



DISTRICT COURT
FILED

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

AUG 15 2014

ARCHER MARKET, LLC, d/b/a FOLKS)
URBAN MARKET and PANTRY)

Plaintiff,)

v.)

ANDREW BLAKE EWING, an individual,)
ENGINE ROOM, LLC, THE PHOENIX)
CAFÉ, LLC, JOE MOMMA'S PIZZA, LLC,)
WHITE FLAG, FUR SHOP, LLC AND)
LEGEND'S DANCE HALL, LLC)

Defendant.)

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

CJ-2014-03133

DAMAN CANTRELL

PETITION

COMES NOW Plaintiff, Archer Market LLC, and for its causes of action against Defendants, Andrew Blake Ewing, Engine Room, LLC, The Phoenix Café, LLC, Joe Momma's Pizza, LLC, White Flag, LLC, The Fur Shop and Legends Dance Hall, LLC, alleges and states as follows:

I. JURISDICTION AND VENUE

1. Plaintiff, Archer Marker (hereinafter "Archer") is a limited liability corporation founded in the State of Oklahoma and the County of Tulsa County, State of Oklahoma.

2. Defendant, Andrew Blake Ewing (hereinafter "Ewing"), is a resident of Tulsa County in the State of Oklahoma.

3. Defendant, Engine Room (hereinafter "Engine"), is a limited liability corporation founded and based in Tulsa.

4. Defendant, The Phoenix Cafe (hereinafter "Phoenix"), is a limited liability corporation founded and based in Tulsa.

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5. Defendant, Joe Momma's Pizza, formerly known as Nightvision Tulsa (hereinafter "Joe Momma"), is a limited liability corporation founded and based in Tulsa.

6. Defendant, White Flag, formerly known as Back Alley Blues and Barbeque (hereinafter "White Flag"), is a limited liability corporation founded and based in Tulsa.

7. Defendant, Fur Shop (herein after "Fur Shop"), is a limited liability corporation founded and based in Tulsa.

8. Defendant, Legend's Dance Hall, formerly known as Blue Ox Dance Hall (hereinafter "Legends"), is a limited liability corporation founded and based in Tulsa. These shall be known hereinafter collectively as the "Defendants."

9. The entire subject matter of the present claims between the parties centers around the Plaintiff's claim of breach of contract and fraud.

10. Jurisdiction and Venue in this action are properly before this Court.

II. FACTUAL BACKGROUND

11. Archer was formed on August 10, 2011. Ewing was the initial manager and served in that capacity until December 24, 2013. It was formed with the idea to open and operate a retail grocery store in Downtown Tulsa.

12. Ewing was also a member and manager of, among other entities Engine, Phoenix, Joe Momma, White Flag, Fur Shop and Legends.

13. Archer remained in concept stage until June of 2013 at which time it obtained a line-of-credit for a local banking institution in the maximum sum of \$350,000.00

14. On June 14, 2013, Ewing began "drawing" on that line, co-mingling Archer funds with those of Engine, and misappropriated Archer's funds to keep afloat several of his other business interests, including Phoenix, White Flag, Fur Shop and Legends. Ewing diverted funds

of at least \$115,805.86 to Engine and \$6,000.00 to Phoenix through November 27, 2013. The precise amounts are unknown and will require gathering of financial information of all of Ewing's entities and a review by a forensic accountant to be conducted during Discovery.

15. The original amount disputed was \$121,805.86. On March 31, 2014, Ewing agreed in writing to a repayment settlement offer of \$76,648.73 and made four payments to Archer of \$5,000.00 per month.

16. Ewing has since refused further payment of his obligation and refused to cooperate with extension of the bank line of credit unless he was released from his settlement obligation.

17. Ewing's diversion of funds drastically reduced Archer's operating capital and doomed its existence.

18. Ewing's diversions amount to conversion, misappropriation and fraudulent transfer thereof. Archer is entitled to the immediate return of those funds, in addition to whatever amount this Court finds that Archer has suffered insofar as punitive relief.

II. COUNT ONE – BREACH OF CONTRACT

19. Plaintiff hereby adopts and re-alleges each of the facts and allegations set forth above.

20. Ewing, in his capacity of trust and respect, as City Councilor misrepresented to Archer Investors the amount of money and time it would take to build a working market in downtown Tulsa. Ewing owed a fiduciary duty to Plaintiff and breached that duty.

21. Ewing strung along Investors with false promises of hiring and training employees, which was never accomplished because the equipment and facility had yet to be purchased or completed.

22. Plaintiff had an oral and/or a written agreement with Defendants that was executed in June 2013.

23. Defendants breached their agreement(s) with Plaintiff by failing to comply with the original partnership agreement and then again failing to make settlement payments. Ewing went so far as to make reconfiguration of the loan impossible unless both Ewing's debt was forgiven.

24. As a direct and proximate result of Defendants' breach, Plaintiff has suffered damages.

II. COUNT TWO – FRAUD/CONSTRUCTIVE FRAUD/DECEIT

25. Plaintiff hereby adopts and re-alleges each of the facts and allegations set forth above.

26. Ewing intentionally, or with reckless disregard for the truth, represented to Archer that the business model was progressing as planned when in fact the timeline and budget was ballooning out of control.

27. Additionally, Ewing was syphoning from Archer to keep his other business ventures open. Ewing continually comingled funds and breached his fiduciary duty to Plaintiff.

28. Such misrepresentations by Defendants are part of a pattern and practice or are so widespread as to constitute a general business practice.

29. Plaintiff reasonably relied upon Defendant's representations until such time that he viewed no progress being made on the construction of the building.

30. Plaintiff has suffered damages as a result of the Defendants' misrepresentations.

31. Defendants acted willfully, wantonly and/or with reckless disregard for the rights of others. Punitive damages should be awarded against Defendants to punish them and deter others.

WHEREFORE, Plaintiff Archer Market prays for judgment against Defendants Andrew Blake Ewing, Engine Room, LLC, The Phoenix Café, LLC, Joe Momma's Pizza, LLC, White Flag, LLC, The Fur Shop, LLC, and Legends Dance Hall, LLC in an amount in excess of Ten Thousand Dollars (\$10,000.00), together with costs, interest, reasonable attorney fees, and other relief which this Court deems just and equitable.

Respectfully submitted,



Reggie N. Whitten, OBA #9576

J. Revell Parrish, OBA #30205

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