for 13 years prior to the sale and represented 's college fund that the Defendants contributed to the corporation, not . Further, would have been a minor at the time of the alleged loan. Plaintiffs are without sufficient information to defend this accusation of a debt owing and it would unduly and unnecessarily prejudice them to do so. This is based on two (2) reasons: 1) Defendant, had her bookkeeper, , wipe all records off of the computers the day of the closing; and 2) Defendants are now apparently taking the position that they are not on possession of any financial information that existed prior to closing.

Defendants' Response to First Set of Requests for Production, Request No. 11, reads as follows:

Copies of any and all documentation provided to on , (as such documents existed on that date) and as returned to on , as follows:

a) ;

- b) ;
- c) ;
- d) ;
- e) ;
- f) ;
- g) ;
- h) ;
- i) ;
- j) ;
- k) ;
- l) ;
- m) ; and
- n) .

RESPONSE: The Defendants have no such documents in their custody or control. On information and belief, all such documents are in the custody and control of the Plaintiffs. Attached hereto as Exhibits " " and " ", respectively, are signed receipt for all of the above-referenced documents dated , , and 's original transmittal letter undated that references the Confidentiality of the documents and how lives could be in danger upon their release. Therefore, it is difficult to imagine that Mr./Ms. would have carelessly left such as important documents as these at the pharmacy without having copies for her files. Further, this information should be contained in the backup of information made by when he wiped out the computer records the day of closing, and/or in the storage room for records that Defendants have consistently refused to provide access to. Defendants could have accessed this information in order to comply with discovery but have failed to do so. However, Plaintiffs did not copy the documentation as agreed and were not and have never been provided copies of the documentation.

Also, the breakdown of the personal property as requested in (a) above was later supplemented and provided to Plaintiffs by Defendants to set forth their defense to the Plaintiffs claim to the insurance proceeds. These were prepared in of , prior to the action being filed and prior to Plaintiffs' discovery request.

Further, in Defendant's Response to First Set of Requests for Production, Request No.10, it states as follows:

Any and all documentation concerning payments from     or     to any individual(s) or entity(ies) for expenses incurred in the remodeling, for payments to     , or for payment of personal tax returns.

RESPONSE: Objection. This request seeks information that is not relevant to the claims or defenses asserted herein, nor is it reasonably calculated to lead to the discovery of admissible evidence.

This was Defendants' third opportunity to plead this amount claimed owed to     and they failed to do so. They failed to do so because they were aware of the prior agreements that the liability did not transfer. It is Plaintiffs position that Defendants have used this action and the discovery to determine if Plaintiffs actually had copies of the financial information that Mr./Ms.     would not allow to be copied prior to asserting this claim. Defendants have had full knowledge of this issue prior to the action ever being filed.

Further,     is not an indispensable party to this action and was in no way connected to the sale. No demand has been made and no documentation evidencing this debt was provided prior to or at the closing. This is nothing more than a shareholder liability and not a "trade payable" and in no way was assumed by the Plaintiffs.

With regard to the issues raised in Paragraphs     of their proposed Amended Counterclaim, Plaintiffs deny any such allegations in their entirety. For Defendants to attempt to make these allegations is nothing short of absurd and surreptitious. All of these items were certainly transferred in the sale as they are part of the receivables, and represented to be by the Defendants. The Addendum to the Contract specifically provided that the checking accounts will remain open until all third party payors have been changed over to the new corporation. name was put on the account to allow him to transfer these third party receivables. This is exactly what has happened since the sale with Defendants' full assistance and tacit approval. By contract and the Defendants' own actions this allegation is ridiculous and without merit. The Contract never limits assets transferred, only liabilities.

Further, no mention was made of this during the loan officer's inspection of the business, the documents submitted to the bank or the documents submitted to the CPA. As previously mentioned, these documents have not been provided to Plaintiffs. This position has never been taken by the Defendants since the     ,     sale, nor in their answer or counterclaim. Again, it is Plaintiffs' position that Defendants have used this action and the discovery to surreptitiously determine if Plaintiffs actually had copies of the financial information that Mr./Ms.     would not allow to be copied prior to asserting this claim. These assets were understood to be transferred by all involved, including the CPA's who transferred and closed out the books after the sale. This understanding is further evidenced by the parties actions since the sale.

The Defendants requested asset listings in discovery and the Plaintiffs responded by submitting the only copies of "hard assets" available to them. Assets such as those they now claim are bookkeeping assets and are not generally listed on a fixture or inventory style listing of tangible assets. They are part of the receivables. These were not included on the books included in the financials supplied to the accountant as they were not "booked" or listed by the Defendants. These assets were receivables and were booked when received. This was explained

to during his/her review of the books and no representation was ever made by any part involved that these receivables would not transfer with the sale. This is a blatant attempt to benefit from documentation the Plaintiffs do not and have not had access to and Defendants prior bookkeeping methods all as a direct result of Defendants conduct and within Defendants full control.

Also, as a condition of the sale, it was understood that Defendants' would provide a listing of personal property not transferred in the sale and remove such items prior to the sale. The Defendants did provide such a list and did remove the items. No mention of the items they now claim were not transferred were on that list, including pharmacy formulas and notes, nor have they ever made any claim to such assets, but rather, have assisted in their transfer.

WHEREFORE, Plaintiffs, , and , respectfully request that this Court dismiss and deny Defendants' Motion to Amend. In the alternative, Plaintiffs would request leave of the Court to file a Motion to Amend their Complaint.

Dated this the day of , 20

Respectfully submitted,

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Attorney for

Of counsel:

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