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CV08-03172
BRAD LINGENFELTER VS. MARCI 20 Pages
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District Court
Washoe County
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BY *[Signature]*
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

BRAD L. LINGENFELTER,
Plaintiff,

CASE NO.:
DEPT. NO.:
CV08 03172
3

vs.

MARCIA R. LUCEY; BRETT H.
LINGENFELTER; ROBERT L. LUCEY,
formerly known as ROBERT L.
LINGENFELTER; KRISTYN L.
LINGENFELTER; and DOES I-X,

Defendants.

VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF, SPECIFIC PERFORMANCE,
ACCOUNTING AND DAMAGES

(EXEMPT FROM ARBITRATION)

For his Complaint, Brad L. Lingenfelter alleges as follows:

I. Parties.

1. Plaintiff Brad L. Lingenfelter is a resident of Washoe County,

1 determined by a majority vote of the Members.

2 24. For the past several years, Marcia, with primarily the assistance
3 of Robert, has acted both as the *de facto* managing member of Lucey
4 Properties and Triple L, as well as the property manager of the real property
5 owned by both LLCs.
6

7 25. On information and belief, Marcia, with the primary assistance of
8 Robert, has knowingly and purposefully mismanaged the two LLCs to
9 Plaintiff's detriment.
10

11 26. No distributions have been paid to Plaintiff despite the two LLCs
12 having had a consistent positive cash flow. On information and belief, Marcia
13 has caused improper payments to be made from the two LLCs, disguised as
14 "management payments" and other miscellaneous fees to herself and some of
15 the other Defendants, in order to show no distributable income and avoid
16 paying to Plaintiff pursuant to his membership interest percentage.
17

18 27. Plaintiff recently hired Reno business consulting firm Meridian
19 Business Advisors ("MBA") to provide forensic accounting services regarding
20 questionable and related party transactions for Lucey Properties and Triple L
21 (hereafter the "MBA Analysis"). A true and correct copy of the MBA Analysis
22 dated September 15, 2008 is attached hereto as Exhibit "3".
23

24 28. Among other things, the following observations were made in the
25 MBA Analysis:

- 26
- 27 • *CAM Fees-Income (Common Area Maintenance Fees) and Common*
28 *Area Costs-Expense: Common Area Costs and CAM Fee Income were*
very sporadic. Based on wording in the lease agreements, (other than

1 those signed with A Plus Animal Hospital. The agreements with A Plus
2 Animal Hospital were unavailable during the viewing period), CAM fees
3 are considered "Other Costs" and were to be passed on to the tenants
4 proportionately. **This does not appear to have occurred** (emphasis
5 added). Costs were not consistently charged to the Common Area Cost
6 account and these costs were not consistently charged back to the
7 tenants and subsequently collected as CAM Fee income. Based on
8 discussions with the Ms. Lucey (property manager and person
9 responsible for the record-keeping) most of these costs have been
10 incorrectly identified as other costs within the financial statements,
11 such as "Maintenance," etc. Ms. Lucey commented that this was due
12 to a **lack of paying attention in the past** and that she was in the process
13 of taking more care in classifying Common Area Costs so they may be
14 correctly charged to the tenants and ultimately be collected as CAM Fee
15 income in the future.

16 • *Leasing Fees and Leasing Expense:* Not until 2007 had leasing related
17 expenses appeared on the financial statements. Based on our viewing of
18 the supporting documents, 100% of these fees, (\$3,709 in 2007)
19 relate to amounts paid to Robert Lucey for the leasing of Triple L.
20 Properties, LLC units. *The description of this charge relates to*
21 commissions for lease negotiations. The amount paid to Robert Lucey
22 was based on a percentage of the gross lease amount negotiated.

23 • *Management Fees:* These fees not only include the fee charged by Ms.
24 Lucey as the property manager, **but also include random payments to**
25 **Robert Lucey and Kristyn Lingenfelter for management services and**
26 **preparation of board of director minutes for Lucey Properties, LLC.**
27 Amounts paid to Robert Lucey and Kristyn Lingenfelter was \$2,140 and
28 \$200 respectively. **The payments to Robert Lucey and Kristyn**
Lingenfelter are above and in addition to the management fee collected
by Marcia Lucey for her property management services. Ms. Lucey's fee
was raised from \$500/month per property to \$1,000/month per
property beginning in January 2006. According to Ms. Lucey, the raise
the monthly management fee was agreed to by a majority of the
stockholders of each entity and documented in the board of director's
minutes. I was not provided access to the entities board of director's
minutes and was unable to confirm Ms. Lucey's statement. **In addition,**
Lucey Properties, LLC made payments to an outside vendor that were
described as "property management." The outside vendor was Alliance
Commercial and between 2004 through 2007 payments to this vendor
ranged from approximately \$3,000 to \$11,000 per year. The Alliance
Commercial invoices described the fees as commissions due for leases
negotiated.

1 • *Office Expense:* Office expenses in 2008 increased from less than \$500
2 for each entity to amounts in excess of \$2,000 and \$3,500 for Lucey
3 Properties, LLC and Triple L. Properties, LLC respectively. According to
4 our viewing of the supporting records, the increase is predominately the
5 result of both entities being charged "office rent" by Marcia Lucey. We
6 found that in 2008, Ms. Lucey had charged monthly rent to Triple L.
7 Properties, LLC \$3,500 and to Lucey Properties, LLC \$4,500. Of the
8 \$4,500 rent charged to Lucey Properties, LLC, \$1,500 was classified in
9 the trial balance as office expense and \$3,000 was classified as
management fees. When we inquired of Ms. Lucey what this amount
was for and how it was determined, she responded that she uses a
portion of her home to store documents and manage the day-to-day
operations of the two entities, therefore she felt it was proper to charge
a fee for rent.

10 • **Credit Card Charges**

11 ... "Based on our limited viewing time, it could not be determined if the
12 charges were business related or if they were charges for personal
13 items."

14 • **CONCLUSIONS**

15 Many times we found similar expenses categorized in more than one
16 income statement expense category. For example, landscaping
17 expenses have been found in the following income statement expense
18 categories: CAM fees, common area costs, maintenance, and
19 management fees. **There appears to not have been much attention paid
20 to classification of expenses and/or the charging of time related to the
21 two entities (emphasis added).** This has made for a difficult analysis.
22 When discussing the various expense items noted above with Ms.
23 Lucey, we were told that these were necessary costs, many of which
24 have not been charged or passed through to the entities in past years.
Per Ms. Lucey, now that the entities will be managed less like a family
business and **more like proper LLCs**, in the future many of these types
of costs will be correctly charged to the entities as they should have
been in the past and efforts will be made to classify expenses in the
proper expense categories ...

25 From our investigation, it appears there were amounts paid to related
26 parties that may not necessarily be for the performance of actual
27 services, but are for the arrangement of those services to be performed
28 by outside vendors. It could be argued that the \$2,000 per month paid
to Marcia Lucey would cover those services...

1 If payments made for services to the related parties noted above are
2 also being deducted as business expenses of the two entities, these
3 amounts should be subject to income tax reporting and both entities
4 should be filing the appropriate federal Form 1099 Miscellaneous
5 income reports with the International Revenue Service. **No evidence
was provided that this reporting requirement was complied with
(emphasis added).**

6 29. Based on the foregoing conclusions of MBA, as well as the
7 personal knowledge of Plaintiff as a Member of the two LLCs and records
8 maintained by him, on information and belief, Marcia, with the primary
9 assistance of Robert, has knowingly and purposefully mismanaged the two
10 LLCs to Plaintiff's detriment.

11 30. Plaintiff has recently contacted reputable property managers
12 Gaston & Wilkerson Management Group, Inc. ("G&W"). G&W has proposed
13 to manage the properties owned by the two LLCs at rates significantly lower
14 than the LLCs are being charged by Marcia. A true and correct copy of
15 G&W's proposals are attached hereto as Exhibit "4".

16 **IV. Agreement to Purchase Plaintiff's Membership Interests.**

17 31. In light of the Defendants' clear effort to deny Plaintiff his right to
18 distributions from the two LLCs, and based on Plaintiff's belief that certain
19 Defendants were intentionally mismanaging the two LLCs, Plaintiff pursued
20 attempts to extricate himself from Defendants in the two LLCs.

21 32. Plaintiff retained counsel to facilitate a fair and equitable buy-out
22 of Plaintiff's interest in the two LLCs, or in the alternative, for Plaintiff to buy
23 out the remaining Members' interests, using the appraised value of the LLCs
24 real property identified above.