

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY**

945 SOUTH DOUGLAS LLC; CHRIS
ISAAK; and SHERYL LOUIS,

Plaintiffs,

v.

BRIAN LAYTON and SARAH BRITT
LAYTON,

Defendants.

Case No. 22-1278-IV

FIRST AMENDED COMPLAINT

Plaintiffs 945 South Douglas LLC, Chris Isaak and Sheryl Louis, for their causes of action against Defendants Brian Layton and Sarah Britt Layton state:

NATURE OF THE ACTION

1. This action arises out of Brian and Sarah Layton's brazen scheme to defraud 945 South Douglas LLC ("Company") and its members, Chris Isaak and Sheryl Louis, by stealing real property that the Company owned and planned to develop, using that property to secure millions of dollars in loans, and using the loan proceeds for the Laytons' personal benefit.

2. Brian Layton was the Company's manager. As discussed in detail below, in that role, he set about perpetuating a massive fraud scheme, and in doing so engaged in an egregious breach of the fiduciary duties he owed to the Company and its members, Isaak and Louis.

3. Sarah Layton—Brian Layton's wife—knew exactly what her husband was doing. And, in addition to encouraging and supporting him in accomplishing his schemes, she helped him pull them off and cover them up.

4. The Laytons' schemes have caused the plaintiffs to incur a staggering amount of damages. The plaintiffs therefore bring this action to redress that harm.

PARTIES

5. Plaintiff 945 South Douglas LLC is a Delaware limited liability company that owns land and operates in Davidson County, Tennessee.

6. Plaintiff Chris Isaak is an individual who resides in Davidson County, Tennessee. Isaak is, and at all relevant times was, a Member of the Company.

7. Plaintiff Sheryl Louis (together with the Company and Isaak, “Plaintiffs”) is an individual who resides in Davidson County, Tennessee. Louis is, and at all relevant times was, a Member of the Company.

8. Defendant Brian Layton is an individual who, upon information and belief, resides in Davidson County, Tennessee. Brian Layton is a member of Layton Homes 2 LLC, a Tennessee limited liability company that operates in Davidson County, Tennessee. At all relevant times, Layton Homes 2 LLC was a Member of the Company, and Brian Layton was the Company’s Manager.

9. Defendant Sarah Layton is an individual who, upon information and belief, resides in Davidson County, Tennessee. Upon information and belief, Sarah Layton is a member of Layton Homes 2 LLC.

JURISDICTION, VENUE, AND GOVERNING LAW

10. This Court has jurisdiction over this action under Tenn. Code Ann. §§ 16-11-101 and 16-11-102.

11. Venue is proper in this Court under Tenn. Code Ann. § 20-4-101 *et seq.* because the acts giving rise to this action occurred principally in Davidson County, Tennessee. Venue is also proper in this Court under Tenn. Code Ann. § 20-4-103 because this action involves real property located in Davidson County, Tennessee.

12. Personal jurisdiction over Brian and Sarah Layton is proper because they are

residents of Tennessee.

13. Plaintiffs' fiduciary duty and contract claims against Brian Layton are governed by Delaware law under the limited liability company operating agreement at issue. Tennessee law governs Plaintiffs' other claims against Brian Layton and their claims against Sarah Layton.

FACTUAL BACKGROUND

I. The Company and Its Operating Agreement

14. In September 2019, Layton Homes 2 LLC ("Layton Homes"), Chris Isaak and Sheryl Louis formed the Company, under Delaware law, to buy, develop, and operate real property at 945 South Douglas Street, Nashville, TN 37204 ("Property").

15. Under the Limited Liability Company Agreement of 945 South Douglas LLC ("Operating Agreement"), the Company is a manager-managed limited liability company subject to the Delaware Limited Liability Company Act ("Act"). A true and correct copy of the Operating Agreement is attached hereto as **Exhibit A**.

16. From the time the Company was formed until Layton Homes' membership interest terminated on or about March 23, 2023, Layton Homes owned 50 percent of the Company's membership interests, and Isaak and Louis each owned 25 percent.

17. Isaak and Louis were each "Investor Members." As Investor Members, Isaak and Louis had certain rights, powers, and responsibilities that Layton Homes did not.

18. Layton Homes' principal, Brian Layton, was named the Company's Manager and served in that capacity until he was removed on or about September 27, 2022. As Manager, Brian Layton had certain powers and responsibilities. *See* Ex. A, Operating Agreement Art. 5.

19. Under section 1.8 of the Operating Agreement:

Unless otherwise approved by a Majority-in-Interest of the Investor Members, legal title to all of the Company's direct or indirect assets, including the Property, shall be held by the Company. Legal representatives, beneficiaries, distributees, partners,

shareholders, members, successors or assigns of any Member shall have no right, title or interest in or to the Property or any other asset of the Company by reason of the manner in which title is held, but all such assets shall be treated as Company assets subject to the terms of this Agreement.

20. The Operating Agreement expressly identifies certain “Major Decisions” that require “the approval of a Majority-in-Interest of the Investor Members in their respective sole and absolute discretion,” including, but not limited to:

(b) Except as provided herein, (i) obtaining any third-party Indebtedness (including an operating line of credit) on behalf of the Company other than ordinary course trade payables or executing or delivering any loan or documents in connection therewith (including any binding term sheets or commitment letter) or (ii) modifying, prepaying or refinancing any Indebtedness of the Company, modifying or extending the term of, or exercising or waiving any material right under, any note, agreement, instrument, deed of trust, mortgage, guaranty, indemnity or other document evidencing, securing or otherwise relating to any loan or extension of credit made to the Company, including the Financing;

...

(i) Transferring or otherwise selling or disposing of the Property or any portion thereof or permitting an encumbrance to be placed on all or any portion of the Property or any other Company Property;

...

(m) Changing the purpose of the Company;

...

(s) Causing the Company to incur any cost or enter into any contract, agreement or other instrument (or amending, extending, waiving any material right under or terminating such contract, agreement or instrument) that is not on the terms set forth in an Approved Development Plan, and in accordance with the provisions of this Agreement and the cost of which is set forth in the Approved Budget;

...

(w) Other than as permitted herein, permitting an encumbrance to be placed on all or any portion of the Property, the Project or any other Company Property (other than any utilities easements or other similar, customary agreements that are consistent with the Approved Development Plan);

...

(kk) Taking any act in contravention of this Agreement or any action that is otherwise required to be approved by the Investor Members under this Agreement;

...

(pp) Transferring or otherwise disposing of the Property or any Company Property or causing the Company to sell all or any portion of the Property; and

(qq) Except as provided herein, (i) causing the Company to borrow money from a Member or its Affiliates except pursuant to Article 2 or (ii) executing or delivering on behalf of the Company any guaranty, indemnity or other agreement whereby the Company is or may become liable for any obligations of any other Person or for which the Company has otherwise assumed responsibility.

Ex. A, Operating Agreement § 5.3.1.

21. Under section 5.3.2 of the Operating Agreement, “the Investor Members shall have the sole and exclusive power, right, authority and discretion to approve or veto any Major Decision proposed by the Manager.”

22. In October 2019, the Company acquired the Property, which was divided into 19 separate units. A true and correct copy of the Master Deed Establishing Douglas Corner, a Horizontal Property Regime with Private Elements, is attached hereto as **Exhibit B**. A true and correct description of the Property after it was divided into 19 separate units is attached hereto as **Exhibit C**.

II. Brian Layton’s Fraud and Acts of Self-Dealing

A. The BD Capital Loan and Consent Resolution

23. In August 2021, a separate entity that Brian Layton and Sarah Layton co-owned, LH2 Investments LLC (“LH2”), borrowed more than \$2 million from BD Capital SE LLC (“BD Capital”). The loan was secured by the Property in direct violation of the terms of the Operating Agreement. The purported purpose of the loan was to refinance other debt that was also secured by the Property (also fraudulently by Brian Layton) and to make further improvements to the Property.

24. The loan documents included a Loan Agreement, a Third Party Pledge and Certificate of Property Owner (“Pledge Agreement”), and a Consent to Action of the Members of 945 South Douglas LLC (“Consent Resolution”) that purportedly bore the signature of each of the Company’s members, including Isaak and Louis.

25. Neither Isaak nor Louis knew about, consented to, or executed the Loan Agreement, the Pledge Agreement, or the Consent Resolution.

26. Plaintiffs are aware of two copies of the Consent Resolution. On one copy, the signature lines for Isaak and Louis reflect that the document was “e-signed” and sent directly to BD Capital.

27. The other copy contains what appear to be Isaak’s and Louis’s signatures.

28. Although one copy of the Consent Resolution purports to bear Isaak’s and Louis’s signatures, neither Isaak nor Louis actually signed the document. Nor did they “e-sign” the document or send it to BD Capital.

29. In fact, Brian Layton added Isaak’s and Louis’s signatures without either’s knowledge or consent.

30. Brian Layton did not obtain the loan for the Company’s benefit; rather, he used the funds he obtained for his and Sarah Layton’s personal benefit.

B. Brian Layton’s Unauthorized Conveyances to Himself

31. In addition to obtaining the BD Capital loan by fraudulently signing Isaak’s and Louis’s names, in a clear act of improper self-dealing, Brian Layton also deeded three of the Property units to his company, Layton Homes 2 TN LLC.

32. On or about October 8, 2021—again in direct violation of the express terms of the Operating Agreement—Brian Layton conveyed the units at 2110 10th Ave. S., 2108 10th Ave. S., and 953 S. Douglas Ave. (collectively, the “Three Units”) to Layton Homes 2 TN LLC by

quitclaim deeds.

33. Neither Isaak nor Louis knew about or authorized any of these conveyances.

34. After conveying the Three Units to Layton Homes 2 TN LLC, Brian Layton used them as collateral to secure over \$4 million in additional loans to Layton Homes 2 TN LLC. These funds were not used for the Company's benefit. Rather, they were used to benefit Brian and Sarah Layton.

III. Sarah Layton's Involvement in Brian Layton's Schemes

35. Upon information and belief, Sarah Layton knew that Brian Layton forged Isaak's and Louis's signatures, fraudulently obtained loans for LH2—a company in which she is a member—using the Property as collateral, and fraudulently deeded the Three Units to Layton Homes 2 TN LLC, and she assisted, encouraged, and conspired with him in accomplishing and covering up his misconduct. For example (and without limitation), upon information and belief, Sarah Layton helped Brian Layton transfer the loan proceeds through a network of shell companies, including LH2. And when Brian Layton needed a cash infusion to keep his schemes alive, Sarah Layton secured funding from her father to assist him. She also benefited personally from the ill-gotten gains resulting from the schemes.

CAUSES OF ACTION

COUNT I Breach of Fiduciary Duties (against Brian Layton)

36. Plaintiffs reallege and incorporate by reference the foregoing paragraphs as if fully set forth herein.

37. Under Delaware law, Brian Layton, as the Company's Manager, owed the Company and Isaak and Louis, as the Company's Members, certain fiduciary duties.

38. Among these duties, Brian Layton was required to act loyally to the Company,

Isaak, and Louis and in good faith. He was also required to refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of the law.

39. Brian Layton breached all of these duties by, among other things: (a) fraudulently encumbering the Property without Isaak's or Louis's knowledge or consent for his personal benefit and the benefit of Sarah Layton; and (b) fraudulently conveying and encumbering the Three Units without Isaak's or Louis's knowledge or consent for his personal benefit and the benefit of Sarah Layton.

40. As a result of Brian Layton's breaches, the Company, Isaak and Louis have been harmed in an amount to be proven at trial.

41. In committing the acts described herein, Brian Layton acted maliciously, intentionally, fraudulently and/or recklessly. Accordingly, Plaintiffs also seek an award of punitive damages in an amount to be determined by the Court.

COUNT II
Conversion
(against Brian Layton)

42. Plaintiffs reallege and incorporate by reference the foregoing paragraphs as if fully set forth herein.

43. The Company is, and at all relevant times was, the lawful owner of the Property.

44. Brian Layton misappropriated the Property by intentionally exercising dominion over it when he fraudulently encumbered the Property and conveyed and encumbered the Three Units without Isaak's or Louis's knowledge or consent for his personal benefit and the benefit of Sarah Layton.

45. Brian Layton's misappropriation of the Property was in defiance of the Company's rights.

46. As a result of Brian Layton's conversion of the Property, the Company has been harmed in an amount to be proven at trial.

47. In committing the acts described herein, Brian Layton acted maliciously, intentionally, fraudulently and/or recklessly. Accordingly, the Company also seeks an award of punitive damages in an amount to be determined by the Court.

COUNT III
Breach of Contract
(against Brian Layton)

48. Plaintiffs reallege and incorporate by reference the foregoing paragraphs as if fully set forth herein.

49. The Operating Agreement is a binding, enforceable contract between Isaak, Louis and Brian Layton.

50. Isaak and Louis have fully performed all of their obligations under the Operating Agreement.

51. Brian Layton breached his contractual obligations by, among other things: (a) fraudulently encumbering the Property without Isaak's or Louis's knowledge or consent for his personal benefit and the benefit of Sarah Layton; and (b) fraudulently conveying and encumbering the Three Units without Isaak's or Louis's knowledge or consent for his personal benefit and the benefit of Sarah Layton.

52. As a result of Brian Layton's breaches, Isaak and Louis have suffered damages in an amount to be proven at trial.

COUNT IV
Civil Conspiracy
(against Brian Layton and Sarah Layton)

53. Plaintiffs reallege and incorporate by reference the foregoing paragraphs as if fully

set forth herein.

54. Brian Layton and Sarah Layton engaged in a conspiracy to breach Brian Layton's fiduciary duties to the Company, Isaak and Louis and to commit conversion with respect to the Property. In doing so, the defendants sought to use the proceeds from the loans they fraudulently obtained for their own benefit.

55. In devising their conspiracy, Brian Layton and Sarah Layton engaged in concerted actions to accomplish these torts. For example (and without limitation), Brian Layton forged Isaak's and Louis's signatures to obtain the loan from BD Capital and conveyed the Three Units to Layton Homes TN 2 LLC to obtain other loans. For her part, Sarah Layton—with knowledge of Brian Layton's conduct—helped Brian Layton transfer the loan proceeds through a network of shell companies, including LH2, and obtained funds from her father to keep these schemes going. She also enjoyed the benefits of the fraudulently obtained loans.

56. As a result of Brian Layton's and Sarah Layton's conspiracy, Plaintiffs have been harmed in an amount to be proven at trial.

57. In committing the acts described herein, Brian Layton and Sarah Layton acted maliciously, intentionally, fraudulently and/or recklessly. Accordingly, Plaintiffs also seek an award of punitive damages in an amount to be determined by the Court

COUNT V
Aiding and Abetting Breach of Fiduciary Duties & Conversion
(against Sarah Layton)

58. Plaintiffs reallege and incorporate by reference the foregoing paragraphs as if fully set forth herein.

59. Sarah Layton knew that Brian Layton fraudulently encumbered the Property without Isaak's or Louis's knowledge or consent and fraudulently conveyed and encumbered the

Three Units without Isaak's or Louis's knowledge or consent.

60. With this knowledge, Sarah Layton gave substantial assistance and encouragement to Brian Layton in accomplishing and covering up this misconduct. For example (and without limitation), upon information and belief, Sarah Layton helped Brian Layton transfer the loan proceeds through a network of shell companies, including her company, LH2, and secured funding from her father to assist Brian Layton in keeping the schemes going.

61. Sarah Layton also benefited personally from the ill-gotten gains resulting from the schemes.

62. Brian Layton could not have accomplished or concealed his misconduct without Sarah Layton's assistance.

63. As a direct and proximate result of Sarah Layton's aiding and abetting Brian Layton's breaches of his fiduciary duties, Plaintiffs have been harmed in an amount to be proven at trial.

64. In committing the acts described herein, Sarah Layton acted maliciously, intentionally, fraudulently and/or recklessly. Accordingly, Plaintiffs also seek an award of punitive damages in an amount to be determined by the Court.

COUNT VI
Lien Lis Pendens

65. Plaintiffs reallege and incorporate by reference the foregoing paragraphs as if fully set forth herein.

66. A lien lis pendens is available to protect a plaintiff who files a lawsuit wherein the specific property secured by the lien lis pendens is part of the subject matter of the lawsuit. The lien lis pendens preserves the status quo and prevents further alienation of the property until the court can render a decision.

67. The real property at issue in this lawsuit is described in Exhibit C.

68. Upon the filing of this action, Plaintiffs are entitled to a lien lis pendens upon the real property described in Exhibit C.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the following relief:

A. That service of process issue against Brian Layton and Sarah Layton requiring them to appear and answer this Complaint;

B. That Plaintiffs be awarded judgment against Brian Layton and Sarah Layton in an amount to be proven at trial;

C. That the Court find Brian Layton and Sarah Layton acted maliciously, intentionally, fraudulently or recklessly and thus award Plaintiffs punitive damages in an amount to be determined by the Court; and

D. That the Court award such other and further relief to which Plaintiffs may be entitled and which the Court deems just and equitable.

Dated: May 3, 2023

/s/ Michael A. Malone

John W. Peterson (BPR# 26136)
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served on May 3, 2023 via U.S. Mail as follows:

Brian Layton
1033 Demonbreun Street
3rd Floor
Nashville, TN 37203

/s/ Michael A. Malone