

IN THE CHANCERY COURT OF COUNTY, MISSISSIPPI

and

vs.

NO.

and

COMPLAINT FOR ACCOUNTING, CONVERSION, DAMAGES  
DECLARATORY JUDGEMENT AND FOR SPECIFIC PERFORMANCE OF  
CONTRACT

COMES NOW Plaintiffs, and , by and through the undersigned counsel, and files this their Complaint against Defendants, and , and would show unto the Court the following facts, to-wit:

1.

Plaintiff, is an adult resident of Mississippi, whose permanent address is , , Mississippi . Plaintiff, , is an adult resident of Mississippi, whose permanent address is , , Mississippi . Plaintiffs are the owners of and both of which are the subjects of this cause. Further, Plaintiffs entered into an Agreement for the purchase of the aforementioned businesses from Defendants, the breach of which is also the subject of this cause.

2.

Defendant, , is an adult resident of who may be served at his/her residence by Certified Mail, Restricted Delivery, at , , . Defendant, , is believed to be an adult resident of who may be served at , , Mississippi , which is his/her current place of abode.

3.

Plaintiffs, on , 20 , entered into a Contract with Defendants for the purchase the assets of and . A copy of said Contract is attached hereto as Exhibit "A" and incorporated herein by reference. The sale was a "turnkey" sale in that all assets and liabilities would be transferred and assumed by Plaintiffs.

4.

Liabilities are being presented for collection from Plaintiffs that were not disclosed at the time of the sale of the businesses, and accordingly, these liabilities should remain the responsibility of the Defendants. Further, Defendants, pursuant to the Contract, were to return the premises to a "state of being" after a natural disaster incurring in of 20 . Defendants have failed to return the premises to a state of being after the disaster and renovations.

5.

An Addendum was executed at closing clarifying several items on \_\_\_\_\_, 20 \_\_\_\_ . A copy of said Addendum is attached hereto as Exhibit "B" and incorporated herein by reference. The Addendum provided that Plaintiffs were allowed an amount not to exceed \$ \_\_\_\_\_ for expenses incurred in completing remodeling of \_\_\_\_\_. Plaintiffs were to submit invoices and up to \$ \_\_\_\_\_ were to be paid by Defendants. The invoices were submitted on \_\_\_\_\_, \_\_\_\_\_, and no payments have been received.

6.

The Defendants were, pursuant to contract, to file an insurance claim on all property damaged in the natural disaster occurring \_\_\_\_\_, 20 \_\_\_\_ . Upon payment of this claim, Plaintiffs were to receive payment for all items damaged belonging to \_\_\_\_\_ and \_\_\_\_\_. Defendants were to retain all proceeds attributable to \_\_\_\_\_, a business unrelated to the sale. Plaintiffs have received no proceeds, other than advancement at closing. Further, Plaintiffs have received no information regarding the claim, or whether the claim has been filed, and have been denied this information despite several requests. Plaintiffs believe at least a portion of the payment has been received.

7.

By Contract, Defendants were to provide Plaintiffs a key to the storage facility containing the prior records of \_\_\_\_\_ and \_\_\_\_\_. Plaintiffs have not been provided a key nor information regarding the whereabouts of such records.

8.

According to the Contract, funds were left in the original bank accounts for each of the businesses, with Defendants having full access to the accounts. These accounts were to remain open until certain third party payors had been notified and the final corporate tax returns were filed by the Defendants. All matters have occurred with the exception of the filing of the tax return. However, fund withdrawals and deposits by the Defendants have continued to occur with no explanation or accounting to the Plaintiffs. The funds in said accounts are property that changed ownership at the time of sale.

9.

The Defendants had obtained a storage facility, prior to the sale of the businesses, at \_\_\_\_\_ to store property that was the subject of the aforementioned insurance claim. After the sale, the storage facility had the Plaintiffs assume these accounts. After the assumption, the Defendants were not authorized to have access or entry. Upon an inspection by the Plaintiffs in \_\_\_\_\_ of \_\_\_\_\_, it was discovered the property had been removed from the facility by Defendants, \_\_\_\_\_ in \_\_\_\_\_ of \_\_\_\_\_. The contents were removed by method of cutting the lock and gaining access. Plaintiffs have never been given an accounting of what was taken nor reimbursed for the expense of maintaining an empty storage facility.

10.

Plaintiffs have requested that Defendants complete the renovations of the buildings that were began prior to the sale. The Defendants own the building through an entity known as \_\_\_\_\_. The contract for sale obligates Plaintiffs to lease the premises from the Defendants during any

period in which money owes from the Plaintiffs to the Defendants. Defendants were also personally obligated under the sale Contract to bring the building back into the "state of being" existing as of , . Plaintiffs have requested the Defendants to complete renovation items or repairs and Defendants have failed to do so.

11.

#### COUNT ONE - ACCOUNTING

Defendants have had full access to information regarding fund deposits and withdrawals in the checking accounts that remained open pursuant to contract, full access to all information regarding the filing and/or collection of the insurance proceeds and the identity of the property and ownership affected by the loss, and full access to the identity of the property removed from the storage facility and the disposition of this property. Accordingly, Plaintiffs seek accounting as to the following issues:

1. The bank records and explanations of all transactions involving the accounts styled in and left open pursuant to the sale contract covering the time period from , 20 (the Contract month) through the present.
2. All information regarding any insurance filings on property owned or previously owned by , , or including amounts and ownership breakdowns, inventory of all property by item, records of any such payments made or denied by the insurance company, and the name of the agent handling the claim.
3. An inventory, by specific item, of all property removed from Plaintiffs' storage facility on , the current whereabouts of the property, any method of disposal, and an accounting of any compensation received as a result of any disposal.

12.

#### COUNT TWO - CONVERSION

Plaintiffs seek damages of a sum certain, but as yet unascertainable amount, for the wrongful entering of the storage facility and wrongful removal of the contents therein.

13.

#### COUNT THREE - SPECIFIC PERFORMANCE

Defendants failed to disclose the liabilities to and to Plaintiffs at the closing of the sale. Accordingly, these liabilities remain the obligation of the Defendants. Plaintiffs would request this Court to order the Defendants to assume these liabilities and contact the Debtors to ensure Plaintiffs release from these liabilities.

Plaintiffs would further request the Court to order Defendants to complete the renovations and make the repairs to the buildings that Plaintiffs occupy.

14.

#### COUNT FOUR - DAMAGES

As a direct and proximate result of Defendants' willful disregard for Plaintiffs' rights under the contract, Plaintiffs seek damages as follows: (1) damages in an undetermined amount for Defendants' unauthorized and continued use of the checking accounts; (2) damages in an undetermined amount for the value of the damaged property that Defendants have claimed or failed to claim insurance reimbursement; (3) damages in an undetermined amount for the wrongful conversion of Plaintiffs' property from the \_\_\_\_\_ storage facility; (4) in the event the Court does not award specific performance regarding the claims of \_\_\_\_\_ and \_\_\_\_\_, damages in an amount to be determined equaling all amounts claimed by said entities against Plaintiffs for debts incurred by the Defendants; (5) damages in the amount of \$ \_\_\_\_\_ for renovations pursuant to contract that Defendants have failed to reimburse Plaintiffs; and (6) as a result of Defendants' willful and continued refusal to perform under the terms of the contract, and willful refusal to turn over insurance proceeds and conversion of Plaintiffs' property, punitive damages in the amount of \$ \_\_\_\_\_.

15.

#### COUNT FIVE - DECLARATORY RELIEF

Plaintiffs are to make note payments to Defendants, jointly, at an address in \_\_\_\_\_ as set forth in the notes. Defendants, \_\_\_\_\_ has instructed the Plaintiffs in writing to send the note payments to her \_\_\_\_\_ address. Defendants, \_\_\_\_\_, has not responded in writing as agreeing to this change. It is Plaintiffs' understanding that a divorce is pending between the two Defendants. Plaintiffs ask the Court to advise Plaintiffs whether to proceed with the address in the notes or recognize Defendants, \_\_\_\_\_'s request for address change.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that their complaint will be received and filed by the Clerk and that process will issue for the Defendants named herein. Further, Plaintiffs prays that upon a hearing in this cause, the Court will order the Defendants to provide an accounting to Plaintiffs of all information as hereinabove delineated, and to order the Defendants to assume the debts relating to \_\_\_\_\_ and \_\_\_\_\_. Plaintiffs also prays that upon trial of this cause, the Court will award damages to Plaintiffs as follows: (1) damages in an undetermined amount for Defendants' unauthorized and continued use of the checking accounts; (2) damages in an undetermined amount for the value of the damaged property that Defendants have claimed or failed to claim insurance reimbursement; (3) damages in an undetermined amount for the wrongful conversion of Plaintiffs' property from the \_\_\_\_\_ storage facility; (4) in the event the Court does not award specific performance regarding the claims of \_\_\_\_\_ and \_\_\_\_\_, damages in an amount to be determined equaling all amounts claimed by said entities against Plaintiffs for debts incurred by the Defendants; (5) damages in the amount of \$ \_\_\_\_\_ for renovations pursuant to contract that Defendants have failed to reimburse Plaintiffs; and (6) as a result of Defendants' willful and continued refusal to perform under the terms of the contract, and willful refusal to turn over insurance proceeds and conversion of Plaintiffs' property,

punitive damages in the amount of \$ \_\_\_\_\_ ; (7) attorneys' fees; and (8) any and all other relief which Plaintiffs may be entitled, together with prejudgment and post-judgment interest thereon, and all costs of this action.

Respectfully submitted,

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Attorney for

Of counsel:

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