

IN THE SUPREME COURT OF THE STATE OF NEVADA

Margaret Reddy, Mohan Thalamarla, Supreme Court No. 83253
Max Global, INC.

Appellants,

vs.

MEDAPPEAL, LLC, an Illinois
limited liability company

Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court

APPELLANTS' APPENDIX VOLUME 1

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Max Global, LLC

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Exhibit 1

2120 - Served
2220 - Not Served
2320 - Served By Mail
2420 - Served By Publication
Summons - Alias Summons

2121 - Served
2221 - Not Served
2321 - Served By Mail
2421 - Served By Publication

(08/01/18) CCG 0001 A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

MEDAPPEAL, LLC

(Name all parties)

v.

Case No. 2018L010586

DAVID WEINSTEIN, VIJAY REDDY,
KEVIN BROWN, VISIONARY BUSINESS BROKERS LLC,
& MEDASSET CORPORATION ☒ SUMMONS ☐ ALIAS SUMMONS

To each Defendant:

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance and pay the required fee **within thirty (30) days after service of this Summons**, not counting the day of service. To file your answer or appearance you need access to the internet. Please visit www.cookcountyclerkofcourt.org to initiate this process. Kiosks with internet access are available at all Clerk's Office locations. Please refer to the last page of this document for location information.

If you fail to do so, a judgment by default may be entered against you for the relief requested in the complaint.

To the Officer:

This Summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this Summons shall be returned so endorsed. This Summons may not be served later than thirty (30) days after its date.

Dorothy Brown, Clerk of the Circuit Court of Cook County, Illinois
cookcountyclerkofcourt.org

Page 1 of 3

Summons - Alias Summons

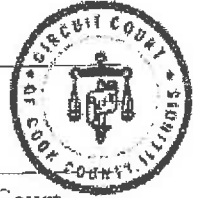
(08/01/18) CCG 0001 B

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10/1/2018

Atty. No.: 58894
Atty Name: Eli R. Johnson
Atty for: Plaintiff
Address: 1000 Skokie Blvd., Ste 225
City: Wilmette
State: IL Zip: 60091
Telephone: 847-348-8808
Primary Email: eli@jjalawllc.com

Witness: _____
10/1/2018 11:13 AM DOROTHY BROWN



DOROTHY BROWN, Clerk of Court

Date of Service: _____
(To be inserted by officer on copy left with
Defendant or other person):

Dorothy Brown, Clerk of the Circuit Court of Cook County, Illinois
cookcountyclerkofcourt.org

CLERK OF THE CIRCUIT COURT OF COOK COUNTY OFFICE LOCATIONS

Richard J Daley Center
50 W Washington
Chicago, IL 60602

District 2 - Skokie
5600 Old Orchard Rd
Skokie, IL 60077

District 3 - Rolling Meadows
2121 Euclid
Rolling Meadows, IL 60008

District 4 - Maywood
1500 Maybrook Ave
Maywood, IL 60153

District 5 - Bridgeview
10220 S 76th Ave
Bridgeview, IL 60455

District 6 - Markham
16501 S Kedzie Pkwy
Markham, IL 60428

Domestic Violence Court
555 W Harrison
Chicago, IL 60607

Juvenile Center Building
2245 W Ogden Ave, Rm 13
Chicago, IL 60602

Criminal Court Building
2650 S California Ave, Rm 526
Chicago, IL 60608

Daley Center Divisions/Departments

Civil Division
Richard J Daley Center
50 W Washington, Rm 601
Chicago, IL 60602
Hours: 8:30 am - 4:30 pm

Chancery Division
Richard J Daley Center
50 W Washington, Rm 802
Chicago, IL 60602
Hours: 8:30 am - 4:30 pm

Domestic Relations Division
Richard J Daley Center
50 W Washington, Rm 802
Chicago, IL 60602
Hours: 8:30 am - 4:30 pm

Civil Appeals
Richard J Daley Center
50 W Washington, Rm 801
Chicago, IL 60602
Hours: 8:30 am - 4:30 pm

Criminal Department
Richard J Daley Center
50 W Washington, Rm 1006
Chicago, IL 60602
Hours: 8:30 am - 4:30 pm

County Division
Richard J Daley Center
50 W Washington, Rm 1202
Chicago, IL 60602
Hours: 8:30 am - 4:30 pm

Probate Division
Richard J Daley Center
50 W Washington, Rm 1202
Chicago, IL 60602
Hours: 8:30 am - 4:30 pm

Law Division
Richard J Daley Center
50 W Washington, Rm 801
Chicago, IL 60602
Hours: 8:30 am - 4:30 pm

Traffic Division
Richard J Daley Center
50 W Washington, Lower Level
Chicago, IL 60602
Hours: 8:30 am - 4:30 pm

Dorothy Brown, Clerk of the Circuit Court of Cook County, Illinois
cookcountyclerkofcourt.org

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – LAW DIVISION

MEDAPPEAL, LLC,
an Illinois Limited Liability Company

Plaintiff

v.

DAVID WEINSTEIN,
VIJAY REDDY,
KEVIN BROWN,
VISIONARY BUSINESS BROKERS LLC,
& MEDASSET CORPORATION

Defendants.

No.

JURY TRIAL DEMANDED

COMPLAINT

NOW COMES, Plaintiff Medappeal, LLC, by and through its attorneys, and file its complaint for damages against Defendants David Weinstein, Vijay Reddy, Kevin Brown, Visionary Business Brokers, and Medasset Corporation (collectively “Defendants”).

NATURE OF ACTION

1. Plaintiff seeks to recover damages caused by the wrongful acts of a group of individuals and entities who conspired to sell Medical Appeals and Insurance Credentialing accounts (collectively, the “Accounts”) that either Defendants (a) did not have title to or did not exist, (b) knowingly and willfully knew they could not provide, (c) never intended to provide, and (d) lied and misled Defendants into believing they could provide.

2. Defendants’ actions are part of an ongoing and sophisticated scheme, spanning

multiple states, in which Defendants sell investors Medical Billing, Medical Collection, and/or Medical Answering Service Accounts, which they never intend or knowingly lack the ability to provide after accepting large sums of money. As a victim of this ongoing scheme, Plaintiff seeks *inter alia*, compensatory damages, punitive damages, and attorney's fees and costs.

PARTIES

3. Plaintiff Medappeal, LLC is an Illinois Limited Liability Company with its principal place of business at 1000 Skokie Blvd., Ste 225, Wilmette, IL 60091.

4. Defendant David Weinstein ("Weinstein") is an individual residing in Nevada and may be served at 125 East Harmon Ave, Unit 322, Las Vegas, NV 89109 or alternatively at 1431 Greene Ln., Cherry Hill, NJ 08003.

5. Defendant Vijay Reddy ("V. Reddy") is an individual residing in Michigan, and can be served at 4269 Kingston Drive, Milan, MI 48160.

6. Defendant Kevin Brown ("Brown") is a resident of New Jersey and may be served at 218 E. 4th St., Palmyra, NJ 08065 or alternatively at 141-I Route 130 South #343, Cinnaminson NJ, 08077.

7. Defendant Medasset Corporation ("Medasset") is a Nevada registered corporation owned by Weinstein and can be served at 125 Harmon Ave., #322, Las Vegas, NV 89109.

8. Defendant Visionary Business Brokers, LLC ("Visionary") is a New Jersey registered company and can be served at 141-I Route 130 South #343, Cinnaminson, NJ, 08077

JURISDICTION AND VENUE

9. The Court has jurisdiction over this matter pursuant to 735 ILCS 5/2-209 as Cook County, Illinois is the place in which the tortious acts occurred and Plaintiff is an Illinois company. Moreover, Illinois is an appropriate venue as Defendants have a history of conducting

business transactions in Illinois, with multiple Illinois residents incurring damages as a result of their tortious conduct.

FACTUAL BACKGROUND

10. In 2018 Defendant Brown, through Visionary, posted a listing on the website BizQuest.com offering for sale an opportunity to purchase a Medical Billing Appeal and Credentialing business (the "Accounts"). The listing is attached as Exhibit 1.

11. Brown was contacted by Plaintiff ownership seeking additional information about Brown/Visionary's listing in or around March 2018.

12. Brown had Plaintiff sign and return Confidentiality Agreements. Brown then sent Plaintiff a copy of the "Executive Summary" of Medasset Management Corporation ("Seller"). A copy is attached hereto as Exhibit 2.

13. The Executive Summary details the business opportunity being offered by Defendants. In their own words, Defendants were selling a start-up business.

14. Defendants promised to provide "all the tools, training, support and clients necessary for positive cash flow."

15. Regarding clients, Defendants promised to provide Plaintiff with sixty (60) clients for Medical Claims Appeal work. Defendants also promised to provide thirty (30) clients for Medical Insurance Credentialing work.

16. The provision of the clients (the Accounts) was at the core of Defendants' business opportunity.

17. The Executive Summary boasts that the Accounts provided by Defendants will generate an estimated monthly profit of \$13,048 for medical appeals and an annual profit of \$15,000 for insurance credentialing work.

18. The Executive Summary details in pertinent part that Visionary believes the executive summary "to be accurate".

19. After reviewing the Executive Summary, a series of due diligence calls ("Calls") took place with Weinstein, Brown, and the Principals associated with Plaintiff.

20. On the Calls, Weinstein, with the assistance of Brown, detailed the business structure and terms of the opportunity.

21. Weinstein and Brown had discussed the high degree of success and customer satisfaction with the business model being sold to prior purchasers.

22. Defendants made no mention of their past failure to fulfill agreements, the lawsuits brought against them, or Weinstein's status as a convicted felon for fraud.

23. When asked by Plaintiff about Plaintiff's priority in receiving client accounts, Weinstein indicated that there were no other sales agreements he had to fulfill, when in fact Defendants had multiple unfulfilled agreements going back years.

24. When asked for a reference for a prior purchaser of a similar system, Weinstein provided the contact information of Defendant V. Reddy.

25. On or about the end of April 2018, V. Reddy was contacted regarding his experience with Weinstein, Brown, and Medasset.

26. V. Reddy informed Plaintiff that he had purchased blocks of Accounts from Weinstein on multiple occasions, going back many years, and that he has been very successful.

27. V. Reddy stated that each year he buys business packages from Weinstein, manages and builds them up with the help of his wife and step-daughter, and then sells them at a profit.

28. V. Reddy was aware of numerous failed attempts, lawsuits, and the criminal

background of Weinstein. However, V. Reddy did not disclose this information when asked about the opportunity.

29. V. Reddy also did not mention the past and pending lawsuits against himself relating to the same/similar business operations, nor did he mention all of the complaints he personally received from his involvement in these transactions.

30. At the time of the Calls, V. Reddy never disclosed his vested interest in the deal, either personally, or questionably through his wife. V. Reddy always passed himself off as a business reference and longtime satisfied customer.

31. On or about May 3, 2018, Plaintiff, through its parent company, Liberty Consulting & Management Services, LLC - with the right to assign to a newly formed entity (written as directed by Weinstein), entered into a contract for the purchase of the business opportunity. A copy of the purchase and sale agreement are attached hereto as Exhibit 3.

32. In part, the Purchase and Sale agreement provides for a purchase price of \$125,000 with \$75,000 as a down payment.

33. On or about May 3, 2018, Plaintiff, through its parent company, sent a wire to Visionary for the sum of \$75,0000. A copy of the wire transfer with the Federal Wire Confirmation number is attached hereto as Exhibit 4.

34. As part of the Purchase and Sale agreement, a Promissory Note ("Note") was tendered for the payment of the balance of the purchase price upon completion of the contract.

35. In early May 2018, Plaintiff was reintroduced to V. Reddy, but this time as the "training coordinator" for Medasset.

36. Plaintiff purchased the suggested office equipment and completed all training sessions as suggested by V. Reddy consisting of a series of remote web-based training

sessions.

37. From the period of May 3, 2018 to today, a *de minimis* number of Medical Appeal Contracts (approximately 3) were assigned to Plaintiff. No Insurance Credentialing contracts were ever provided to Plaintiff.

38. Only one of these contracts has generated any revenue to date, totaling a mere few hundred dollars.

39. Weinstein was called numerous times to discuss the deficiency, however Weinstein fails to maintain a properly functioning voicemail system and has failed to speak directly with Plaintiff after he received his payment.

40. Weinstein has received numerous emails to discuss the deficiency, however Weinstein has refused to call Plaintiff even one time to discuss the matter, or provide a sufficient explanation as to the lack of performance.

41. Brown was called numerous times and received multiple voicemails requesting he discuss the deficiency; however, Brown has failed to call Plaintiff even one time after payment was received.

42. Brown has received numerous emails to discuss the deficiency, however Brown has failed to reply to even one email to discuss the matter after payment was received.

43. V. Reddy was contacted by Plaintiff by phone and email numerous times to discuss the lack of performance. V. Reddy has continuously provided false statements as to his knowledge of the deficiency and his experience with Weinstein and Brown.

44. It has since been discovered that Defendants' fraudulent actions follow a clear and ongoing pattern, and were not unique to Plaintiff.

45. Defendants have been offering the same "business opportunity" in various

forms for years. Defendants take their victims' money based on a promise to provide a specific number of client Accounts, which Defendants have absolutely no intention and/or ability to deliver.

46. When the victims complain, Defendants first make excuses and then cut off all communication.

47. Defendants have also been reported to intimidate their victims through counter-complaints, profanity-laced voicemails, contacting a victim's employer, and other aggressive tactics.

48. A summary of Defendants' fraudulent scheme was published on June 1, 2018 by ABC News 6 Philadelphia, and also ran on their television station. A copy of the news article is attached hereto as Exhibit 5.

**COUNT ONE
FRAUDULENT MISREPRESENTATION
AND FRAUDULENT INDUCEMENT**

49. Plaintiff realleges and incorporates by reference herein the allegations contained in paragraphs 3 through 48 above.

50. In connection with their advertisement and promotion of the "business opportunity", Defendants made certain representations regarding the value of the Accounts and specifically, the monies Plaintiff would collect from such accounts should they purchase the business system.

51. In further connection with their advertisement and promotion of the business opportunity, Defendants made certain representations regarding their record of success and their previous buyers.

52. In the Agreement, Defendants represented that Defendants owned "valid and

marketable legal and beneficial title to the Assets and the Modules, which are free and clear of all liens, claims, encumbrances and security interests.”

53. In the Agreement, Defendants also represented, “Litigation: There is no action, suit, proceedings.”

54. Defendants knew or should have known that such representations were false when they made them.

55. Defendants made such representations in order to induce Plaintiff to pay to Defendants \$75,000.00 as a down payment.

56. Plaintiff justifiably relied upon such representations to its detriment.

57. Plaintiff has been directly and proximately damaged in relying on such representations.

58. Wherefore, Plaintiff is entitled to and demands judgment against Defendants for their fraudulent misrepresentation and fraudulent inducement.

**COUNT TWO
FRAUDULENT OMISSION AND
FRAUDULENT CONCEALMENT**

59. Plaintiff realleges and incorporates by reference herein the allegations contained in paragraphs 3 through 48 above.

60. In connection with their advertisement and promotion of the business opportunity, Defendants omitted and concealed material facts, which they had a duty to disclose.

61. Plaintiff and Defendants had a confidential and fiduciary relationship. Plaintiff's owners/staff were made to sign a Confidentiality Agreement by Defendants.

62. Defendants did not disclose that V. Reddy, their “client reference” was and/or has

been part of their business deals and he and/or his wife would be a beneficiary of the potential transaction.

63. Defendants did not disclose past lawsuits, pending lawsuits, or threats of litigation against them regarding their continually failed business opportunity.

64. Defendants did not disclose that they sell substantially the same business package under different corporate names, to different people, in different states.

65. Defendants did not disclose that they continually voluntarily or involuntarily dissolve said corporations.

66. Defendant Weinstein did not disclose his felony conviction for fraud related to the insurance industry.

67. Defendants' concealment was intended to induce Plaintiff to have false beliefs, and under the circumstances Defendants had a duty to speak.

68. Plaintiff could not have discovered the truth through a reasonable inquiry or inspection.

69. The concealed information was such that Plaintiff would have acted differently had he been aware of it.

70. Defendants' omissions led to a reliance by Plaintiff and caused his injury.

71. Wherefore, Plaintiff is entitled to and demands judgment against Defendants for their fraudulent omission and fraudulent concealment.

COUNT THREE CIVIL CONSPIRACY

72. Plaintiff realleges and incorporates by reference herein the allegations contained in paragraphs 3 through 48 above.

73. In engaging in the acts described herein, Defendants formed an agreement, through

the joint venture and otherwise, and operated a conspiracy with each other to deprive Plaintiff of his money.

74. Defendants engaged in fraud in furtherance of their shared objective.

75. Defendants did so conspire to commit fraud with knowledge that such conspiracy was wrongful and would/did cause Plaintiff economic harm.

76. Defendants' fraudulent actions were coordinated, well-planned and substantially similar to their previous transactions, which resulted in similar economic harm to numerous individuals and families.

77. Wherefore, Plaintiff is entitled to and demands judgment against Defendants for their Civil Conspiracy.

COUNT FOUR CONVERSION

78. Plaintiff realleges and incorporates by reference herein the allegations contained in paragraphs 3 through 48 above.

79. Defendants currently possess the sum of \$75,000 which was wired to Defendant Visionary.

80. Plaintiff has an absolute and unconditional right to the return of the \$75,000 in Defendants' possession.

81. On September 18, 2018, Demand was made upon Defendant Weinstein and Medasset with notice copied to Defendant Brown and Visionary for the return of \$75,000.

82. Defendants wrongfully continue to withhold the return of the \$75,000.

83. Wherefore, Plaintiff is entitled to and demands judgment against Defendants for their act of conversion.

COUNT FIVE
VIOLATION OF THE ILLINOIS CONSUMER FRAUD
AND DECEPTIVE PRACTICES ACT ("ACT") 815 ILCS 505/1, et seq.

84. Plaintiff realleges and incorporates by reference herein the allegations contained in paragraphs 3 through 48 above.

85. Defendants engaged in the use of deception, fraud, false pretense, false promise, misrepresentation, and concealment of facts in the course of a commercial transaction.

86. In order to induce Plaintiff to wire Defendants money, Defendants engaged in deceptive acts and practices, to include but not limited to: making false statements, distributing misleading and inaccurate promotional documents, providing an interested party as a reference, and withholding important information.

87. Defendants intended Plaintiff to rely on their deceptions.

88. Defendants' deception occurred in the course of conduct involving trade/commerce. Defendants were trying to sell Plaintiff a thing of value (the start-up business/Accounts).

89. Plaintiff suffered actual damages as a direct result of the deception, to include but not limited to: the loss of \$75,000, the loss of money spent on infrastructure, and a significant loss of time incurred by Plaintiff and Plaintiff's employees.

90. Wherefore, as an Illinois resident, Plaintiff is entitled to and demands judgment against Defendants for their violation of the Act.

COUNT SIX
VIOLATION OF RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
ACT ("RICO") 18 U.S.C. §1961 et seq.,

91. Plaintiff realleges and incorporates by reference herein the allegations contained in paragraphs 3 through 48 above.

92. Defendants have engaged in "racketeering activity" by committing, attempting to

commit, and soliciting and/or coercing another to commit a crime.

93. Defendants have committed and solicited others to commit criminal fraud, theft by deception, and other crimes punishable in the State of Illinois.

94. Through a continuous pattern of racketeering activity, Defendants have acquired and maintained control of Plaintiff's money along with the money from numerous others they have defrauded.

95. Defendants have been the subject of Civil and/or Criminal lawsuits, threats of litigation, complaints, and/or law enforcement investigations involving the sale of Medical Billing, Medical Appeals, and/or Transcription contracts.

96. Defendants have conspired to acquire and currently maintain an interest in Plaintiff's property.

97. Wherefore, Plaintiff is entitled to and demands judgment against Defendants for their violation of the RICO Act.

PRAYER FOR RELIEF

WHEREFORE MEDAPPEAL, LLC accordingly and respectfully demands judgment jointly and severally against Defendants as follows:

1. That Plaintiff receive compensatory damages in an amount that is in excess of \$75,000 and that is sufficient to compensate Plaintiff for his actual, consequential, and incidental losses sustained as a result of Defendants' wrongful actions.

2. That Plaintiff recover \$225,000 as treble damages as proscribed by RICO;

3. That Plaintiff recover all costs of the suit including reasonable Attorney's fees;

4. That Plaintiff recover interest as deemed appropriate by the Court;

5. That Plaintiff recover punitive damages as deemed appropriate by the Court;

6. That Plaintiff recover in the form of the Court declaring the assigned agreement between Plaintiff and Defendants null and void along with the promissory note; and
7. That Plaintiff be awarded any such additional relief as the Court may deem equitable and appropriate.

Respectfully submitted:

MEDAPPEAL, LLC

By: /s/ Eli Johnson
One of its Attorneys

Eli R. Johnson
Seth D. Johnson
Johnson, Johnson & Associates, LLC
1000 Skokie Blvd., Ste 225
Wilmette, IL 60091
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BizQuest

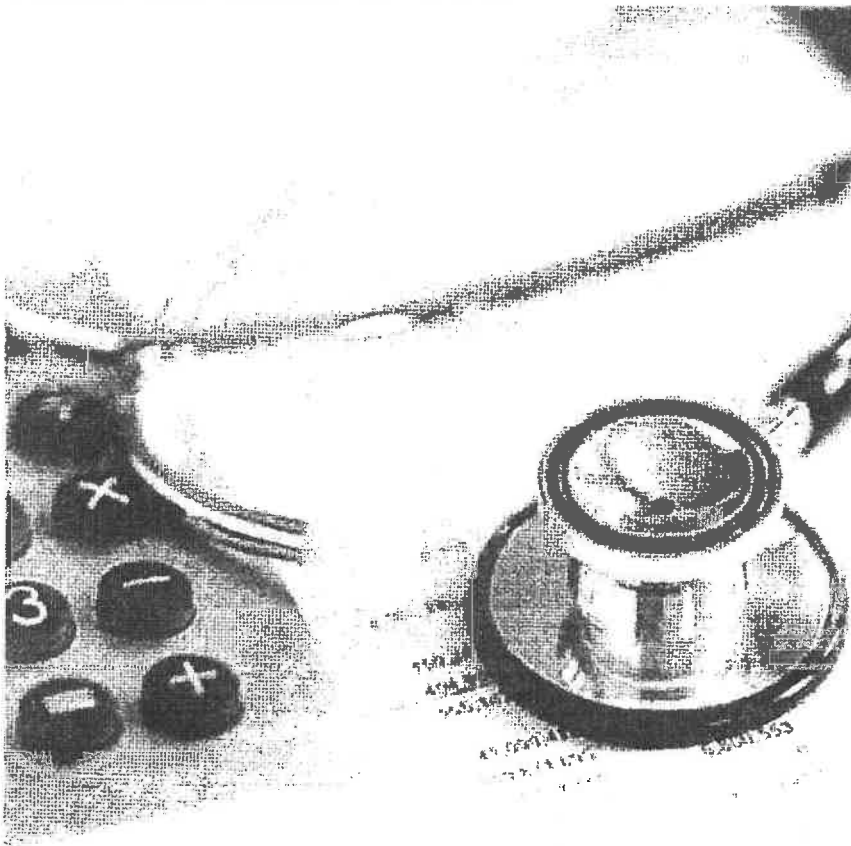
Medical Credentialing / Medical Appeals

Nationwide Relocatable Niche Business

\$ Seller Financing

United States | Business Services Businesses for Sale - Other Business Services Businesses for Sale

| Find More Business with Asking Prices Between \$100k and \$150k



Asking Price:

\$135,000

Gross Revenue:

\$300,000

Cash Flow:

\$155,000

(Seller's Discretionary
Earnings)

EBITDA:

Not Disclosed

Inventory:

Not Disclosed

FF&E:

Not Disclosed

Real Estate:

Not Disclosed

Business Description

This company has two departments:

First: This company negotiates contracts on behalf of medical offices between insurance companies and government payers to get the medical offices in the payers networks. (Credentialing)

Second: This company also handles denied claims from insurance companies and resubmits and/ appeals the denied claims.

EXHIBIT 1

Over 30 separate offices Medical Credentialing-

Over 60 separate offices for Medical Appeals

About the Business

Year Established: 2014

Number of Employees: 3

Relocatable: Yes

Home Based: Yes

Facilities: completely turn key, all systems in place

**Market Outlook/
Competition:** growing health care services field

About the Sale

Reason For Selling: contact owner

Training/Support: seller will train for a smooth transition.

Seller Financing: 78K required.

Listing Info

ID: 1374944

Ad Detail Views: 24

The information on this listing has been provided by either the seller or a business broker representing the seller. BizQuest has no interest or stake in the sale of this business and has not verified any of the information and assumes no responsibility for its accuracy, veracity, or completeness. See our full Terms & Conditions.

MEDASSET MANAGEMENT CORPORATION

A Complete Medical Solution

Medical Appeals Management & Medical Credentialing

**Business Brokers
VISIONARY**

1401-L Route 130 S. Suite 343
Cinnaminson, NJ 08077

EXHIBIT 2

Disclaimer

The information, material, and judgments have been prepared by **Medasset Management Corporation**. While **Medasset Management Corporation** believes this document to be accurate, no warranty is implied, expressed or provided. Recast statements, comments of future potential, and financial projections are based on the assumptions that must be reasonably verified by the reader.

The use of this report, including the identity of **Medasset Management Corporation**, or the verbal or written reproduction of any part, is strictly controlled by execution of the Confidential Disclosure Agreement prior to access.

Executive Summary

MEDASSET MANAGEMENT CORPORATION

A Complete Medical Solution

**Medical Appeals Management
&
Medical Credentialing**

Category: Medical Services

**Business Brokers
VISIONARY**

1401-L Route 130 S. Suite 343
Cinnaminson, NJ 08077

Medasset Management Corporation is presenting this business start-up opportunity in conjunction with expanding their national network. The opportunity arises from the Seller's extensive experience in the medical administrative services industry. From a virtual office template, the unit buyer will operate a medical appeals service business. No medical experience is necessary and all the tools, training, support and clients necessary for positive cash flow are provided by Medasset Management Corporation.

Limited Units Available

This business opportunity for sale is a book of business contracts with Health Care Providers to support their Practices. This company supports health care providers' offices by performing their medical appeals and credentialing. Included with your purchase of this business are the necessary software and training. In addition, Medasset Management Corporation will introduce you to supporting vendors if you choose to use them.

Background and Overview

Medasset Management Corporation was established to offer medical debt collection, medical billing, medical transcriptions, and medical appeals management to clients/health care providers. All clients/health care providers are under 100% transferable service agreements. Business owners are offered the opportunity to affiliate with Medasset Management Corporation and to purchase access to the proven state-of-the-art, industry-leading software and training in a system that uses a proprietary streamlined approach. As you are being trained in your new business and becoming familiar with the systems for a discipline, Medasset Management Corporation provides the clients/health care providers to you under their transferable service agreement to fill your "books of business" in the discipline you purchase. Once these service agreements are transferred, the client/health care provider relationship is yours to 'own' and manage indefinitely.

Get a clear and direct approach to profitability with the ability to grow and expand in the health care field. Pairing this with the successful training methods and backup resources makes you uniquely prepared and qualified to enter the health care industry and become a profitable service provider in your own business. Each discipline has its own unique and proprietary system for you to follow with support provided by Medasset Management Corporation.

Never before has there been a package that encompasses so much with no marketing or sales activity required from the owner to reach profitability.

No need for health industry background.

All training is received via standard web-based systems . . . no travel expenses.

Access to industry leading software and systems is supplied with your purchase.

You bill and get paid directly by your clients/health care providers.

Medasset Management Corporation provides the buyer with all the tools, software, training and equipment to allow the buyer to succeed in the exploding field of health care.

The business owner has total flexibility as they design their business enterprise. In addition, the business owner may elect to add additional units at a later date. The initial 'book of business' for each unit is provided by Medasset Management Corporation from the continuing flow of new clients generated by its medical client level sales and marketing efforts. The new business owner is provided a guaranteed client base with no marketing effort of their own. As each purchased unit matures, additional units can be acquired from the company's resources on a fee based arrangement, or the owner may develop their own client generating referral programs.

This business model success is based on delivering the absolute highest level of customer satisfaction. Therefore, it is important for the new business owner to grow the business as quickly as possible to provide cash flow and to fully comprehend any and all nuances of satisfying the clients/health care providers to be serviced in any discipline. This is very much a relationship business managed primarily electronically via data or voice without face-to-face contact

between the business owner and his/hers geographically disbursed clients/health care providers. Each unit will be filled with a diverse group of clients so the business owner will have a broad scope, not only geographically – but in range of types of practices as well.

By utilizing Medasset Management Corporation, you can take advantage of the benefits that were once only available to multi-million dollar companies. Small and large unit buyers alike can benefit from our streamline approach. Below are just some of the benefits:

Have a clear and direct approach to profitability.

Medasset Management Corporation will hold seller financing (if approved) for a vested interest in your success.

All client/doctor contracts are 100% transferable and once transferred to you, you own the contracts outright.

Medical practice cancellation guarantee*
(see contract provisions).

Medical Appeals Management

With new health insurance guidelines and policies implemented, there are a growing number of claims that are being denied for various reasons, and claims in need of appeal. These processes can be time consuming to the medical practice making it a premium service in order to maximize a medical practice's revenue. Increasing numbers of claims are coming back as either denied or requiring more information and due to all the changes in the industry, many practices simply do not have the time or resources to devote to claim fixes. This is an opportunity for the Unit Buyer to not only help

these practices increase their profit and success with their claims submission, but an opportunity also for the Unit Buyer to generate a sound income while also creating the opportunity to cross sell other available disciplines.

Medasset Management will introduce the buyer to industry specific software to maximize your profit. The buyer can then enter into contracts with that company. The client/doctor will forward the office's denied claims or claims appeals to the Buyer. The Buyer will then follow-up on each claim provided and liaison with the insurance companies, TPA, Self-Funded plans, etc. in order to get the claim paid.

Under the units' contract, Medasset Management will provide the business owner over a reasonable time period a client/doctor base capable of providing the estimated annualized cash flow as noted in the attached documents. The business owner will be solely responsible for the ongoing customer service relationship with his/her clients/doctors.

Medical Claim Resubmission & Denial Management,
once your contract is fulfilled *

Number of clinics per your contract: 60

Average # of claims per client/doctor: 30

Average claim amount: \$450

Average contingency: 9.9%

Average success rate: 25%

Average Revenue Monthly: \$ 20,048

Average Overhead Monthly: \$7,000

Average Profit Monthly: \$13,048

After all contracts are fulfilled*

Medical Credentialing

In addition to medical appeals work, Medasset Management Corporation also provides 30 clinics who request credentialing services. Credentialing is a service provided to a clinic, where the doctor is currently out-of-network with an insurance carrier and would like to become part of the network. Clinics generally receive more patients when they are part of an insurance company's network, hence more income.

Medasset Management Corporation will attract clinics who are seeking this service. It should be noted that insurance credentialing is typically a one-time activity that results in the clinic A) becoming part of the network, or B) the clinic being placed on a waiting list for potential inclusion in the future, or C) the clinic's application being denied. Regardless of the outcome, payment will be required by the clinic for the work completed. Any referrals, cross-selling, or other services sold to the clinic is also part of the value package the Unit Buyer will enjoy.

**Medical Credentialing, once your
contract is fulfilled *** Number of clinics
per your contract: 30 Average # of
insurance panels requested: 3
Average charge per panel credentialing: \$200
Average Revenue: \$18,000
Average Overhead per clinic: \$100
Total Projected Profit: \$15,000
After all contracts are fulfilled*

SELLING MEMORANDUM

MEDICAL CLAIMS RESUBMISSION & DENIAL SOLUTIONS

60 Doctors / Practices under contract for
medical appeals work

30 Doctors / Practices requesting credentialing
services

Relocatable

Seller provides two weeks training

Access to software provided at no charge

The information, material and judgments have been prepared by the Seller. While Visionary Business Brokers believes this document to be accurate, no warranty is implied, expressed or provided. Recast statements, comments of future potential, and financial projections are based on the assumptions that must be reasonably verified by the reader.

WHEREAS Medasset Corporation (hereinafter known collectively as the "Seller"), and who has agreed to sell certain systems, assets, as well as intellectual property and where Liberty Consulting & Management Services, LLC (on behalf of a company to be formed later) (hereinafter known as "Buyer") agrees to buy certain systems, assets, as well as intellectual property, both parties agree to the following:

The purchase price will be \$125,000.00 US (One Hundred Twenty Five Thousand Dollars and 00/xx US). Buyer will give Seller \$75,000.00 US (Seventy Five Thousand Dollars and 00/xx US) and simultaneously execute a Promissory Note in the amount of \$50,000 US (Fifty Thousand Dollars and 00/xx US) at the time of signing this Agreement. The Promissory Note will not be due until 60 medical appeals clinics have been assigned and 30 medical credentialing applications have been requested..

The following are to be provided:

Medical Appeals: Seller will deliver, over the course of nine months from the date of signing this Agreement, 60 medical practices, whose total annual uncollected receivables will average a goal of \$5 million dollars annually.

Medical Credentialing: Seller will deliver, over the course of nine months from the date of signing this Agreement, 30 medical offices who are seeking credentialing services. Credentialing is defined as a service provided to a clinic, where the doctor is currently out-of-network with an insurance carrier and would like to become part of the network.

If Buyer does not reach \$5 million dollars in annual uncollected receivables or 30 medical offices who request credentialing services, after all other contract terms are satisfied, then the Sole Remedy will be as follows: Seller will provide a refund, not to exceed \$45,000 for any reason under the following formulas:

Medical appeals refund:

$[1 - ((\text{total uncollected revenue from the past 30 days} \times 12) / \$5,000,000)] \times 45,000 = \text{refund}$

For clarity, if the total uncollected revenue for the past 30 days, 9 months from the date the Agreement is dually signed, is \$250,000, then the refund would be calculated as follows:

$$[1 - ((\$250,000 * 12) / \$5,000,000)] * 45,000 = \text{an } \$18,000 \text{ refund.}$$

Medical credentialing refund:

$$[1 - (\text{Number of clients delivered} / 30)] * 45,000 = \text{refund}$$

For clarity, if the number of clients delivered is 20, then the refund would be calculated as follows:

$$[1 - (20/30)] * 45,000 = \text{a } \$15,00 \text{ refund.}$$

At the signing of this contract, Buyer agrees to the following performance guidelines including but not limited to:

Billing:

1. Buyer agrees to begin servicing all clients within 1 business day of receipt and assignment of any transferred contract.
2. Buyer agrees to abide by all contract provisions of the assigned contracts and the medical practices.
3. Buyer agrees not to illegally defer any money.
4. Buyer agrees to a high standard of customer service and to promptly return calls and all correspondence and contracts that were assigned to them.
5. Buyer agrees to accept all contracts assigned to them.
6. Buyer agrees to be trained for all systems, intellectual property and assets.
7. Buyer agrees to do all requisite follow-up and keep in touch with the client on a minimum of a weekly basis to continue to generate new claims to appeal and/or bill.

Credentialing:

1. Buyer agrees to begin servicing all clients within 1 business day of receipt and assignment of any transferred request for credentialing.

2. Buyer agrees to abide by all contract provisions of the assigned contracts/work and the medical practices.
3. Buyer agrees to promptly contact insurance carriers to begin the credentialing process. Buyer will conduct all requisite work and only ask the doctor to perform work that Buyer cannot legally do.
4. Buyer agrees to a high standard of customer service and to promptly return calls and all correspondence and contracts that were assigned to them.
5. Buyer agrees to accept all credentialing work assigned to them.

Seller hereby represents and agrees:

1. **Corporate Status:** Seller has been duly created, validity exists, and is in good standing.
2. **Title to Assets:** Seller holds valid and marketable legal and beneficial title to the Assets and the Modules, which are free and clear of all liens, claims, encumbrances and security interests.
3. **Litigation:** There is no action, suit, proceedings.
4. Seller has the right and power to transfer clients to Buyer as contemplated herein. Seller's contracts with Clients permit the assignment of those contracts to Buyer.
5. Medical billing software and a clearinghouse to process claims will be made available at no charge to the Buyer with a minimum of 10 simultaneous users allowed to access the system. The software will have a User ID that is transferrable to Buyer. The User ID will allow for Buyer to file medical billing claims electronically at no charge.
6. No restrictions will be placed on Buyer to attract their own clients through their own marketing methods including, but not limited to, Request for Proposals, referrals, telesales, telemarketing, or personal sales. If any new clients are acquired and a contract is signed, Buyer may inform Seller, and Seller will remove that clinic from active solicitation.
7. Seller will not sell any other service to a clinic that is assigned to Buyer (exclusive). This restriction includes, but is not limited to, medical transcription, medical collection, medical billing, and answering services.

Terms:

Buyer will provide a wire transfer or certified check in the amount of \$75,000.00 US (Seventy Five Thousand Dollars and 00/xx US) at the time of execution of this agreement. Buyer will give equal monthly payments as per the Promissory Note, which calls for an amortization of 5 years with a 3-year balloon. Debt service payments and interest on the debt service will begin after and only when 60 medical appeals clinics have been assigned and 30 medical credentialing applications have been requested. The Agreement including all exhibits, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and merges and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions. Neither of the Parties will be bound by any conditions, definitions, warranties,

understandings, or representations with respect to the subject matter hereof other than as expressly provided herein. No oral explanations or oral information by either party hereto will alter the meaning or interpretation of this Agreement. The terms and conditions of this Agreement will prevail notwithstanding any different, conflicting or additional terms and conditions that may appear on any letter, email or other communication or other writing not expressly incorporated into this Agreement.

Training and Transition:

At no cost to the Buyer, the Seller will train and transition up to 2 consecutive weeks for medical billing. If additional training beyond the 2 weeks is required, or requested, Seller will provide up to 20 additional hours of training at no cost to the Buyer. These 20 additional hours may be spread out over the course of one year. Training shall not exceed 1 year from the signing of this agreement for any reason. Buyer will make themselves available for this training and may not refuse the training. If Buyer is not available for training or refuses training it will be considered as though they have been trained for the full period allotted.

Confidentiality:

At all times, the Buyer will respect the confidentiality and the extensive work put into the intellectual property, assets, and systems. Buyer will not attempt to reverse engineer the marketing methodology for personal gain or publishing purposes.

Commercial Transaction:

This transaction is considered a commercial transaction.

Venue:

The venue is the State of Nevada and the County of Clark.

Governing Law:

This Agreement will be governed by the laws of Nevada and the County of Clark.

Default:

If the Buyer defaults with regard to any of the paragraphs above, as well as the Promissory Note, individually or collectively, the Buyer will immediately return all contracts, assets and systems and intellectual property that has been delivered and will release, hold harmless, and indemnify the Seller.

Restrictive Covenant:

Unless a default occurs, the Seller will be prohibited, once the contract has been transferred to Buyer, from contacting or soliciting those clients. The one exception would be to verify the reason of loss. Buyer will void this clause if Buyer chooses to use Seller's resources in order to service Buyer's clients however, Seller will not solicit Buyer's clients. Buyer will not solicit Seller's third party resources.

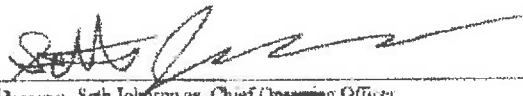

 Buyer Seth Johnson as Chief Operating Officer, Liberty Consulting and Talent Services, LLC (on behalf of an entity to be formed later)	DATE: May 3, 2018
 Seller Medasset Corporation	DATE: May 3, 2018

EXHIBIT A

ALLOCATION OF PURCHASE PRICE

Intellectual Property, Systems, and Future Contracts \$ 55,000.00

Goodwill \$ 35,000.00

Training \$ 10,000.00

Restrictive Covenant \$ 25,000.00



 DATE: May 3, 2018
Buyer
Liberty Consulting & Management Services, LLC (on behalf of an entity to be formed later)
 DATE: May 3, 2018
Seller
Medasset Corporation

EXHIBIT B

PROMISSORY NOTE

May 3, 2018

FOR VALUE RECEIVED, Liberty Consulting & Management Services (on behalf of an entity to be formed later) ("Buyer") unconditionally promises to pay to the order of Medasset Corporation ("Seller") the principal sum of \$50,000.00 (Fifty Thousand Dollars and 00/xx US), together with interest payable in arrears on the unpaid principal balance at the rate of 6% per annum. This Promissory Note is given in a commercial transaction, and Buyer hereby represents and warrants to Seller that the proceeds of the loan evidenced by this Promissory Note shall be used solely for business purposes.

Repayment

The principal sum of \$50,000 (Fifty Thousand Dollars and 00/xx US) will be paid under a 5 year amortization with a 3-year balloon. Therefore, principal and interest shall be payable in 36 installments of \$966.64 (Nine Hundred Sixty Six and 64/100 Dollars US) each month, commencing on the first day of the month after 9,000 claims in any 30-day period have been assigned to Buyer per the Commercial Transaction and continuing on the same day of each month thereafter until and including the 36th installment. Any remaining unpaid principal, together with any accrued interest, shall also be due and payable in full with the 36th installment. All payments under this Promissory Note shall be in lawful money of the United States.

Payments will be delivered to Seller at 125 East Harmon Ave, Unit 322, Las Vegas, NV 89109 or other address provided by the Seller.

All payments under this Promissory Note shall be applied first to late fees and costs, if any, second to interest then due, if any, and the balance to principal.

In no event shall the interest and other charges in the nature of interest hereunder, if any, exceed the maximum amount of interest permitted by law. Any amount collected in excess of the maximum legal rate shall be applied to reduce the principal balance.

Prepayment

This Promissory Note may be prepaid at any time, in whole or in part, without penalty or premium.

Late Payment Fees

If any installment hereunder is not paid within 30 days of the date the same is due, the Buyer shall pay to the Seller a late charge equal to 10% percent of the overdue payment as liquidated damages, and not as a penalty.

Additional Costs

Buyer agrees to pay to Seller such further amount as will be sufficient to cover the cost and expenses, including, without limitation, reasonable attorney's fees, expenses, and disbursements, of the collection of sums due hereunder, whether through legal proceedings or otherwise, to the extent permitted by law. These costs will be added to the outstanding principal and will become immediately due.

After the maturity of this Promissory Note, or upon any default, this Promissory Note shall bear interest at the rate of 18% percent per annum, at the option of the Holder.

Events of Acceleration

At the sole and exclusive option of the Seller, in addition to any other rights and remedies that Seller may have, this entire Promissory Note shall become immediately due and payable, without demand or notice, upon the occurrence of any one of the following events:

- a. failure of the Buyer to pay any installment hereunder when due, which shall continue for 60 days;
- b. any misrepresentation or omission of or on behalf of Buyer made to the holder in connection with this loan;
- c. insolvency or failure of Buyer to generally pay its debts as they become due;
- d. assignment for the benefit of creditors of, or appointment of a receiver or other officer for, all or any part of Buyer;

Transfer of the Promissory Note

Buyer hereby waives any notice of the transfer of this Promissory Note by Seller or by any subsequent holder of this Promissory Note, agrees to remain bound by the terms of this Promissory Note subsequent to any transfer, and agrees that the terms of this Promissory Note may be fully enforced by any subsequent holder of this Promissory Note.

Amendment; Modification; Waiver

No amendment, modification or waiver of any provision of this Promissory Note or consent to departure therefrom shall be effective unless by written agreement signed by both Buyer and Seller. If any provision of this Promissory Note shall be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

The Buyer expressly waives presentment, demand, notice, protest, and all other demands and notices in connection with this Promissory Note. No renewal or extension of this Promissory Note, nor release of any collateral or party liable hereunder, will release the liability of Buyer.

Successors

The terms and conditions of this Promissory Note shall inure to the benefit of and be binding jointly and severally upon the successors, assigns, heirs, survivors and personal representatives of Buyer and shall inure to the benefit of any holder, its legal representatives, successors and assigns.

Breach of Promissory Note

No breach of any provision of this Promissory Note shall be deemed waived unless it is waived in writing. No course of dealing and no delay on the part of Seller in exercising any right will operate as a waiver thereof or otherwise prejudice Seller's rights, powers, or remedies. No right, power, or remedy conferred by this Promissory Note upon Seller will be exclusive of any other rights, power, or remedy referred to in this Promissory Note, or now or hereafter available at law, in equity, by statute, or otherwise.

Venue

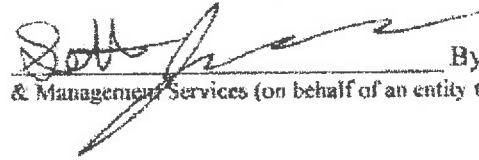
The State of Nevada and the County of Clark shall be the venue for this Agreement.

Governing Law

The Laws of the State of Nevada and the County of Clark shall govern this Agreement.

IN WITNESS WHEREOF, intending to be legally bound hereby, Maker has duly executed this Note under seal and the date and year first above mentioned.

Witness: Maker or Corporate Nominee:



By: Seth Johnson as Chief Operating Officer of Liberty Consulting
& Management Services (on behalf of an entity to be formed later)

FILED DATE: 10/1/2018 12:00 AM 2018L010586

OUTGOING WIRE TRANSFER Bank Name: **WINTRUST BANK**

Wire Created by UserID: **LDICKMAN2** Date: **5/3/2018** Time: **13:27:14**
 Branch: **001** Name: **DEFAULT BRANCH 380** Phone #: _____
 Amount: **75,000.00 USD** WIRE FEE AMOUNT: [Refer to Fee Schedule]
 Ins _____ Ins Currency: _____ Exchange Rate: _____
 Account #: **~~XXXXXXXXXX~~**
 Customer Name: **LIBERTY CONSULTING & MANAGEMENT SER** Phone #: _____
 Address 1: **1000 SKOKIE BLVD SUITE 225** Address 2: **WILMETTE, IL 60091-1176**
 Address 3: _____

BANK INFORMATION

Destination Bank Name: **BENEFICIAL BANK** Bank ABA: **236075689**
 Destination Bank Address 1: _____
 Destination Bank Address 2: _____
 Destination Bank Address 3: _____
 Beneficiary Bank Name: _____ Bank ID: _____
 Beneficiary Bank Address 1: _____
 Beneficiary Bank Address 2: _____ Bank ID: _____
 Intermediary Bank Name: _____

CUSTOMER (BENEFICIARY) INFORMATION

Beneficiary Name to Credit: **VISIONARY BUSINESS BROKERS**
 Account Number to Credit: **~~XXXXXXXXXX~~**
 Beneficiary Address 1: **141-I ROUTE 130 SOUTH #343**
 Beneficiary Address 2: **CINNAMINSON NJ 08077**
 Beneficiary Address 3: _____
 Other Information: **180503132411LDIC**
 Bank to Bank Info: _____
 ORG to BNF Info: _____
 Purpose of Wire: _____

Customer Signature: Date: **May 3, 2018**

***CUSTOMER AUTHORIZATION *** BANK IS HEREBY AUTHORIZED TO SEND THE ABOVE REFERENCED WIRE TRANSFER AND DEBIT THE ACCOUNT INDICATED ABOVE FOR THE AMOUNT OF THE WIRE TRANSFER PLUS WIRE TRANSFER FEES PURSUANT TO THE ACCOUNT AGREEMENT AND DISCLOSURE STATEMENT AND FEE SCHEDULE, AS PREVIOUSLY PROVIDED OR MAY BE REQUESTED FROM BANK AT ANY TIME AND MAY BE CHANGED BY BANK FROM TIME TO TIME. Wire Transfer Disclosure Information (International Wires) Due to the nature and complexity of international banking and unless otherwise separately disclosed in writing: (1) it is impossible for the Bank to make any delivery time or fee charge guarantees on any foreign wire transfers and (2) the Bank is not responsible for variances in foreign exchange rates. Our fees only cover our costs for sending funds. Additional fees can be (and often are) incurred by necessary tracing, recall of funds, rate changes and verifications required by foreign banks. It should be understood any additional costs or fees are passed on to the customer. As the originating Bank, we rely on the customer for accurate and complete instructions for the receiver/beneficiary bank specifications. Erroneous information can (and often does) result in nonpayment or delay of funds and significant monetary impact to the originator.

EXHIBIT 4

BREAKING NEWS Boy dies after being struck by SEPTA bus in Wissinoming

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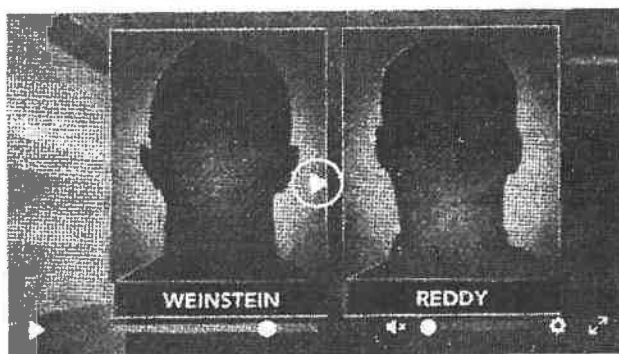
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BUSINESS

Investigation: Men accused of selling bogus businesses



EMBED MORE VIDEOS

Investigation: Men accused of selling bogus businesses. Chad Pradelli reports during Action News at 11pm on June 1, 2018.

By Chad Pradelli

Friday, June 01, 2018

CHERRY HILL, N.J. (WPVI) -- Two men are accused of selling fraudulent businesses, and Action News identified more than a dozen alleged victims around the country during a year-long investigation.

As it turns out, one of the alleged con artists has been operating out of Cherry Hill, New Jersey.

Steve Sami is an alleged victim out of Florida.

"They will take your money, they will string you along. They have no morals and conscience and you will lose every penny you have."

David Weinstein of Cherry Hill, New Jersey and Jay Reddy of Michigan say they sign medical practices up for billing, transcription, and/or collection services and then sell those contracts to investors who want to manage the businesses.

But some investors tell Action News those companies are bogus, and that they've lost more than \$1.3 million with one or both of these men since 2010.

Sami says, "I've made probably, in the whole process, a couple hundred dollars."

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Republican Sen. Flake pushes delay on full Kavanaugh vote after



Father of missing 6-year-old boy: I thought they

EXHIBIT 5

FILED DATE: 10/1/2018 12:00 AM 2018L010586

Weinstein's marketing materials say, "We do the hard part. We get the doctors under contract for you." Buyers get what's called a Triple Play of all three businesses for \$125,000.

According to a sales brochure, buyers get "a clear and direct approach to profitability." Steve Sami says his contract with Jay Reddy promised 300 medical answering service contracts.

But in the two years since, he says he's received just a few. Sami and others have filed complaints with their state attorneys general.

"Within a month I texted him and said something feels strange and the contracts aren't coming, and he basically said he had a death in the family and it's the holidays. He told me it will pick up."

But he says it never did and that when he threatened to expose Reddy after learning of other alleged victims, a man claiming to be David Weinstein called out of the blue and left a profanity-laced voicemail.

Action News has learned at least three alleged victims have sued Weinstein and or Reddy over the years. Attorney John Perrin represented an alleged victim out of Michigan who sued Reddy in 2010.

"It was really just an empty shell and there was nothing to it," Perrin said.

He says Reddy was constantly reselling the business but never delivering contracts with physicians.

"There were literally dozens of these entities and when you looked at who created them, it was coming back to either Vijay Reddy or David Weinstein."

Perrin won \$200,000 in court but says he's never been able to collect and just last month Reddy filed for bankruptcy.

Two Georgia men sued Weinstein in Federal court in 2012. In court papers, Weinstein denied any wrongdoing. He and other defendants later agreed to a confidential settlement. Action News has also learned Weinstein was convicted of health insurance fraud in 2002.

Sami says he wants his money back and justice for himself and other victims.

"I believe the FBI should be involved, the IRS. Money should be recouped and given back to the people who lost it," Sami said.

Both Reddy and Weinstein refused our request for comment. We tracked down Weinstein to a Cherry Hill condo and he actually called police on us, accusing us of harassment.

Officially, the FBI says it cannot confirm or deny they're investigating. But since our investigation began, several alleged victims tell us they've been interviewed by agents.

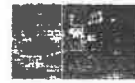
Weinstein is still selling the business model and living in Las Vegas.

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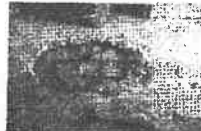
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Exhibit 2

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

FILED
12/14/2018 6:41 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018L010586

MEDAPPEAL, LLC,

Plaintiff,

v.

DAVID WEINSTEIN, VIJAY REDDY,
KEVIN BROWN, VISIONARY BUSINESS
BROKERS LLC and MEDASSET
CORPORATION,

Defendants.

No. 18-L-010586

Judge Brigid Mary McGrath

**DEFENDANTS' COMBINED MOTION TO DISMISS
UNDER SECTION 2-301 FOR LACK OF PERSONAL JURISDICTION OR,
ALTERNATIVELY, UNDER SECTION 2-615 FOR IMPROPER VENUE**

Defendants David Weinstein ("Weinstein"), Vijay Reddy ("Reddy"), Kevin Brown ("Brown"), Visionary Business Brokers LLC ("Visionary") and Medasset Corporation ("Medasset"), by their attorneys Leland Grove Law LLC, respectfully hereby move: (a) to dismiss the Complaint pursuant to 735 ILCS 5/2-301 for lack of personal jurisdiction; or, alternatively, if the Court finds it has jurisdiction over one or more of the Defendants, (b) to dismiss the Complaint pursuant to 735 ILCS 5/2-615 because Cook County, Illinois is an improper venue. The grounds for this motion are set forth in Defendants' memorandum of law and affidavits, filed herewith.

Respectfully submitted,

DAVID WEINSTEIN, VIJAY REDDY,
KEVIN BROWN, VISIONARY BUSINESS
BROKERS LLC and MEDASSET
CORPORATION

By:


One of Their Attorneys

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LELAND GROVE LAW LLC
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Exhibit 3

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

FILED
12/14/2018 6:41 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018L010586

MEDAPPEAL, LLC,)	
)	
Plaintiff,)	
)	
v.)	No. 18-L-010586
)	
DAVID WEINSTEIN, VIJAY REDDY,)	Judge Brigid Mary McGrath
KEVIN BROWN, VISIONARY BUSINESS)	
BROKERS LLC and MEDASSET)	
CORPORATION,)	
)	
Defendants.)	

**DEFENDANTS' MEMORANDUM IN SUPPORT OF
THEIR MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

Defendants David Weinstein ("Weinstein"), Vijay Reddy ("Reddy"), Kevin Brown ("Brown"), Visionary Business Brokers LLC ("Visionary") and Medasset Corporation ("Medasset"), by their attorneys Leland Grove Law LLC, respectfully submit this memorandum of law in support of their motion: (a) to dismiss Plaintiff's Complaint pursuant to 735 ILCS 5/2-301 for lack of personal jurisdiction; or, alternatively, if the Court finds it has jurisdiction over one or more of the Defendants, (b) to dismiss the Complaint pursuant to 735 ILCS 5/2-615 because Cook County, Illinois is not a proper venue.

INTRODUCTION

Plaintiff entered into a contract with Defendant Medasset to purchase a certain number of transferrable service contracts with health care providers.¹ Medasset is owned and operated by Defendant Weinstein. Plaintiff complains that after the contract was signed, Medasset failed to

¹ Plaintiff is not a named party to the contract, but it alleges it entered into the contract "through its parent company, Liberty Consulting & Management Services, LLC." (Compl. ¶31.) Defendants do not admit that Plaintiff has standing to bring the claims alleged in the Complaint, and reserve all rights to challenge Plaintiff's standing at any later appropriate time.

deliver the transferrable contracts at the rate promised. Moreover, Plaintiff claims that Medasset never intended to perform and that the whole transaction was carried out fraudulently – not only by Medasset, but also allegedly with the collusion of Defendant Visionary (a company owned by Defendant Brown), which acted as Medasset’s broker for the deal, and Defendant Reddy, who provided a reference and some training in connection with the transaction.

The alleged dispute, however, has no connection with Illinois except that Plaintiff resides here. Defendants are from Nevada, New Jersey and Michigan. The underlying transaction with Plaintiff was Medasset’s only transaction with an Illinois-based client. And no Defendant was present in Illinois for any of the events or occurrences alleged in the Complaint. In short, there are no grounds on which to subject any of the Defendants to personal jurisdiction in Illinois.

Accordingly, as explained more fully below, the case should be dismissed as against all five Defendants pursuant to 735 ILCS 5/2-301 (“Section 2-301”) for lack of personal jurisdiction. Or, alternatively, in the event that the Court finds it has jurisdiction over any one or more Defendants, it should dismiss the case under 735 ILCS 5/2-615 (“Section 2-615”) because Illinois is not a proper venue for the dispute.

SUMMARY OF FACTUAL ALLEGATIONS²

The factual allegations of the Complaint are, in summary, as follows.

² In ruling on a motion to dismiss for lack of personal jurisdiction under Section 2-301, “the court shall consider all matters apparent from the papers on file in the case, affidavits submitted by any party, and any evidence adduced upon contested issues of fact.” 735 ILCS 5/2-301(b). This section of the brief summarizes Plaintiff’s allegations, and the section that immediately follows summarizes the facts in Defendants’ affidavits attached hereto. Nothing herein shall be construed as an admission by Defendants of the truth of any allegation of the Complaint. Defendants expressly hereby reserve their rights to deny and dispute any and all of Plaintiff’s allegations at any later point in these or other legal proceedings.

Brown, through Visionary, posted information on the website BizQuest.com concerning an opportunity to purchase Medical Appeals and Medical Credentialing service contracts from Medasset (the “BizQuest Posting”). (Compl. ¶10 & Ex. 1.) The BizQuest Posting – which is attached to the Complaint as Exhibit 1 – states that it concerns “Nationwide Relocatable Niche Business,” and the location of the opportunity is the “United States.” (Id. Ex. 1, p. 1.) There is no reference in the BizQuest Posting to Illinois or any location in Illinois.

In or around March 2018, Plaintiff’s ownership “contacted” Brown about the BizQuest Posting. (Compl. ¶11.)³ Brown asked Plaintiff to sign and return confidentiality agreements and, after it did so, Brown sent Plaintiff an “Executive Summary” of Medasset. (Id. ¶12.) The Executive Summary – which is attached to the Complaint as Exhibit 2 – lists a New Jersey address for Visionary. (Id. Ex. 2.) It does not provide any address for Medasset, nor does it refer to Illinois or any location in Illinois. The Complaint does not allege how or where the referenced “contact” occurred, or where the confidentiality agreements were formed or negotiated.

After Plaintiff reviewed the Executive Summary, “a series of due diligence calls (“Calls”) took place with Weinstein, Brown, and the principals associated with Plaintiff” (id. ¶19) on which Weinstein and Brown described the business opportunity and represented that the business had various other satisfied customers. (Id. ¶¶20-23.) Plaintiff alleges that Weinstein misrepresented facts on those Calls, and that Weinstein and Brown withheld certain information. (Id.) When Plaintiff’s principals asked for a reference, Weinstein gave them Reddy’s name and contact information. (Id. ¶24.) The Complaint does not allege where the Calls occurred.

³ Actually, Plaintiff’s initial contact with Brown was made on April 19, 2018, as stated below and in the attached Affidavit by Certification of Kevin Brown, ¶3. However, the precise date of this initial contact from Plaintiff is immaterial to Defendants’ motion to dismiss.

On or about the end of April 2018, Plaintiff's principals then contacted Reddy by phone. (Id. ¶¶25, 30.) Reddy told them about many successful and profitable business dealings he had with Weinstein over many years. (Id. ¶¶26, 27.) Plaintiff claims Reddy failed to disclose certain information on those calls, including that he had a "vested interest" in Plaintiff doing business with Weinstein. (Id. ¶¶28-30.) The Complaint does not allege where the alleged calls occurred.

On or about May 3, 2018, Liberty Consulting & Management Services, LLC ("Liberty Consulting"), which is described by Plaintiff as its "parent company," entered into a contract for the purchase of the business opportunity (the "Purchase-Sale Agreement" or "Agreement"). (Id. ¶31.) The Agreement – which is attached to the Complaint as Exhibit 3 – includes a Nevada venue provision and a Nevada choice-of-law provision. (Id. Ex. 3, p. 4.) Exhibit B to the Agreement is a Promissory Note given by Liberty Consulting to Medasset. (Id. Ex. 3, pp. 7-9.) The Promissory Note also contains a Nevada venue provision and a Nevada choice-of-law provision. (Id. Ex. 3, p. 9.) Neither the Agreement nor the Promissory Note contain any reference to Illinois or any location in Illinois.

On or about May 3, 2018, Liberty Consulting sent a \$75,000 wire transfer to Visionary. (Compl. ¶33.) The Complaint does not allege the location from where the wire transfer was made, or to which it was sent.

In early May, 2018, Plaintiff "was reintroduced to" Reddy. (Id. ¶35.) This time, Reddy was identified as a "training coordinator" for Medasset. (Id.) At Reddy's suggestion, Plaintiff completed a series of "remote web-based training sessions." (Compl. ¶36.) The Complaint does not allege where the web-based training sessions occurred, or how or where Plaintiff was "reintroduced" to Reddy.

Since May 3, 2018, Plaintiff was assigned a “de minimus number of Medical Appeal Contracts (approximately 3)” from Medasset pursuant to the Agreement. (Id. ¶37.) Plaintiff made various telephone calls to Weinstein to ask why Medasset was not assigning more Medical Appeal Contracts. (Id. ¶¶39, 40.) Plaintiff made telephone calls to Brown for the same purpose and left several voicemails, but Brown never returned any of those calls. (Id. ¶¶41, 42.) Plaintiff called and emailed Reddy for the same purpose and discussed Medasset’s contract performance. (Id. ¶43.) Plaintiff claims Reddy provided false information on those calls. (Id.) The Complaint does not allege where the alleged calls occurred.

ADDITIONAL FACTS FROM DEFENDANTS’ AFFIDAVITS⁴

On April 19, 2018, Plaintiff principal Seth Johnson made the initial contact with Kevin Brown in response to the BizQuest Posting to inquire about the opportunity with Medasset. (Brown Aff. ¶¶3, 5.) Before Plaintiff responded to the BizQuest Posting, none of the Defendants had solicited business from, or had any contact whatsoever with Plaintiff or any of its representatives. (Weinstein Aff. ¶5; Brown Aff. ¶9; Reddy Aff. ¶4.) The BizQuest Posting to which Plaintiff responded was published on www.BizQuest.com and, as such, was available nationwide, to anyone who chose to search that website for a business opportunity. (Brown Aff. ¶4.) None of the Defendants has ever met in person with Plaintiff or any of its representatives. (Weinstein Aff. ¶7; Brown Aff. ¶11; Reddy Aff. ¶6.) All contact between Plaintiff and one or more of the Defendants was made by email, telephone or video conferencing via the internet. None of the Defendants was ever physically present in Illinois during any telephone call, email

⁴ The Affidavit by Certification of David Weinstein is attached hereto as Exhibit A and cited herein as “Weinstein Aff. ¶__.” The Affidavit by Certification of Kevin Brown is attached hereto as Exhibit B and cited herein as “Brown Aff. ¶__.” The Affidavit by Certification of Vijay Reddy is attached hereto as Exhibit C and cited herein as “Reddy Aff. ¶__.”

communication or video conference with Plaintiff or its representatives. (Weinstein Aff. ¶¶7-9; Brown Aff. ¶¶11-13; Reddy Aff. ¶¶6-8.) Weinstein was in Nevada every time he had contract with Plaintiff or any of its owners or representatives. (Weinstein Aff. ¶9.) Brown was in New Jersey every time he had contact with Plaintiff or any of its owners or representatives. (Brown Aff. ¶13.) Reddy was in Michigan every time he had contact with Plaintiff or any of its owners or representatives. (Reddy. Aff. ¶8.)

ARGUMENT

As set forth in **Part I**, below, Plaintiff's Complaint should be dismissed under Section 2-301, because it does not allege grounds for personal jurisdiction over any Defendant and, as shown by the attached affidavits of Defendants Weinstein, Brown and Reddy, none of the alleged events or occurrences took place in Illinois.

Alternatively, if the Court does not grant dismissal as to all Defendants for lack of personal jurisdiction, **Part II** explains why the Court should dismiss the Complaint in its entirety pursuant to Section 2-615 because Cook County, Illinois is an improper venue.

I. Motion to Dismiss Pursuant to Section 2-301: The Court Lacks Personal Jurisdiction Over All Defendants

No Defendant resides in Illinois. With respect to the individual Defendants, Weinstein, Reddy and Brown, the Complaint concedes that they are residents of Nevada, Michigan and New Jersey. (Compl. ¶¶4, 5, 6.) Likewise, as to the corporate Defendants, the Complaint concedes that Medasset is a Nevada corporation with its offices in Las Vegas, Nevada, and Visionary is a New Jersey limited liability company with its offices in Cinnaminson, New Jersey. (*Id.* ¶¶7, 8.) Defendants' affidavits filed herewith confirm the same. (Weinstein Aff. ¶2; Brown Aff. ¶2.)

A. Legal Standard for Exercising Personal Jurisdiction Over Non-Residents

This Court can exercise personal jurisdiction over a non-resident defendant only if the defendant has “minimum contacts” with Illinois “such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” Campbell v. Acme Insulations, Inc., 2018 IL App (1st) 173051, ¶12. There are two categories of jurisdiction – specific and general – and the nature and extent of the contacts required to establish jurisdiction depend on which category is being asserted. Id. ¶12. The Illinois long-arm statute, 735 ILCS 5/2-209, lists certain activities by a defendant that can form the basis for specific jurisdiction (under section 209(a)) and general jurisdiction (under section 209(b)) provided that the defendants’ contacts with Illinois are sufficient to satisfy the due process clauses of the Illinois Constitution and the Constitution of the United States. Campbell, 2018 IL App (1st) 173051, ¶11; 735 ILCS 5/2-209(c).

Specific jurisdiction exists, in accordance with the long-arm statute and Illinois and federal constitutional standards, when a defendant’s contacts with Illinois establish “an affiliation ‘between the forum and the underlying controversy,’ i.e., some activity or occurrence ‘that takes place in the forum State and is therefore subject to the State’s regulation.’” Campbell, 2018 IL App (1st) 173051, ¶18, quoting Goodyear Dunlop Tires Op., S.A. v. Brown, 564 U.S. 915, 919 (2011). Specific jurisdiction “is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction.” Id.

General jurisdiction, on the other hand, may be established by a defendant’s contacts to the forum state that are unrelated to the controversy. Campbell, 2018 IL App (1st) 173051, ¶14. Thus, when general jurisdiction is established, a defendant may be sued in Illinois even if all conduct on which the claims are based occurred outside of Illinois. Id. However, the standard is “very high” to establish general jurisdiction. Id. It requires a showing that the defendant carried on

“continuous and systemic” business activity, “not casually or occasionally, but with a fair measure of permanence and continuity.” Id. Further, even if a defendant engages in continuous and systemic activities in Illinois, general jurisdiction requires still more. Id. It also requires a showing that such activities in Illinois are so substantial relative to defendant’s business activities as a whole, that they make Illinois defendant’s “home” state. Id. Indeed, it is only in “exceptional cases” where a corporate defendant, for jurisdiction purposes, will be deemed “at home” in a state other than where it is incorporated or maintains its principal place of business. Id.

Plaintiff has the burden to establish a *prima facie* basis for personal jurisdiction with respect to each Defendant. Campbell, 2018 IL App (1st) 173051, ¶10. If Plaintiff makes a *prima facie* case, it may be overcome by uncontradicted evidence from Defendants that defeats jurisdiction. Id. The Court may consider the allegations of the Complaint and any affidavits submitted by the parties; un rebutted allegations and uncontradicted evidence are taken as true. Id.

B. The Complaint Does Not Plead Grounds For Jurisdiction

Plaintiff does not allege grounds for specific jurisdiction. In fact, the Complaint does not identify any activity or occurrence by any Defendant that allegedly took place in Illinois. The Complaint alleges there was correspondence between Defendants and Plaintiff’s representatives, but it does not allege that such correspondence took place in Illinois, or that the participants were physically present in Illinois when such correspondence took place. It alleges that certain Defendants entered into contracts with Plaintiff or its affiliates, but it does not say where such contracts were formed, negotiated, signed or performed. It alleges that Defendants marketed their services but it does not allege that those marketing activities took place in, or were directed to Illinois. In short, it does not allege that Defendants engaged in any business activity in Illinois –

much less the kind of activity necessary to satisfy due process standards and subject Defendants to a lawsuit here.

Rather, Plaintiff asserts one conclusory assertion that: “Illinois is the place in which the tortious acts occurred.” (Compl. ¶9.) It is well established, however, that to plead a valid claim in Illinois a plaintiff must allege facts, not mere conclusions. Demeester’s Flower Shop & Greenhouse, Inc. v. Florists’ Mut. Ins. Co., 2017 IL App (2d) 161001, ¶9. Pleading jurisdiction is no exception – a plaintiff must allege facts that establish jurisdiction. E.g., Kadala v. Cunard Lines, Ltd., 226 Ill.App.3d 302, 310 (1st Dist. 1992). Thus, Plaintiff’s allegation that the Court has jurisdiction because “the tortious acts occurred” in Illinois – without a single factual allegation identifying a single tortious act that actually occurred here – does not establish jurisdiction over any Defendant.

The only factual connection the Complaint makes between Illinois and the matter in controversy is that Plaintiff resides here. (Compl. ¶¶3, 9.) However, “[a] nonresident defendant’s contract with an Illinois resident does not automatically establish sufficient minimum contacts” to establish specific jurisdiction. Cardenas Marketing Network, Inc. v. Pabon, 2012 IL App (1st) 111645, ¶36; see also Gordon v. Tow, 148 Ill. App. 3d 275, 283 (1st Dist. 1986) (“To construe [defendant’s] phone calls and letters which were sent into Illinois as the transaction of business in Illinois ‘would be to destroy the distinction between the transaction of business *in* Illinois and the transaction of business *with* an Illinois [resident]’”), quoting Wessel Co., Inc. v. Yoffee & Beitman Management Corp., 457 F. Supp. 939, 941 (N.D. Ill. 1978). Whether the making of a contract with an Illinois resident provides grounds for jurisdiction depends on (1) who initiated the transaction, (2) where the contract was negotiated, (3) where the contract was formed, and (4) where performance of the contract was to take place. Cardenas, 2012 IL App (1st) 111645, ¶36; see also

Gordon, 148 Ill.App.3d at 280-81 (listing the same factors). And, “only the acts of defendant can be considered in determining whether business was transacted in Illinois” for purposes of establishing jurisdiction. Gordon, 148 Ill.App.3d at 280. Here, the Complaint admits that Plaintiff initiated the transaction with Defendants. (Compl. ¶11.) That fact weighs against Plaintiff on the jurisdiction issue. See, e.g., Gordon, 148 Ill.App.3d at 283. As to every other potentially relevant factor, the Complaint is silent.

The Complaint is, likewise, devoid of any alleged factual support for general jurisdiction. The only allegations that arguably relate to general jurisdiction are that: “Defendants have a history of conducting business transactions in Illinois, with multiple Illinois residents incurring damages as a result of their tortious conduct” (Compl. ¶9); and “Defendants have committed and solicited others to commit criminal fraud, theft by deception, and other crimes punishable in the State of Illinois” (Comp. ¶93). As explained above, however, bare legal conclusions do not establish jurisdiction. Thus, Plaintiff’s conclusory allegations, without a single factual actual allegation to support them – e.g., which Defendants, how much business, what activities, with whom or when – fall far short of establishing that any Defendant conducted business in Illinois that was “continuous and systemic” and so substantial relative to Defendants’ other business activities that Defendants can be deemed “at home” in Illinois. Compare Kadala at 310, 315 (defendant that spent \$500,000 marketing in Illinois and earned “substantial revenue” from Illinois residents was not subject to general jurisdiction); Campbell, 2018 IL App (1st) 173051, ¶¶15-17 (general jurisdiction was not established by defendant having a registered agent in Illinois for over 100 years, employing 3,000 people in Illinois, and owning and operating 30 facilities in Illinois, because those operations were a relatively small part of its total operations); Cardenas, 2012 IL

App (1st) 111645, ¶32 (allegations that defendant worked on one event in Chicago did not establish general jurisdiction).

Thus, Plaintiff has not made even a *prima facie* showing that any Defendant is subject to personal jurisdiction in Illinois. For this reason, alone, the case should be dismissed in its entirety.

C. The Facts Confirm The Court Lacks Personal Jurisdiction

Moreover, even assuming that Plaintiff carried its burden to establish a *prima facie* case for jurisdiction (it has not), Defendants' attached affidavits confirm that Plaintiff's alleged claims are not derived from any business activity by Defendants in Illinois. Indeed, Defendants' affidavits establish that:

- The BizQuest Posting to which Plaintiff responded was an internet posting that was not directed or targeted to Plaintiff, or to Illinois;
- Plaintiff made the initial inquiry to Visionary about the Medasset opportunity;
- No Defendant met in person with Plaintiff or its representatives;
- No Defendant was physically present in Illinois during any call, email communication or video conference with Plaintiff or its representatives; and
- No Defendant was physically present in Illinois for any of the events or occurrences alleged in the Complaint.

Further, contrary to the Complaint's baseless allegation that Defendants have "a history of conducting business in Illinois," in fact, the underlying transaction is the only transaction in which Medasset has ever done business with an Illinois-based client. (Weinstein Aff. ¶10.) Likewise, it is the only transaction between Medasset and an Illinois-based client in which Brown, Visionary or Reddy has been involved in any capacity. (Brown Aff. ¶14; Reddy Aff. ¶9.)

* * *

In sum, Plaintiff has failed to establish that any Defendant is subject to personal jurisdiction in Illinois. Accordingly, the Court should dismiss the case as against all Defendants pursuant to 735 ILCS 5/2-301. If the Court agrees that dismissal is warranted on these grounds, it need not read further. However, in the event that the Court finds that it has personal jurisdiction over any one or more of the Defendants, **Part II** of this brief explains in the alternative, that the case should be dismissed pursuant to 735 ILCS 5/2-615 because Illinois is an improper venue.

**II. In the Alternative, Motion to Dismiss Pursuant to Section 2-615:
The Parties Are Bound By a Clark County, Nevada Forum Selection Clause**

A motion to dismiss under Section 2-615 attacks the legal sufficiency of the complaint based on defects on the face of the pleading. Beahringer v. Page, 204 Ill. 2d 363, 369 (2003). When a complaint is based on a written contract, the contract is deemed part of the complaint for all purposes. 735 ILCS 5/2-606. In this case, the Agreement, which is attached as Exhibit 3 to the Complaint contains two unambiguous Nevada forum selection and choice-of-law clauses. In particular, the Purchase Agreement states:

Venue:

The venue is the State of Nevada and the County of Clark.

Governing Law:

This Agreement will be governed by the laws of Nevada and the County of Clark.

(Compl. Ex. 3, p. 4.) And, likewise, the Promissory Note that is attached as an exhibit to the Agreement states:

Venue

The State of Nevada and the County of Clark shall be the venue for the Agreement.

Governing Law

The Laws of the State of Nevada and the County of Clark shall govern this Agreement.

(*Id.*, p. 9.) Because the Agreement provides that it “will be governed by the laws of Nevada and the County of Clark,” this Court’s construction and application of the Agreement’s forum selection clauses is governed by Nevada law. For the sake of completeness, however, this section of the brief contains citations to cases from both States.⁵ Under both Nevada and Illinois law, the forum selection clauses are enforceable and result in the dismissal of this case.

As a general matter, contractual forum selection clauses are enforced and controlling with respect to contract-based claims. See Fabian v. BGC Holdings, LP, 2014 IL App (1st) 141576, ¶16 (a forum-selection clause “is *prima facie* valid and courts should enforce it unless the opposing party shows that enforcement would contravene the strong public policy of the state in which it is brought,” or that enforcement would be so unreasonable that plaintiff would “for all practical purposes be deprived of [its] day in court”); Tuxedo Intern. Inc. v. Rosenberg, 127 Nev. 11, 24-25 (Nev. 2011) (discussing circumstances under which enforceable forum selection clause is binding on tort-based claim in addition to contract-based claims).

Where – as in this case – a plaintiff alleges tort claims that are related to a contract, a forum selection clause will still be enforced under Illinois law as long as the alleged claims are connected to, arise or require interpretation of the underlying contract. Solargenix Energy, LLC v. Acciona, S.A., 2014 IL App (1st) 123403, ¶34. Nevada applies a similar, three-step test: first, courts look to the plain language of the forum selection clause “to determine whether related tort claims were meant to be included within the clause’s control”; second, if the contract language alone does not

⁵ Copies of Nevada cases are attached as Exhibit D.

resolve the issue, the courts consider “whether resolution of the tort-based claims pleaded by the plaintiff relates to the interpretation of the contract, and if they are, then the claims are within the scope of the forum selection clause”; and, third, if step two still does not resolve the issue, courts look to “whether the contract-related tort claims involve the same operate facts as a parallel breach of contract claim,” or “whether the plaintiff could have brought a parallel breach of contract claim and yet did not.” Tuxedo, 127 Nev. at 25.

In this case, under either State’s law, Plaintiff’s tort-based and other claims are subject to the Nevada forum selection clauses because the claims relate to, and depend on interpretation of the underlying Agreement. In particular, Plaintiff alleges that Defendants worked in concert and conspired to persuade Plaintiff to enter into the Agreement, that Defendants’ allegedly knew Medasset would not perform the Agreement, and that Medasset in fact did not deliver all of the service contracts it promised under the Agreement.

Moreover, the foregoing rules about application of forum selection clauses also apply to claims for fraudulent inducement. Thus, a plaintiff cannot avoid being bound by an otherwise applicable forum selection clause merely by alleging that the contract containing the clause was procured by fraud and, thus, void. IFC Credit Corp., 378 Ill.App.3d at 92-93 (rejecting defendants’ argument that forum selection clause was unenforceable because the entire agreement was procured by fraud, and holding that “to invalidate the clause . . . the fraud alleged must be specific to the forum selection clause itself”); Tuxedo Intern. Inc., 127 Nev. at 693 (“forum selection clauses will become meaningless if parties are simply allowed to circumvent them by alleging fraud in the inducement of the contract rather than asserting contract-based claims”).

Finally, the forum selection language at issue in this case is mandatory, not permissive, because it states “[t]he venue is the State of Nevada and the County of Clark” and “[t]he State of

Nevada and the County of Clark shall be the venue for this Agreement.” (Emphasis added.) Thus, in contrast to clauses that merely provide for parties to “submit to the jurisdiction of” a particular state, but do not actually identify a mandatory forum for disputes, the Agreement’s forum selection clauses plainly state that the venue for any dispute is and shall be Clark County, Nevada. See IFC Credit Corp. v. Reiker Shoe Corp., 378 Ill.App.3d 77, 88 (1st Dist. 2007) (distinguishing “mandatory” language stating that actions relating to the contract “shall be venued exclusively” in a certain court with “permissive” language that merely states the defendant “would submit to the jurisdiction of” certain courts, but does not require the parties to litigate there); Am. First Fed. Credit Union v. Soro, 359 P.3d 105, 107-08 (Nev. 2015) (same).

For the foregoing reasons, the forum selection clauses are controlling and dispositive. For this reason alone, the action must be dismissed.

CONCLUSION

For the foregoing reasons, this Court should grant Defendants’ motion and dismiss Plaintiffs’ Complaint in its entirety.

Respectfully submitted,

DAVID WEINSTEIN, VIJAY REDDY,
KEVIN BROWN, VISIONARY BUSINESS
BROKERS LLC and MEDASSET
CORPORATION

By: 

One of Their Attorneys

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LELAND GROVE LAW LLC
1032 Sterling Ave.
Flossmoor, IL 60422
Firm No. 61596

Exhibit 4

EXHIBIT A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

FILED
12/14/2018 6:41 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018L010586

MEDAPPEAL, LLC,)	
)	
Plaintiff,)	
)	
v.)	No. 18-L-010586
)	
DAVID WEINSTEIN, VIJAY REDDY,)	Judge Brigid Mary McGrath
KEVIN BROWN, VISIONARY BUSINESS)	
BROKERS LLC and MEDASSET)	
CORPORATION,)	
)	
Defendants.)	

AFFIDAVIT BY CERTIFICATION OF DAVID WEINSTEIN

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this Affidavit are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

1. I am over the age of 18 years, have knowledge of the matters stated herein and, if called as a witness, could competently testify thereto.

2. I have been the sole owner and officer of Defendant Medasset Corporation ("Medasset") since its inception. Medasset is, and has always been, a Nevada corporation with its only office located in Las Vegas, Nevada.

3. On or about May 3, 2018, on behalf of Medasset, I signed a purchase-sale agreement (the "Agreement") to sell certain service contracts with health care providers to Liberty Consulting & Management Services, LLC ("Liberty"). That Agreement that is the subject of Plaintiff's allegations in above captioned case. A copy of the Agreement is attached as Exhibit 3 to the Complaint.

4. In connection with the Agreement, beginning in late April 2018, I had contact with Seth Johnson and Eli Johnson, who I understood at the time to be the owners and/or officers of Liberty, about their potential interest in buying service contracts from Medasset.

5. My first contact with Seth or Eli Johnson or Liberty came after Kevin Brown informed me in late April 2018 that the Johnsons had contacted him to inquire about a posting he placed on BizQuest.com concerning a Medasset business opportunity. Before then, I was not acquainted or familiar with Liberty, the Johnsons, or anyone associated with them, and I had never solicited business from them.

6. As Medasset's sole owner and officer, I have complete knowledge of Medasset's marketing activities. Medasset has never directed marketing to Illinois. The only marketing or solicitation from or concerning Medasset that has ever been available to Illinois-based businesses has been marketing via internet listings that are available to anyone worldwide with access to the internet.

7. I have never met in person with Seth or Eli Johnson. To my knowledge, I have never had any contact with anyone else associated with Liberty or the Johnsons.

8. All of my contact with Seth Johnson or Eli Johnson has been by telephone or email.

9. I have been in Las Vegas, Nevada every time I have had contact with Seth Johnson or Eli Johnson.

10. Liberty is the only Illinois-based client that Medasset has ever done business with.



Executed on December 14, 2018

David Weinstein

EXHIBIT B

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION

MEDAPPEAL, LLC,)	
)	
Plaintiff,)	
)	
v.)	No. 18-L-010586
)	
DAVID WEINSTEIN, VIJAY REDDY,)	Judge Brigid Mary McGrath
KEVIN BROWN, VISIONARY BUSINESS)	
BROKERS LLC and MEDASSET)	
CORPORATION,)	
)	
Defendants.)	

AFFIDAVIT BY CERTIFICATION OF KEVIN BROWN

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this Affidavit are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

1. I am over the age of 18 years, have knowledge of the matters stated herein and, if called as a witness, could competently testify thereto.

2. I have been the sole owner and officer of Visionary Business Brokers LLC ("Visionary") since its inception. Visionary is, and has always been, a New Jersey limited liability company with its only office located in Cinnaminson, New Jersey.

3. On April 19, 2018, I received an email (the "Email Inquiry") from BizQuest.com indicating that "Seth J" was inquiring about a BizQuest.com posting (the "BizQuest Posting") that Visionary had placed on behalf of Medasset concerning an opportunity to purchase service contracts for health care providers from Medasset.

4. I personally – acting as an officer of Visionary – placed the BizQuest Posting to which the Email Inquiry responded. The BizQuest Posting was published via the internet on www.BizQuest.com and was available nationwide, to anyone who had access to the internet.

5. The Email Inquiry provided an email address and phone number for the inquirer, “Seth J.,” who I later came to learn was Seth Johnson.

6. Shortly after receiving the Email Inquiry, I sent a form Confidentiality Agreement via email to the email address provided by the inquirer.

7. Seth Johnson returned the Confidentiality Agreement to me by email, executed by his brother Eli Johnson and dated April 23, 2018. A true and correct copy of that executed confidentiality agreement is attached to this Affidavit.

8. Thereafter, I informed my client David Weinstein, who owns and operates Medasset about the inquiry from Seth Johnson and Eli Johnson. In the weeks that followed, I had telephone and email contact with the Johnsons, who I eventually learned were the owners and/or officers of a company called Liberty Consulting & Management Services, LLC (“Liberty”).

9. The Email Inquiry I received from Seth Johnson in April 2018 was my first contact with him or anyone associated with him or Liberty. Before then, I was not acquainted or familiar with Liberty, the Johnsons, or anyone associated with them, and I had never solicited business from them on my own behalf, or on behalf of any entity or client.

10. Liberty eventually entered into a contract with Medasset. A copy of the contract is attached as Exhibit 3 to the Complaint in this case.

11. I have never met in person with Seth Johnson or Eli Johnson. To my knowledge, I have never had contact with anyone else associated with Liberty or the Johnsons.

12. All of my contact with Seth Johnson or Eli Johnson has been by telephone or email.

13. I have been in the State of New Jersey every time I have had contact with Seth Johnson or Eli Johnson.

14. Except for the Liberty transaction that is the subject of this case, I have never been involved in any capacity in any business transaction in which Mr. Weinstein or Medasset was involved and the client was based in Illinois.

Executed on December 14, 2018



Kevin Brown

Business Brokers VISIONARY

1401-L Route 130 S. Suite 343
Cinnaminson, NJ 08077

Confidentiality Agreement

THIS AGREEMENT is made and entered into this 23rd day of April, 2018 by and between Visionary Business Brokers LLC,* ("Company"), and El. Johnson ("Buyer"); collectively, the "Parties"

Buyer understands that the Company represents certain businesses (hereinafter "Clients") who wish to sell their business (es) and the Company has an agreement with such Clients to be paid a fee based on any transaction with the Buyer. The Buyer agrees not to attempt to circumvent this agreement in any way. Company and Buyer desire to explore the possibility of the acquisition of Clients of the Company and, in the course of the Parties' discussions and due diligence investigations, Company will disclose confidential and proprietary information, both of a financial and business nature regarding its Clients. The confidential and proprietary information disclosed relates generally to the identity of businesses that are for sale, marketing, sales, billing, pricing, accounting, and other operations of the Clients, as well as other proprietary information including trade secrets of the Clients, all of which is designated "Subject Matter".

In consideration of the mutual promises, terms and conditions, intending to be legally bound hereby, the Parties agree as follows:

1. "Confidential Information" means information given by the Company which relates to the above-identified Subject Matter, including without limitation, financial information, business concepts and business plans (whether or not they include intellectual property rights), confidential ideas, trade secrets, software, processes, data, marketing and sales information, customer names, customer contacts, accounting and pricing information, or other business and/or related technical information, or which, although not related to such Subject Matter, is nevertheless disclosed. Confidential Information may be disclosed either orally, visually or in tangible form (whether by document, electronic media, or other form). Even though Company or Clients may not mark, label or identify any of the above-described information as proprietary or confidential for purposes of this Agreement, it shall not affect its status as part of the Confidential Information protected by this Agreement.
2. Buyer shall hold and maintain the Confidential Information in strict confidence and shall use such Confidential Information only for the purpose of assisting it in the assessment, determination, investigation and or negotiation of terms mutually agreeable for the acquisition of the Company's Clients. Buyer shall not reproduce such Confidential Information, or disclose any of such Confidential Information to any third party, or other person or business entity of any kind without prior written approval of the Company. Buyer shall not approach, write to, discuss or have contact with the Client's customers, vendors, employees or other agents. Buyer agrees that it shall not use the Confidential Information in any manner in any way inconsistent with the use and purpose described in this Agreement.

3. All Confidential Information disclosed under this Agreement shall remain the exclusive property of the Company. All such information in tangible form shall be returned to the Company the sooner of ten (10) days of request, upon termination of this Agreement for any reason, or as soon as Buyer no longer has an interest in the Clients.
4. Buyer acknowledges and agrees that the Confidential Information is unique and valuable and that disclosure or use of Confidential Information in breach of this Agreement will result in irreparable injury for which monetary damages alone would not be an adequate remedy. Therefore, Buyer agrees that in the event of a breach or threatened breach of confidentiality, Company shall be entitled to specific performance, injunctive or other equitable relief, including, but not limited to, reasonable attorney's fees. Any such relief shall be in addition to and not in lieu of any appropriate relief in the way of monetary damages.
5. Buyer shall bear its own costs and expenses for conducting the due diligence investigation and negotiations undertaken herein, including but not limited to accounting, tax, and legal fees. The Parties shall not be liable to each other for any such costs and expenses in the event an acquisition is not consummated.
6. All obligations undertaken herein by the Parties shall survive termination of this agreement or the contemplated transaction between the Company's Clients and the Buyer.
7. Buyer understands that all Subject Matter and Confidential Information received by the Company has been given to the Company by the Clients and Company has done no due diligence; therefore, no representation or warranty, expressed or implied, is given to the accuracy of such information by the Company. The Buyer will perform its own due diligence and hold the Company harmless from any claims or obligations related to a transaction with one of the Company's Clients. The Buyer understands that the Company represents its Clients. The Buyer will not contact the Clients disclosed by the Company and will direct all negotiations, offers to purchase, letters of intent or other communication with the Clients through the Company.
8. This Agreement (i) constitutes the entire understanding between the Parties concerning the Subject Matter and Confidential Information and supersedes any prior discussions between them; (ii) may not be amended or modified except by a written instrument signed by each of the Parties; (iii) shall be governed by the laws of the State of New Jersey; (iv) the Parties agree to personal jurisdiction and venue in the State of New Jersey; and (v) may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
9. The invalidity, illegality, or unenforceability of any obligation or provision under this agreement shall not affect or impair the enforceability or legality of any remaining provision or obligation under this agreement.
10. From time to time, the Buyer may be required to sign additional non-disclosure and/or confidentiality agreements. In the event of a conflict between such additional documents, this agreement shall prevail. Each of the Parties has executed or caused this Agreement to be executed, as of the date first written above.

Pertaining to the following listing (s)

Agreed and accepted this 23rd day of April, 2018.

Name of Individual: Eli Johnson

Signature: [Signature]

Address: 1000 Skolem Blvd # 225

City: Wilmette State: IL Zip: 60091

Phone: 847-853-7000 Fax: 847-853-7300

Cell: 847-269-3541

E-Mail: eli@libertycms.com

Available Funds for Purchase: _____

Current Occupation/ Work: _____

Business Brokers
VISIONARY

215-806-4534 direct 856-210-7470 fax

EXHIBIT C

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION

MEDAPPEAL, LLC,)	
)	
Plaintiff,)	
)	
v.)	No. 18-L-010586
)	
DAVID WEINSTEIN, VIJAY REDDY,)	Judge Brigid Mary McGrath
KEVIN BROWN, VISIONARY BUSINESS)	
BROKERS LLC and MEDASSET)	
CORPORATION,)	
)	
Defendants.)	

AFFIDAVIT BY CERTIFICATION OF VIJAY REDDY

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this Affidavit are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

1. I am over the age of 18 years, have knowledge of the matters stated herein and, if called as a witness, could competently testify thereto.

2. In or around late April 2018, I received a call from Seth Johnson and/or Eli Johnson asking about my experience with David Weinstein and Medasset Corporation ("Medasset").

3. I eventually learned that Seth Johnson and Eli Johnson are brothers who are associated with a company called Liberty Consulting & Managing Services, LLC, and that, sometime after I received that initial call, Liberty entered into a contract with Medasset to purchase service contracts with health care providers.

4. The call I received from Seth and/or Eli Johnson in or around April 2018 was my first contact with either of them. Before then, I was not acquainted or familiar with Liberty, the Johnsons, or anyone associated with them.

5. Since that initial call, I have had contact with Seth Johnson and Eli Johnson on several occasions by telephone, email and internet video conferencing. On one or more of the occasions when we communicated by video conferencing, the Johnsons were with other individuals who I understood were employees of the Johnsons or Liberty. I do not recall their names.

6. I have never met in person with Seth Johnson or Eli Johnson, or any person associated with them or Liberty.

7. All of my contact with Seth Johnson or Eli Johnson, or any person associated with them or Liberty, has been by telephone, email or internet video conferencing.

8. I have been in the State of Michigan every time I have had contact with Seth Johnson or Eli Johnson, or any person associated with them or Liberty.

9. Except for the Liberty transaction that is the subject of this case, I have never been involved in any capacity in any business transaction in which Mr. Weinstein or Medasset was involved and the client was based in Illinois.

Executed on December 14, 2018



Vijay Reddy

127 Nev. 11
Supreme Court of Nevada.

TUXEDO INTERNATIONAL INCORPORATED,
a Foreign Corporation, Appellant,
v.
Michael ROSENBERG, an Individual; and Lima
Uno, a Foreign Corporation, Respondents.

No. 52861.
|
Feb. 10, 2011.

Synopsis

Background: Investor brought theft-conversion by fraud and unjust enrichment action against individuals who allegedly misrepresented that they owned casinos in Peru. The Eighth Judicial District Court, Clark County, Valorie Vega, J., granted defendants' motion to dismiss based on a forum selection clause, and investor appealed.

[Holding:] The Supreme Court, Hardesty, J., held that when determining whether a forum selection clause applied to a tort claim, the district court was to first focus on the parties' intent, and, if this did not resolve the issue, the court was to determine whether the resolution of the tort claims involved the interpretation of the contract.

Reversed and remanded.

West Headnotes (5)

[1] Pretrial Procedure

Legal remedies and proceedings

Investor made a prima facie showing of personal jurisdiction over individuals who allegedly misrepresented that they owned casinos in Peru, such that dismissal of investor's theft-conversion by fraud and unjust enrichment action on a motion to dismiss was not warranted, where investor alleged that the meaningful meetings and negotiations regarding the Peruvian casino investment project took place in Las Vegas.

Cases that cite this headnote

[2] Contracts

Legal remedies and proceedings

When determining whether a forum-selection clause in a contract applies to tort claims pleaded by a plaintiff, a court should first focus on the intent of the parties regarding the clause's applicability to the contract-related tort claims; if this does not resolve the question, in the next step the court should determine whether the resolution of the tort-based claims relates to the interpretation of the contract, and, if they do, then the claims are within the scope of the forum selection clause, and, if this still does not resolve the issue, the court should determine whether the tort claims involve the same operative facts as a parallel breach of contract claim, or whether the plaintiff could have brought a parallel breach of contract claim and yet did not.

5 Cases that cite this headnote

[3] Contracts

Legal remedies and proceedings

A thorough textual review is required in any analysis of whether a contractual forum selection clause applies to tort-based claims related to the contract.

2 Cases that cite this headnote

[4] Contracts

Legal remedies and proceedings

When determining whether a forum-selection clause applies to tort claims pleaded by a plaintiff, because a district court must first focus on the intention of the parties reflected in the wording of particular clauses and the facts of the case to determine whether related tort claims were meant to be included within the clause's control, the initial review must involve a careful and thorough study of the particular clause itself.

1 Cases that cite this headnote

[5] Contracts**Presumptions and burden of proof**

A plaintiff has burden of demonstrating that tort-based claims related to a contract are not subject to a forum selection clause contained in agreement.

4 Cases that cite this headnote

Attorneys and Law Firms

****690** Alan J. Buttell & Associates and [Alan J. Buttell](#), Las Vegas, for Appellant.

Dubowsky Law Office, Chtd., and [Peter Dubowsky](#), Las Vegas, for Respondents.

Before [DOUGLAS](#), C.J., [PICKERING](#) and [HARDESTY](#), JJ.

OPINION

By the Court, [HARDESTY](#), J.:

12** In this appeal, we address the proper analysis to determine whether a forum selection *691** clause applies to the tort claims pleaded by a plaintiff when the dispute is arguably related to a contract containing an applicable forum selection clause. We conclude that the best approach for resolving this issue is one that focuses first on the intent of the parties regarding a forum selection clause's applicability to contract-related tort claims. If that examination does not resolve the question, however, the district court must determine whether resolution of the tort-based claims pleaded by the plaintiff relates to the interpretation of the contract. And if that analysis does not resolve the question, the district court must determine whether the plaintiff's contract-related tort claims involve the same operative facts as a parallel breach of contract claim. As the district court dismissed this case without the benefit of our guidance on this issue, we reverse the district court's judgment and remand this matter to the district court for reexamination under the standard adopted today.

BACKGROUND

In April 2008, appellant Tuxedo International Incorporated filed a complaint in district court against respondents Michael Rosenberg and Lima Uno (hereinafter Rosenberg) seeking damages for two causes of action—"theft-conversion by fraud" and unjust enrichment—arising out of an allegedly failed investment involving casinos in the South American country of Peru.

***13** The following facts are alleged in Tuxedo's complaint and are set forth here to provide context for this appeal.¹ During the spring of 2005, Tuxedo had "numerous meetings" with Michael Rosenberg and/or his associates in Las Vegas, Los Angeles, and Peru regarding a possible investment project involving technology facilitating horse book and sports book betting in Peru. During these meetings, Rosenberg and his associates purportedly represented that he owned, "directly or indirectly," approximately "400 slot machine casinos" in Peru. It is alleged that Rosenberg knew these representations were false at the time they were made to Tuxedo. Tuxedo claims that its decision to pursue this venture was largely influenced by Rosenberg's claim of ownership of the casinos and that it would not have participated in this venture if it had known that Rosenberg's ownership claims were false.

As a result of these meetings, a series of agreements were subsequently signed. First, a memorandum of understanding was signed on June 25, 2005, the purpose of which was to "set forth the main guidelines of the business to be developed by [Tuxedo and Rosenberg] prior to entering into good faith negotiations towards the execution of a definitive long term agreement." The memorandum of understanding contained a clause stating that

[t]his document and the Agreement will be governed by the laws of Peru. Any arising dispute will be submitted to arbitration in Peru by an arbitration tribunal to be set according to what the Parties may agree and lacking such agreement, pursuant to the General Law of

Arbitration of Peru in force at the time the dispute arises.

Thereafter, on December 15, 2005, Tuxedo and Rosenberg signed a more extensive agreement, which specifically “incorporated” the memorandum of understanding. The December 15 agreement included a clause entitled “Choice of law and forum,” stating that “[t]his agreement shall be construed, interpreted and enforced according to the laws of Peru. The parties hereto hereby consent to jurisdiction in Lima, Peru.” Directly below this “Choice of law and forum” provision was a separate clause, entitled “Entire Agreement,” stating that “[t]his instrument super[s]edes any prior agreements between the parties hereto, and sets forth the entire agreement between the parties hereto with respect to the subject matter hereof.”

*14 Under this December 15 agreement, Tuxedo would provide technology, equipment, and funding to make horse book and sports book betting available at selected casinos. The agreement called for Tuxedo to provide start- **692 up costs of \$25,000 to \$30,000 and initial working capital of \$5,000 per location, \$125,000 in build-out payments for the first five casinos, and approximately \$7,300 per month in ongoing operating expenses. According to Tuxedo, it paid over \$400,000 in build-out costs, \$90,000 in working capital, and \$160,000 in operating expenses for locations that never opened.

Finally, the parties' briefs also reference a third agreement, a June 12, 2006, “tripartite addendum to agreement of simulcasting and tote services.”² This is an agreement between Tuxedo, Rosenberg, and a third entity, DGS Systems Corp., a Panamanian corporation, regarding the transmission of video feeds of horse and dog races. The tripartite addendum contains a clause entitled “Governing Law and Jurisdiction,” which sets forth that

[t]his Addendum shall be construed and governed in accordance with the laws of the Country of Peru. Each party hereby consents to personal jurisdiction in the Country of Peru and acknowledges that venue is proper in any court in the Country of Peru and agrees that any action related to this Addendum must be brought in a court in the Country of Peru and waives any objection that may exist, now or in the future, with respect to

jurisdiction, governing law and venue as set out in this paragraph.

This document also contained a clause entitled “Entire Agreement,” stating that “[t]his Addendum constitutes the entire agreement between the parties hereto relating to the subject matter hereof. It does not, however, alter the Definitive Agreement between [Rosenberg] and Tuxedo.”

[1] Approximately one month after the complaint was filed, Rosenberg brought a motion to dismiss, arguing, among other things, that the complaint should be dismissed based on the “Choice of law and forum” clause in the December 15 agreement because the parties had already agreed that Peru is the proper forum for this dispute. After further filings and a hearing on Rosenberg's motion, the district court found that the forum selection clauses were “valid and enforceable” and entered an order dismissing the complaint.³ This appeal followed.

*15 DISCUSSION

On appeal, Tuxedo argues that the district court erred in enforcing the forum selection clause to preclude its complaint for tort claims. More specifically, Tuxedo contends that contractual forum selection clauses do not encompass claims for fraud, that its complaint makes clear that the causes of action are based in tort connected to Rosenberg's alleged series of fraudulent activities that led Tuxedo to sign a sham contract, and that the contract here should be considered, at best, evidence of the conspiracy to defraud Tuxedo rather than constituting any legitimate bargained-for agreement. Rosenberg, however, contends that precedent from other jurisdictions provides compelling authority to uphold **693 the dismissal of this complaint based on the forum selection clause, as forum selection clauses will become meaningless if parties are simply allowed to circumvent them by alleging fraud in the inducement of the contract rather than asserting contract-based claims.

This court has not addressed whether tort-based causes of action that, at a minimum, are tangentially related to a contract are subject to an otherwise enforceable forum selection clause included in the contract. Other courts considering this question have struggled to fashion generally applicable rules. On the one hand, forum selection clauses should not be rendered meaningless by allowing parties to disingenuously back out of

their contractual obligations through attempts at artful pleading. See, e.g., *Lambert v. Kysar*, 983 F.2d 1110 (1st Cir.1993) (rejecting arguments that tort-based claims related to a contract are not subject to a contractual forum selection clause on this basis). On the other hand, some flexibility should also be made available for legitimate cases when a forum selection clause is contained in an agreement that never would have been entered into absent a party's fraudulent conduct. See *Farmland Industries v. Frazier-Parrott Commodities*, 806 F.2d 848, 851–52 (8th Cir.1986) (setting forth this proposition in explaining *16 that, when a fiduciary relationship is created by a fraudulent contract, the individual defrauded should not be held to the contract's forum selection clause), *abrogated on other grounds by* *Lauro Lines s.r.l. v. Chasser*, 490 U.S. 495, 109 S.Ct. 1976, 104 L.Ed.2d 548 (1989). Striking the proper balance between these competing concerns, however, is a difficult and delicate endeavor.

Numerous other courts have addressed this issue and our review of these decisions reveals a variety of methods used to determine whether tort-based claims related to a contract are subject to its contractual forum selection clause. We therefore begin our analysis of this issue by providing an overview of the different approaches taken by other jurisdictions. We then discuss our concerns with these approaches before setting forth the analysis to be applied by Nevada courts considering this issue.

Extrajurisdictional approaches to addressing the applicability of forum selection clauses to tort-based claims

Based on our review of the approaches taken by other courts in determining whether tort-based claims related to a contract are subject to a forum selection clause, it appears that the majority of the decisions fall, generally, into three categories. Some courts have adopted a bright-line approach that takes the position that the inclusion of allegations in a complaint of fraud in the inducement or the like does not warrant ignoring an otherwise enforceable forum selection clause. In other jurisdictions, a more rule-based approach has been adopted, which, in some cases, appears to be more receptive to a conclusion that such tort-based claims are not subject to a contractual forum selection clause if certain requirements are met. Finally, other courts have adopted an approach that focuses on the intent of the parties and the text of a particular forum selection clause to resolve the issue. While we concede that none of the

courts adopt these categories and, at times, the analyses blur somewhat between the categories, we nonetheless find this framework helpful to analyze and understand the different methodologies used for this issue.

The bright-line approach

In certain jurisdictions, questions regarding the applicability of forum selection clauses to contract-based tort claims are resolved using a bright-line approach that flatly rejects the possibility that pleading tort-based claims alleging fraud in the inducement of an agreement or the like can result in a forum selection clause not being applied to such claims. A good example of this approach is provided by the United States Court of Appeals for the Seventh Circuit's decision in *American Patriot Insurance Agency v. Mutual Risk Management*, 364 F.3d 884 (7th Cir.2004). In this decision, *17 the Seventh Circuit rejected an attempt to avoid a forum selection clause, reasoning that

a dispute over a contract does not cease to be such merely because instead of charging **694 breach of contract the plaintiff charges a fraudulent breach, or fraudulent inducement, or fraudulent performance. The reason is not that contract remedies always supersede fraud remedies in a case that arises out of a contract.... It is that the existence of multiple remedies for wrongs arising out of a contractual relationship does not obliterate the contractual setting, does not make the dispute any less one arising under or out of or concerning the contract, and does not point to a better forum for adjudicating the parties' dispute than the one they had selected to resolve their contractual disputes.

Id. at 889 (citations omitted); see also *Dexter Axle Co. v. Baan USA, Inc.*, 833 N.E.2d 43, 49–51 (Ind.Ct.App.2005) (adopting, in its entirety, the bright-line approach set forth in *American Patriot Insurance*). Another example of this approach is found in *Cheney v. IPD Analytics, LLC*, 583 F.Supp.2d 108, 117–18 (D.D.C.2008), in which

a federal district court addressed the enforceability of an employment agreement's forum selection clause against an employee, when the employee argued that he was induced to leave his former employment with a law firm by a fraudulent promise of equity in his new employer, thereby rendering his execution of the employment contract with the new employer a product of fraud. The federal district court rejected this argument as "plainly insufficient to invalidate the forum selection clause" and further explained that such allegations of fraud and overreaching must be specific to the forum selection clause itself, rather than the entire contract, in order to invalidate the forum selection clause.⁴ *Id.* at 118.

*18 *The rule-based approach*

A second approach to reviewing tort claims potentially subject to a contractual forum selection clause, which we refer to here as the rule-based approach, is arguably more receptive to permitting avoidance of a forum selection clause through a party's pleadings. This approach sets forth various guidelines for determining whether a forum selection clause contained in an agreement applies to tort-based claims such as fraud in the inducement that are related to the contract. And unlike the bright-line approach, courts applying this methodology have at least recognized the possibility that, in certain circumstances, such tort-based claims may not be subject to a forum selection clause contained in the contract. Within this approach there appear to be three different rules applied by various courts, which we address, in turn, below.

The First Circuit rule

In *Lambert v. Kysar*, 983 F.2d 1110, 1121–22 (1st Cir.1993), the First Circuit Court of Appeals addressed an argument that a forum selection clause should not apply to certain tort claims because the plaintiff was alleging tortious conduct relating to the formation of the contract rather than regarding performance of the contract. The First Circuit rejected this distinction by commenting that "[w]e cannot accept the invitation to reward **695 attempts to evade enforcement of forum selection agreements through artful pleading of tort claims in the context of a contract dispute." *Id.* at 1121 (internal quotations omitted). The court then continued by noting that the United States Supreme Court had recognized in *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 519 n. 14,

94 S.Ct. 2449, 41 L.Ed.2d 270 (1974), that allegations of fraud and overreaching must be specific to the forum selection clause itself rather than the entire contract in order to invalidate the forum selection clause. *Lambert*, 983 F.2d at 1121.

Although this pronouncement appears more in line with the bright-line approach set forth above, this did not conclude the *Lambert* court's analysis. Instead, the *Lambert* court went on to hold that "contract-related tort claims involving the same operative facts as a parallel claim for breach of contract should be heard in the forum selected by the contracting parties." *Id.* at 1121–22. This same-operative-facts test requires a determination as to whether a plaintiff's cause of action directly concerns the formation or enforcement *19 of the contract containing the forum selection clause, *id.* at 1122, or, in the opinion of the Eighth Circuit Court of Appeals, whether the parties could have brought a parallel breach of contract claim and yet did not. See *Terra Intern., Inc. v. Mississippi Chemical Corp.*, 119 F.3d 688, 695 (8th Cir.1997) (restating the *Lambert* test). Thus, this approach arguably breaks with those courts that broadly conclude that tort-based claims are always subject to contractual forum selection clauses by announcing a rule that, at least in theory, could allow allegations of tort-based causes of action related to a contract to avoid being subject to a forum selection clause. See also *Forrest v. Verizon Communications, Inc.*, 805 A.2d 1007, 1014–15 (D.C.2002) (adopting the First Circuit rule that noncontract claims involving the same operative facts as a parallel contract claim fall within the scope of a forum selection clause in the contract); *Lawler v. Schumacher Filters America, Inc.*, 832 F.Supp. 1044, 1052 (E.D.Va.1993) (implementing the *Lambert* "same operative facts" rule).

The Ninth Circuit rule

While similarly choosing to adopt a rule-based analysis of this forum selection clause applicability question, the Ninth Circuit Court of Appeals has stated its rule somewhat differently. In *Manetti-Farrow, Inc. v. Gucci America, Inc.*, 858 F.2d 509, 513–14 (9th Cir.1988), the court addressed the contention that a forum selection clause did not apply to certain tort-based claims. The court explained that a forum selection clause can equally apply to tort or contractual causes of action and that the primary analysis is "whether resolution of the claims

relates to interpretation of the contract.” *Id.* at 514. In addressing the claims before it, the Ninth Circuit determined that the tort claims at issue could not “be adjudicated without analyzing whether the parties were in compliance with the contract,” and that therefore they fell within the scope of the forum selection clause. *Id.*; see also *Moon v. CSA—Credit Solutions of America*, 304 Ga.App. 555, 696 S.E.2d 486, 487 (2010) (independently adopting a largely identical rule providing that “[r]egardless of the duty sought to be enforced in a particular cause of action, if the duty arises from the contract, the forum selection clause [in the contract] governs the action” (quoting *Hugel v. Corporation of Lloyd's*, 999 F.2d 206, 209 (7th Cir.1993))).

The Third Circuit rule

Finally, the Third Circuit Court of Appeals has adopted a third version of this rule-based approach. In *Coastal Steel v. Tilghman Wheelabrator Ltd.*, 709 F.2d 190, 203 (3d Cir.1983), abrogated on other grounds by *Lauro Lines s.r.l. v. Chasser*, 490 U.S. 495, 109 S.Ct. 1976, 104 L.Ed.2d 548 (1989), the Third Circuit explained that to permit a pleading to *20 avoid being subject to a forum selection clause “ignores the reality that the ... contract is the basic source of any duty,” and that “[i]f forum selection clauses are to be enforced as a matter of public policy, that same public policy requires that they not be defeated by artful pleading of claims....” *Id.* The court therefore set forth the rule that “where the relationship between the parties is contractual, the pleading of alternative non-contractual theories of liability should **696 not prevent enforcement of such a bargain.” *Id.*; see also *bAnco POpular de pUerto rIco v. aIrborne gRoup pLC*, 882 F.Supp. 1212, 1217 (D.P.R.1995) (relying on *Coastal Steel* in determining that a forum selection clause was enforceable against a plaintiff's tort claims).

The intent-of-the-parties approach

A third approach to addressing whether a fraud-in-the-inducement tort claim or the like can avoid a forum selection clause is to deduce the intent of the parties regarding the clause's applicability to such claims, as demonstrated by the text of the forum selection clause and the facts of the case. A Utah federal district court decision, *Berrett v. Life Insurance Co. of the Southwest*, 623 F.Supp. 946, 948–49 (D.Utah 1985), provides a

useful illustration of the operation of this approach. In *Berrett*, an individual and his insurance agency contracted with a life insurance company for authorization to write insurance policies on behalf of the insurance company. *Id.* at 947. The agreement contained a forum selection clause that provided as follows: “[s]itus. This agreement is made and performable in Dallas, Dallas County, Texas. The parties agree that any action at law or in equity hereunder shall be brought in Dallas County, Texas.” *Id.* After the business relationship soured, the individual and his agency brought an action asserting both breach of contract and tort-based claims against the insurance company. *Id.* at 947–48.

In resolving a motion to dismiss the action brought by the insurance company, the federal district court addressed, among other things, the applicability of the forum selection clause contained in the agreement to the tort-based claims brought by the plaintiffs. *Id.* at 948–49. The *Berrett* court concluded that the key factor in determining whether the tort claims were subject to the forum selection clause was “the intention of the parties reflected in the wording of particular clauses and the facts of each case.” *Id.* In reaching this conclusion, the court also noted that “compelling factual considerations may dictate that claims otherwise governable by forum selection clauses be retained for disposition” by the court in which the claims were originally filed. *Id.* at 949.

Applying its approach to the case before it, the *Berrett* court found noteworthy the fact that the plaintiffs' complaint alleged *21 tortious acts by the defendants causing damage to the plaintiffs' business and reputation that, in the court's view, were “unrelated to the interpretation of the agency agreement.” *Id.* Specifically, the *Berrett* plaintiffs asserted that the insurance company independently contacted a large number of the plaintiffs' clients to encourage those clients not to renew their policies through the plaintiffs and informed those policyholders, as well as the Utah Division of Insurance, that the plaintiffs were engaged in fraudulent business practices. *Id.* The *Berrett* court determined that, in entering into the agency agreement, it was “highly unlikely” that the parties intended such tort claims to be subject to the forum selection clause. *Id.* The *Berrett* court further grounded its decision in an analysis of the text of the parties' forum selection clause. *Id.* While acknowledging that the agency agreement's forum selection clause applied to “any action at law or in

equity hereunder,” the court nonetheless concluded that such tort-based claims did not “arise ‘hereunder’ ” the agreement. *Id.* at 947, 949. As a result, the *Berrett* court held that the parties’ forum selection clause was not applicable to the plaintiffs’ tort-based claims. *Id.* at 949.

How Nevada courts should address the applicability of forum selection clauses in relation to tort claims

Having reviewed the various analyses used by other courts to address the applicability of contractual forum selection clauses to tort-based claims related to the contract, we now turn to how Nevada courts should address this issue. We begin our analysis by noting that we do not find any of the established methodologies set forth above to be, in and of themselves, wholly satisfactory. The most appropriate analysis of this issue should be one that focuses on the terms of the parties’ actual agreements, furthering the parties’ freedom to contract on this point while also being responsive enough to avoid substantial injustice when necessary. The ideal analysis **697 should also provide consistency and predictability for the parties.

While the bright-line approach has some merit in its simplicity and the clarity it provides, we conclude that this approach is too inflexible and that its application may, in certain cases, lead to substantial injustice. Indeed, in some cases, the application of such a rigid default position, which fails to particularize its analysis to the actual text of a disputed forum selection clause, may contravene the contractual intent of the parties’ agreements. For the same reasons, we find the Third Circuit’s whether-the-parties’-relationship-is-contractual test, which is effectively the bright-line approach presented in rule form, to be equally unsatisfactory.

Turning to the remaining rule-based approaches, we are not persuaded that the First Circuit’s same-operative-facts rule, in and *22 of itself, provides the best approach, as it fails to sufficiently take into account the intention of the parties as demonstrated by the text of an agreement. Instead, we conclude that this rule provides ultimate utility when applied as a secondary factor when the intentions of the parties cannot be discerned. Such a configuration allows consideration of the intent of the parties to be at the forefront, while making use of the rule’s guidance when the parties’ intent cannot be gleaned from their contractual language. In our view, the Ninth Circuit’s whether-resolution-of-the-claims-relates-to-the-interpretation-of-the-contract rule comes the closest to

approximately the ideal analysis of the rule-based approaches as it focuses, if only tangentially, on the actual language of the parties’ agreements. To the extent that the rule emphasizes compliance with the contract as the essential question, like the First Circuit rule, we similarly view this emphasis as more properly considered as a secondary factor to be used only if the intent of the parties is unavailing, rather than as the whole test, because the issue of whether the tort claims involve questions of compliance with the contract should not be the primary concern.

[2] Finally, we turn to the intent-of-the-parties approach as set forth in *Berrett*, 623 F.Supp. at 948–49. We conclude that this approach represents the best of these various methodologies because it places a determination of the parties’ intent, as established through a thorough examination of the text of the subject forum selection clause, at the forefront of its analysis. Such an approach recognizes the parties’ freedom to contract on the applicability of the clause to potential tort claims and is sufficiently accommodating to the individual facts of a case so as to avoid substantial injustice.

Because the intent of the parties must be discerned through a review of the language of the subject forum selection clause, an application of this approach requires the district court to conduct a thorough and detailed review of the language of that provision. *Id.* Our de novo review of the district court’s contractual interpretation of the agreements discussed by the parties in this case, see *Whitemaine v. Aniskovich*, 124 Nev. 29, —, 183 P.3d 137, 141 (2008) (setting forth this court’s standards for reviewing the district court’s interpretation of contractual terms), reveals two problematic issues that would likely have been apparent had the district court conducted the thorough textual review required by the intent-of-the-parties approach.

The parties’ forum selection clause arguments, both on appeal and before the district court, focus primarily on the language contained in the “Choice of law and forum” clause of the December 15, 2005, agreement, which provides that “[t]his agreement shall be construed, interpreted and enforced according to the *23 laws of Peru. The parties hereto hereby consent to jurisdiction in Lima, Peru.” Rosenberg, however, also points to language contained in two additional agreements as further evidence of the parties’ intent to have this dispute

resolved in Peru. First, there is the June 25, 2005, memorandum of understanding, which contains a clause stating that

[t]his document and the Agreement will be governed by the laws of Peru. Any arising dispute will be submitted to arbitration in Peru by an arbitration tribunal to be set according to what the Parties may agree and lacking such agreement, pursuant to the General Law of Arbitration of Peru in force at the time the dispute arises.

****698** And second, there is the June 12, 2006, “tripartite addendum to agreement of simulcasting and tote services,” which contains a clause entitled “Governing Law and Jurisdiction,” which provides that

[t]his Addendum shall be construed and governed in accordance with the laws of the Country of Peru. Each party hereby consents to personal jurisdiction in the Country of Peru and acknowledges that venue is proper in any court in the Country of Peru and agrees that any action related to this Addendum must be brought in a court in the Country of Peru and waives any objection that may exist, now or in the future, with respect to jurisdiction, governing law and venue as set out in this paragraph.

While the parties seem to treat these various clauses as forum selection clauses all approximately achieving the same ends, our de novo review of the language of these agreements, *Whitemaine*, 124 Nev. at —, 183 P.3d at 141, suggests to us that these clauses may contain distinct and separate meanings.

As an initial matter, the language in the June 2005 memorandum of understanding suggests this clause may be more properly construed as an arbitration clause than as a forum selection clause, and thus, if this clause were

deemed controlling, it would be subject to an entirely different type of analysis than the forum selection clause analysis set forth in this opinion. See, e.g., *Gonski v. Dist. Ct.*, 126 Nev. —, —, 245 P.3d 1164, 1174 (2010) (discussing enforceability of arbitration clauses). Turning to the December 2005 agreement's clause, the relevant language could be read as memorializing the agreement on only two relevant matters: that the parties consent to a choice of the laws of Peru and the parties consent to jurisdiction in Peru. It can be argued, however, that there is no requirement contained in this clause that Peru is the *exclusive* forum for jurisdiction over any dispute between the parties. See, e.g., *Hunt Wesson Foods, Inc. v. Supreme Oil Co.*, 817 F.2d 75, 76–77 (9th Cir.1987) (distinguishing between exclusive and *24 nonexclusive forum selection clauses). If it is determined that the parties did not intend for the clause to act as an exclusive forum selection clause, then arguably, there is no contractual bar to Tuxedo bringing its tort claims in the Nevada district court.

Finally, with regard to the June 2006 tripartite addendum, our de novo review of the language reveals that it is the provision that most closely resembles a traditional exclusive forum selection clause. This addendum, however, adds a new entity that does not appear to have been a party to the memorandum of understanding or December 15 agreements, and the addendum specifically states that it does not “alter the Definitive Agreement between [Rosenberg] and Tuxedo.” Further, the language of the clause itself may specifically limit its application to “any action related to this Addendum.” Thus, there appears strong textual support that this clause cannot be construed as the controlling clause in this litigation. Indeed, given that all three clauses may have significant and distinct meanings and implications, the question of which clause controls here would also appear to be a crucial and necessary part of a thorough review of the language of these provisions.

[3] The foregoing discussion highlights the importance of a thorough textual review to any analysis of whether a contractual forum selection clause applies to tort-based claims related to the contract. Indeed, we believe that this discussion aptly demonstrates why the intent-of-the-parties approach, which requires such a detailed analysis of the language of the forum selection clause, represents the best of the established methodologies for resolving this issue. Nonetheless, we recognize that, like

the other approaches, the intent-of-the-parties analysis is also not without its own flaws. As highlighted in *Terra International, Inc. v. Mississippi Chemical Corp.*, 119 F.3d 688 (8th Cir.1997), there may be instances when the intent of the parties cannot be determined even after a thorough review of the applicable contracts. In *Terra*, the Eighth Circuit Court of Appeals applied the *Berrett* rule in reviewing whether tort claims were subject to a forum selection clause and, after carefully reviewing the meaning of the terms used in that clause, concluded that it was unable to ascertain whether the parties intended ****699** the tort claims brought by the plaintiff to be subject to the clause. *Id.* at 692–95. In order to resolve the stalemate, the *Terra* court applied the First Circuit's “same operative facts” rule-based test to resolve this issue. *Id.* at 695.

[4] In light of the concerns noted above, and the practical insight generated from a review of the facts of this case, we conclude that a modified version of *Terra's* hybrid approach that combines a careful review of the text with possible consideration of the Ninth and First Circuit rules as secondary factors is best suited for addressing ***25** whether tort-based claims related to a contract are subject to a forum selection clause contained in that agreement. In applying the hybrid test we adopt here today to resolve this issue, the district court must first focus on “the intention of the parties reflected in the wording of particular clauses and the facts of [the] case,” *Berrett*, 623 F.Supp. at 948–49, to determine whether related tort claims were meant to be included within the clause's control. Therefore, the initial review must involve a careful and thorough study of the particular clause itself. See *Terra*, 119 F.3d 688; *Berrett*, 623 F.Supp. 946. The clause's context within a series of preexisting or superseding agreements and other particular facts of the case may also be relevant in this initial review. *Berrett*, 623 F.Supp. at 948–49.

[5] If the issue can be resolved based on this examination, then the district court's analysis is concluded. If, however, as in *Terra*, the intent of the parties cannot be discerned from the language of the agreement, then the district court should apply the Ninth and First Circuit rules, in that order, to resolve the issue. As a result, if the issue cannot be resolved through the *Berrett* textual analysis, the next step is to determine whether resolution of the tort-based claims pleaded by the plaintiff relates to the interpretation of the contract, and if they are, then the claims are within the scope of the forum selection clause. Cf. *Manetti-Farrow, Inc. v. Gucci America, Inc.*, 858 F.2d 509, 514

(9th Cir.1988). If, for some reason, the application of this rule still does not resolve the issue, the district court should determine whether the contract-related tort claims involve the same operative facts as a parallel breach of contract claim—that is, whether the plaintiff's cause of action directly concerns the formation or enforcement of the contract containing the forum selection clause, cf. *Lambert v. Kysar*, 983 F.2d 1110, 1121–22 (1st Cir.1993), or whether the plaintiff could have brought a parallel breach of contract claim and yet did not. See *Terra*, 119 F.3d at 695 (rephrasing the *Lambert* rule). If these tests are satisfied, then the forum selection clause would be applicable to the tort claims. *Lambert*, 983 F.2d at 1121–22. Thus, the Ninth and First Circuit rules should be implemented as relevant factors in the rendering of a final determination of whether tort claims should be subject to a forum selection clause when the parties' intentions on this issue are not otherwise discernible. Finally, we note that, in applying this analysis, the plaintiff has the burden of demonstrating that tort-based claims related to a contract are not subject to a forum selection clause contained in the agreement. Cf. *Tandy Computer Leasing v. Terina's Pizza*, 105 Nev. 841, 844, 784 P.2d 7, 8 (1989) (requiring the party seeking to set aside a forum selection clause to demonstrate a “strong showing” that such relief is warranted).

26** Because this court had never addressed whether tort-based claims related to a contract were subject to an otherwise enforceable forum selection clause contained in the agreement, the parties and district court did not have the benefit of the test adopted in this opinion in addressing this issue in the underlying case. Accordingly, we conclude that a remand is warranted for the district court to further examine its dismissal in light of this opinion, and we therefore reverse the district court's dismissal of this case based on the applicability of the forum selection clause for that purpose. See, e.g., *Vredenburg v. Sedgwick CMS*, 124 Nev. 553, 563, 188 P.3d 1084, 1092 (2008) (remanding for reexamination under a standard adopted in that opinion). We note that, prior to implementing this test on remand to determine whether Tuxedo's tort-based claims are subject to any forum selection clause, the district court will *700** necessarily need to determine which of the three purported forum selection clauses discussed by the parties is the controlling clause and, once that determination is made, address the relevant issues identified by this court through its de novo review of the district court's contractual

interpretation.⁵ *Whitemaine v. Aniskovich*, 124 Nev. 29, —, 183 P.3d 137, 141 (2008).

All Citations

127 Nev. 11, 251 P.3d 690, 127 Nev. Adv. Op. 2

We concur: DOUGLAS, C.J., and PICKERING, J.

Footnotes

- 1 This case was dismissed shortly after the complaint was filed and, as a result, the district court did not make any factual findings. Because "[t]his court is not a fact-finding tribunal," *Zugel v. Miller*, 99 Nev. 100, 101, 659 P.2d 296, 297 (1983), we set forth the allegations enumerated in the complaint for informational purposes.
- 2 While Tuxedo is the only party to this agreement that has signed the copy contained in the record on appeal, Rosenberg has not challenged the document's authenticity or disputed having signed it.
- 3 The district court also granted respondents' alternative request to dismiss the complaint on personal jurisdiction grounds. Although we do not consider Tuxedo's argument that it should have been granted limited discovery to establish jurisdiction over Rosenberg, as that argument is not properly before us, see *Arnold v. Kip*, 123 Nev. 410, 416–17, 168 P.3d 1050, 1054 (2007) (explaining that arguments set forth for the first time in a motion for reconsideration are only reviewable if the district court addresses those arguments on the merits in an order entered before the notice of appeal is filed), we nonetheless reverse the district court's alternative dismissal for lack of personal jurisdiction. Specifically, we conclude that, under our decision in *Firouzabadi v. District Court*, 110 Nev. 1348, 1355, 885 P.2d 616, 621 (1994) (determining that a prima facie case of specific personal jurisdiction had been shown for an out-of-state defendant who traveled to Nevada to attend a trade show), Tuxedo made a prima facie showing of specific personal jurisdiction over Rosenberg with its allegations that meaningful meetings and negotiations regarding the Peruvian casino investment project took place in Las Vegas, so as to preclude dismissal at this early stage of the proceedings. See *Fritz Hansen A/S v. Dist. Ct.*, 116 Nev. 650, 655, 6 P.3d 982, 985 (2000) (noting that after a plaintiff makes, when challenged, a pretrial prima facie showing of jurisdiction, the issue can be raised again at a pretrial evidentiary hearing or at trial itself).
- 4 This distinction is in reference to a footnote in the United States Supreme Court's decision *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 519 n. 14, 94 S.Ct. 2449, 41 L.Ed.2d 270 (1974). This footnote clarified that a prior decision, *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 92 S.Ct. 1907, 32 L.Ed.2d 513 (1972), did not hold that a forum selection clause is unenforceable any time the allegation is made that the underlying transaction was a product of fraud, but rather that the inclusion of the forum selection clause in the contract must be the product of the fraud. *Scherk*, 417 U.S. at 519 n. 14, 94 S.Ct. 2449. Relatedly, this court, in *Sentry Systems, Inc. v. Guy* 98 Nev. 507, 654 P.2d 1008 (1982), addressed a case where a party argued that the inclusion in his complaint of a claim for fraud in the inducement regarding a franchise agreement removed the controversy from the field of the Federal Arbitration Act. This court disagreed, citing a United States Supreme Court decision, *Prima Paint v. Flood & Conklin*, 388 U.S. 395, 87 S.Ct. 1801, 18 L.Ed.2d 1270 (1967), for the conclusion that "a general claim of fraud in the inducement of a contract is arbitrable but a specific claim of fraud in the inducement of the arbitration clause itself is for the courts to decide." *Sentry*, 98 Nev. at 509, 654 P.2d at 1009. We are not convinced, however, that this *Scherk* footnote represents good policy for Nevada regarding general forum selection clauses, as we do not believe, in reality, a party is likely to be defrauded only in the inclusion of a forum selection clause but not defrauded by the contract as a whole. See, e.g., *Hoffman v. Minuteman Press Intern., Inc.*, 747 F.Supp. 552, 557 n. 3 (W.D.Mo.1990) (expressing skepticism at the *Scherk* footnote's division between fraud in the inducement of a forum selection clause and fraud in the inducement of the contract as a whole).
- 5 We note that our brief discussion of the issues revealed through our de novo review of particular texts at issue in this appeal should not be construed as instructions to the district court on how to rule on these various issues. In addition, this opinion should not be construed as affecting existing Nevada law that presupposes the existence of a contract for a party seeking rescission based on fraud in the inducement. See *Awada v. Shuffle Master, Inc.*, 123 Nev. 613, 622, 173 P.3d 707, 713 (2007) (explaining requirements for seeking rescission of a contract because of fraud in the inducement); *J.A. Jones Constr. v. Lehrer McGovern Bovis*, 120 Nev. 277, 290–91, 89 P.3d 1009, 1018 (2004) (stating the elements for fraud in the inducement).

359 P.3d 105
Supreme Court of Nevada.

AMERICA FIRST FEDERAL CREDIT UNION,
A Federally Chartered Credit Union, Appellant,
v.

Franco SORO, an Individual; Myra Taigman–
Farrell, an Individual; Isaac Farrell, an Individual;
[Kathy Arrington](#), an Individual; and Audie
Embestro, an Individual, Respondents.

No. 64130.
|
Sept. 24, 2015.

Synopsis

Background: After lender held trustee's sale of property that secured commercial loan, lender brought action deficiency action against borrowers. The Eighth Judicial District Court, Clark County, [Jerry A. Wiese, J., 2013 WL 10871290](#), dismissed for lack of subject matter jurisdiction. Lender appealed.

[Holding:] On an issue of apparent first impression, the Supreme Court, [Hardesty, C.J.](#), held that forum selection clause was permissive rather than mandatory.

Reversed and remanded.

West Headnotes (6)

[1] Appeal and Error

🔑 [Subject-matter jurisdiction](#)

The Supreme Court reviews a district court's decision regarding subject matter jurisdiction de novo.

[2 Cases that cite this headnote](#)

[2] Appeal and Error

🔑 [Construction, interpretation, and application in general](#)

Contract interpretation is a question of law and, as long as no facts are in dispute, the Supreme Court views contract issues de novo, looking to the language of the agreement and the surrounding circumstances.

[3 Cases that cite this headnote](#)

[3] Contracts

🔑 [Intention of Parties](#)

The objective of interpreting contracts is to discern the intent of the contracting parties.

[9 Cases that cite this headnote](#)

[4] Contracts

🔑 [Application to Contracts in General](#)

Contracts

🔑 [Existence of ambiguity](#)

When interpreting a contract, the Supreme Court initially determines whether the language of the contract is clear and unambiguous; if it is, the contract will be enforced as written.

[18 Cases that cite this headnote](#)

[5] Contracts

🔑 [Existence of ambiguity](#)

Contracts

🔑 [Construction against party using words](#)

An ambiguous contract is susceptible to more than one reasonable interpretation, and any ambiguity should be construed against the drafter.

[7 Cases that cite this headnote](#)

[6] Contracts

🔑 [Legal remedies and proceedings](#)

Clause in commercial loan agreement stating that the parties were required to "submit themselves to the jurisdiction of" another state constituted a permissive forum selection clause, rather than a mandatory forum selection clause, and therefore clause did not deprive trial court of subject matter

jurisdiction over action seeking to recover deficiency following trustee's sale of real property that secured loan, where no language within clause containing words of exclusivity.

2 Cases that cite this headnote

Attorneys and Law Firms

*105 Ballard Spahr, LLP, and Stanley W. Parry, Timothy R. Mulliner, and Matthew D. Lamb, Las Vegas, for Appellant.

Bogatz Law Group and I. Scott Bogatz and Charles M. Vlasic III, Las Vegas, for Respondents.

Before the Court En Banc.

OPINION

By the Court, HARDESTY, C.J.:

In this opinion, we must determine whether a contract clause stating that the parties “submit themselves to the jurisdiction of” another state results in a mandatory forum selection clause requiring dismissal of the Nevada action. We hold that such a clause consenting to jurisdiction is permissive and therefore reverse the district court's order granting a motion to dismiss based on lack of subject matter jurisdiction in Nevada.

FACTS AND PROCEDURAL HISTORY

In 2002, appellant America First Federal Credit Union (the credit union) loaned \$2.9 million, secured by real property in Mesquite, *106 Nevada, to respondents (borrowers)¹ for the purchase of a liquor/mini-mart. The borrowers defaulted, and the credit union held a trustee's sale, resulting in a deficiency on the loan balance of approximately \$2.4 million. The Utah-based credit union sued the borrowers in Clark County to recover the deficiency.

The borrowers moved to dismiss the action under NRCP 12(b)(1), arguing that the credit union could not sue to recover the deficiency in Nevada and citing

several clauses in the “Commercial Promissory Note” and “Business Loan Agreement” to support their argument. An “Applicable Law” clause in the loan agreement stated that “[t]his Agreement (and all loan documents in connection with this transaction) shall be governed by and construed in accordance with the laws of the State of Utah.” The loan agreement also contained the following: “Jurisdiction. The parties agree and submit themselves to the jurisdiction of the courts of the State of Utah with regard to the subject matter of this agreement.” A clause in the note stated: “If there is a lawsuit, Borrower(s) agrees to submit to the jurisdiction of the court in the county in which Lender is located.”

The district court agreed with the borrowers and granted the motion to dismiss. The district court found that the note and loan agreement “contain language which clearly expresses the parties' intent to submit litigation relating to the Agreement and the Note, to the jurisdiction of the State of Utah.... [T]he language clearly enough identifies Utah as the forum[,] which they selected for purposes of subject matter jurisdiction.” This appeal followed.

DISCUSSION

On appeal, the credit union argues that the district court erred in enforcing the clauses in question to preclude its complaint for a deficiency action.² More specifically, the credit union argues that the jurisdiction clauses here were permissive, and while the complaint could have been brought in Utah, the clauses do not mandate that Utah was the exclusive forum. In response, the borrowers contend that whether a forum selection clause is mandatory or permissive is a matter of contract interpretation, and therefore, the clauses are ambiguous and must be construed against the credit union as the contract drafter. Whether forum selection clauses may be mandatory or permissive is an issue of first impression for this court.

Standard of review

[1] [2] [3] [4] [5] This court reviews a district court's decision regarding subject matter jurisdiction de novo. *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009). Additionally, “[c]ontract interpretation is a question of law and, as long as no facts are in dispute, this court reviews contract issues de novo, looking

to the language of the agreement and the surrounding circumstances.” *Redrock Valley Ranch, LLC v. Washoe Cnty.*, — Nev. —, —, 254 P.3d 641, 647–48 (2011). The objective of interpreting contracts “is to discern the intent of the contracting parties. Traditional rules of contract interpretation are employed to accomplish that result.” *Davis v. Beling*, — Nev. —, —, 278 P.3d 501, 515 (2012) (citation and internal quotation marks omitted). This court initially determines whether the “language of the contract is clear and unambiguous; if it is, the contract will be enforced as written.” *Id.* An ambiguous contract is susceptible to more than one reasonable interpretation, and “[a]ny ambiguity, moreover, should be construed against the drafter.” *Anvui, LLC v. G.L. Dragon, LLC*, 123 Nev. 212, 215–16, 163 P.3d 405, 407 (2007).

The district court erred when it dismissed the case based on the forum selection clauses

[6] The credit union argues that the clauses do not contain any mandatory language *107 and, therefore, all of the forum selection clauses are merely permissive. We agree.

We have not yet distinguished between mandatory and permissive forum selection clauses. In *Tuxedo International, Inc. v. Rosenberg*, 127 Nev. 11, 251 P.3d 690 (2011), we reversed a district court’s grant of a motion to dismiss based on the defendants’ argument that any litigation must be brought in Peru. *Id.* at 14, 24–25, 251 P.3d at 692, 699. There, we remanded the case to the district court to determine which of three separate forum selection clauses potentially controlled the dispute. *Id.* at 26, 251 P.3d at 699–700. In analyzing the clauses, we noted that one of the clauses contained both a consent to jurisdiction in Peru and a Peruvian choice-of-law provision. *Id.* at 22–23, 251 P.3d at 697. We then stated:

It can be argued, however, that there is no requirement contained in this clause that Peru is the *exclusive* forum for jurisdiction over any dispute between the parties. See, e.g., *Hunt Wesson Foods, Inc. v. Supreme Oil Co.*, 817 F.2d 75, 76–77 (9th Cir.1987) (distinguishing between exclusive and nonexclusive forum selection clauses). If it is

determined that the parties did not intend for the clause to act as an *exclusive* forum selection clause, then arguably, there is no contractual bar to [plaintiff] bringing its tort claims in the Nevada district court.

Id. at 23–24, 251 P.3d at 698 (second emphasis added). We also noted that another clause “resemble[d] a traditional exclusive forum selection clause,” containing language that “any action ... must be brought in a court in the Country of Peru.” *Id.* at 24, 251 P.3d at 698. Thus, *Tuxedo International* observed the distinctions between mandatory and permissive forum selection clauses, but the facts of the case did not provide an opportunity for us to affirmatively adopt a rule. See *id.* at 26 n. 5, 251 P.3d at 700 n. 5.

Other state courts have distinguished between mandatory and permissive forum selection clauses. See, e.g., *Garcia Granados Quinones v. Swiss Bank Corp. (Overseas), S.A.*, 509 So.2d 273, 274 (Fla.1987) (recognizing that a mandatory jurisdiction clause requires “a particular forum be the exclusive jurisdiction for litigation,” while permissive jurisdiction is merely a consent to jurisdiction in a venue (internal quotation marks omitted)); *Polk Cnty. Recreational Ass’n v. Susquehanna Patriot Commercial Leasing Co.*, 273 Neb. 1026, 734 N.W.2d 750, 758–59 (2007) (distinguishing a mandatory forum selection clause based on the words “shall be brought only in” a particular jurisdiction from a permissive forum selection clause where parties only “consent and submit to the jurisdiction” of other courts); *Caperton v. A.T. Massey Coal Co.*, 225 W.Va. 128, 690 S.E.2d 322, 338–39 (2009) (“[T]o be enforced as mandatory, a forum-selection clause must do more than simply mention or list a jurisdiction; in addition, it must either specify venue in mandatory language, or contain other language demonstrating the parties’ intent to make jurisdiction exclusive.”). For example, the Wisconsin Court of Appeals stated:

Clauses in which a party agrees to submit to jurisdiction are not necessarily mandatory. Such language means that the party agrees to be subject to that forum’s jurisdiction *if sued there*. It does not

prevent the party from bringing suit in another forum. The language of a mandatory clause shows more than that jurisdiction is *appropriate* in a designated forum; it unequivocally mandates *exclusive* jurisdiction. Absent specific language of exclusion, an agreement conferring jurisdiction in one forum will not be interpreted as excluding jurisdiction elsewhere.

Converting/Biophile Labs., Inc. v. Ludlow Composites Corp., 296 Wis.2d 273, 722 N.W.2d 633, 640–41 (2006) (citations and internal quotation marks omitted).

Similarly, federal circuit courts generally agree that where venue is specified [in a forum selection clause] with mandatory or obligatory language, the clause will be enforced; where only jurisdiction is specified [in a forum selection clause], the clause will generally not be enforced unless there is some further language indicating the parties' intent to make venue exclusive.

Paper Express, Ltd. v. Pfankuch Maschinen GmbH, 972 F.2d 753, 757 (7th Cir.1992); see *Excell, Inc. v. Sterling Boiler & Mech., Inc.*, 106 F.3d 318, 321 (10th Cir.1997) (describing *108 the "mandatory/permissive dichotomy" and concluding that the clause, "jurisdiction shall be in the State of Colorado, and venue shall lie in the County of El Paso, Colorado," was mandatory (internal quotation marks omitted)); *John Boutari & Son, Wines & Spirits, S.A. v. Attiki Imps. & Distribs. Inc.*, 22 F.3d 51, 52–53 (2d Cir.1994) (holding the forum selection clause, "[a]ny dispute arising between the parties hereunder shall come within the jurisdiction of the competent Greek Courts, specifically of the Thessaloniki Courts," as permissive (internal quotation marks omitted)); *Hunt Wesson Foods, Inc. v. Supreme Oil Co.*, 817 F.2d 75, 76–78 (9th Cir.1987) (holding the forum selection clause, "[t]he courts of California, County of Orange, shall have jurisdiction over the parties in any action at law relating to the subject matter or the interpretation of this contract," as

permissive, and noting that to be considered mandatory, a forum selection clause must clearly require that a particular court is the only one that has jurisdiction (internal quotation marks omitted)); *Keaty v. Freeport Indon., Inc.*, 503 F.2d 955, 956–57 (5th Cir.1974) (holding the forum selection clause, "[t]his agreement shall be construed and enforceable according to the law of the State of New York and the parties submit to the jurisdiction of the courts of New York," as permissive (internal quotation marks omitted)).

We agree with the distinctions made by other state and federal courts regarding mandatory and permissive forum selection clauses described above. Here, there are two jurisdictional clauses at issue. First, the loan agreement contains a clause entitled "Jurisdiction," which provides that "[t]he parties agree and submit themselves to the jurisdiction of the courts of the State of Utah with regard to the subject matter of this agreement." We conclude that this language is permissive as there is no language within the clause containing words of exclusivity. Absent such language, we deem the clause permissive.

Second, a clause in the note stated: "If there is a lawsuit, Borrower(s) agrees to submit to the jurisdiction of the court in the county in which Lender is located." This language is also permissive as there is no language within the clause containing words of exclusivity. See *Golden Palm Hospitality, Inc. v. Stearns Bank Nat'l Ass'n*, 874 So.2d 1231, 1233–37 (Fla.Dist.Ct.App.2004) (concluding that the language, "[i]f there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of STEARNS County, the State of Minnesota" as permissive, and thus permitted, but did not require, that the action be brought in Minnesota (internal quotation marks omitted)). Thus, the case may be heard in another appropriate venue besides the courts in Utah.

Without articulating why, the borrowers argue that the forum selection clauses are ambiguous and therefore must be construed against the credit union. We conclude that this argument is without merit as the clauses are clear and unambiguous and this court need not interpret the contract any differently from the contract's plain meaning. See, e.g., *Hunt Wesson Foods*, 817 F.2d at 77 ("A primary rule of interpretation is that '[t]he common or normal meaning of language will be given to the words of a contract unless circumstances show that in a particular case a special meaning should be attached to it.' ")

(quoting 4 Samuel Williston & Walter H.E. Jaeger, *A Treatise on the Law of Contracts* § 618 (3d ed.1961)). The clauses provide no words of exclusivity and to interpret the clauses as mandatory forum selection clauses would read language into the contract that is not there.

found Utah was the sole forum for any controversy and dismissed the case for lack of subject matter jurisdiction. We therefore reverse the district court's order dismissing the case and remand this matter to the district court for further proceedings.

CONCLUSION

In this case, none of the clauses contain exclusive language. Accordingly, all clauses are permissive forum selection clauses, and the district court erred when it

PARRAGUIRRE, CHERRY, GIBBONS, DOUGLAS, SAITTAA and PICKERING, JJ., concurring.

All Citations

359 P.3d 105, 131 Nev. Adv. Op. 73

Footnotes

- 1 While eight individuals signed the note and loan agreement, the only borrowers in the instant action are Franco Soro, Myra Taigman-Farrell, Isaac Farrell, Kathy Arrington, and Audie Embestro.
- 2 Additionally, the credit union argues that Nevada's six-month statute of limitations for recovery of deficiency judgments applies to the action, not Utah's three-month statute of limitations. However, because the district court did not decide this issue, we do not address it here.

Exhibit 5

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In the Matter of:

VIJAY REDDY,

Debtor.

Case No. 18-43079-mlo
Chapter 7
Hon. Maria L. Oxholm

The Examination of VIJAY REDDY, taken
before me, Glenn G. Miller, Notary Public within and for
the County of Oakland, State of Michigan, at 645
Griswold, Suite 1300, Detroit, Michigan, on Wednesday,
June 27, 2018.

APPEARANCES:

CLAYSON, SCHNEIDER & MILLER, PC
645 Griswold, Suite 3900
Detroit, Michigan 48226
(By David P. Miller, Esq.)

Appearing on behalf of Trustee.

ALSO PRESENT: Brittany Byrnes

W I T N E S S I N D E X

Witness	Examination	Page
Vijay Reddy	Mr. Miller	3

E X H I B I T I N D E X

Exhibit No.	Description	Page
A	Order	7
B	4-3-18 Reddy Letter	8
C	2016 Tax Return	21
D	10-26-16 Offer to Purchase	27
E	Acquisition Agreement	29
F	E-Mail String	42
G	People Driven Credit Union Statement	52
H	Statement of Commissions	59
I	Margaret Reddy Tax Returns	61
J	Closing Statement	86
K	Promissory Note	89

(Attached to Original.)

6/27/2018

Page 3

Detroit, Michigan

Wednesday, June 27, 2018

At about 1:00 p.m.

- - -

V I J A Y R E D D Y

was thereupon called as a witness herein, and after
having been duly sworn to tell the truth, the whole
truth and nothing but the truth, was examined and
testified as follows:

MR. MILLER: Today is the date and time
set for the 2004 Examination of Vijay Reddy, case number
18-43079-mlo. My name is David Miller. I'm appearing
on behalf of Trustee Timothy J. Miller.

EXAMINATION

BY MR. MILLER:

Q. Mr. Reddy, would you state your name for the record.

A. Vijay Reddy.

Q. You're the debtor in the case?

A. Correct.

Q. Today is going to be a question and answer session.
I'll ask the questions and you give the answers. It is
being recorded, so please allow me to finish my
questions before you begin answering them so we can get
an accurate record and I'll do the same courtesy for
you. So the questions I'll be asking you, if you don't

1 understand them please ask me to explain. Otherwise,
2 I'll assume you understood the questions.

3 And is there any reason that anything
4 you say today would not be truthful and accurate? Are
5 you under the influence of any sort of substances or any
6 medications?

7 A. No medications, no substances or anything else.

8 Q. Where do you live, Mr. Reddy, what is your address?

9 A. 4269 Kingston Drive, Milan, Michigan, 48160.

10 Q. What do you do, what is your job?

11 A. Currently I'm not employed.

12 Q. What is your education, your background?

13 A. I got my bachelor's degree from Michigan State
14 University in psychology, I've got a master's degree
15 from Indiana University of Pennsylvania in clinical
16 psychology and I've got an MBA from Cleary University.

17 Q. Are you currently looking for employment?

18 A. I have something that may be offered to me in the coming
19 months but it's a position with my uncles. They want me
20 to work for them in Africa, but I need to be going out
21 there, which I didn't want to do before the bankruptcy
22 was over because it would look weird to do international
23 travel in the middle of this. So I haven't gone to
24 complete the investigation of what I would be doing.

25 Q. Do you know what you would be doing in general?

1 A. My uncles have a mine I believe in it's Ghana. They
2 want me to essentially oversee some of the operations,
3 making sure the people are showing up to work and doing
4 operational things.

5 Q. Like a management position?

6 A. Yeah.

7 Q. What about your previous occupations in the past, what
8 sort of work have you done?

9 A. After finishing graduate school in clinical psychology,
10 I worked as a psychologist at Henry Ford Hospital.
11 Technically, I worked in the Human Resources Department,
12 but it doesn't make a difference. After that I went
13 into business for myself doing medical billing and
14 medical transcription. That was a position that my
15 uncle essentially owned that business that he asked me
16 to run it and take care of it for him. After that,
17 through word of mouth, I was told about a position in
18 Philadelphia working for Blue Cross, so they recruited
19 me to go work for them there. That lasted about five or
20 six months.

21 After that I was recruited for a
22 position in Texas working for the VA based on my work I
23 had done in Philadelphia, it was word of mouth, so I
24 worked for them for four month. I don't recall the
25 exact time frame. That was several years ago. And then

1 I came back to Michigan full time. From there I worked
2 with David Weinstein doing odd jobs for his medical
3 billing transcription businesses.

4 Q. We'll get into a little bit of that later. The uncle
5 you mentioned, is it the same uncle who you have a
6 potential job offer for the mines in Africa or is that a
7 different uncle?

8 A. It's a different uncle that offered me the position, but
9 they're all brothers.

10 Q. What are their names?

11 A. The one who owned the medical billing transcription
12 company from 12 years ago, his name is Siva, S-i-v-a,
13 and his last name is T-h-a-l-m-a-r-l-a. The other uncle
14 that you've been referencing is Mohan. His first name
15 is spelled M-o-h-a-n, and then Thalmarla is his last
16 name.

17 Q. And Mohan Thalmarla is the same uncle who holds the
18 notes securing your current residence; is that correct?

19 A. With my wife, correct.

20 Q. Okay. Then you live in that home that you mentioned,
21 the Kingston Drive home, with your wife. Correct?

22 A. Correct.

23 Q. And two kids, I believe?

24 A. One kid is 25, grown and out of the house; the other one
25 is 14.

1 Q. I want you to look in this booklet that I've provided to
2 you. On the left-hand side in that pocket there is an
3 order. You can pull it out and take a look. The title
4 is Order Directing Debtor to Produce Certain Records and
5 Appear for Examination Pursuant to Federal Rule
6 Bankruptcy Procedure 2004. Have you seen this document
7 before?

8 A. Yes.

9 Q. And you understand that it's an order in your bankruptcy
10 case requiring you to appear today and produce several
11 documents?

12 A. Correct.

13 Q. I'm going to have this marked as Exhibit A.

14 (Deposition Exhibit A was
15 marked for Identification.)

16 BY MR. MILLER:

17 Q. So that very same order, now marked as Exhibit A,
18 requires you to produce, to the extent not already
19 produced and to the extent in your possession, several
20 documents, an itemized list of 1 through 28. Do you see
21 that?

22 A. Yes.

23 Q. And these documents, the document lists 1 through 28,
24 those are essentially copied from my letters that I sent
25 to you requesting documents in this case. Correct?

1 A. Correct.

2 Q. So you received those requests and provided several
3 documents in response to those requests?

4 A. Correct.

5 Q. If you look in that booklet in front of you, I'm going
6 to have you flip to the tab that says document requests
7 and response.

8 (Deposition Exhibit B was
9 marked for Identification.)

10 BY MR. MILLER:

11 Q. We marked that as Exhibit B. See that first page there
12 is a letter from you to the bankruptcy trustee, Timothy
13 Miller, sent in advance of your 341 Hearing. Do you
14 recognize that document?

15 A. Yes.

16 Q. That's your signature at the bottom there?

17 A. Yes.

18 Q. And the next page of that same Exhibit B is titled
19 Evidence of Income/Statement of Support. Is that your
20 signature on that document as well?

21 A. Yes.

22 Q. And you've seen that before and that's something you
23 prepared?

24 A. Yes.

25 Q. And the next page in that same exhibit is a letter sent

1 from me to you. June 8, 2018 is the date on it. This
2 is my first document request that I sent to you. You've
3 seen this request. This is the one we just referred to.
4 Correct?

5 A. Yes.

6 Q. If you flip four pages, there's a letter from you dated
7 June 11, 2018 to me. It's a response to that first
8 document request. That's something you prepared?

9 A. Yes.

10 Q. And the signature at the end of that letter, is that
11 your signature?

12 A. Yes.

13 Q. The next letter in that same Exhibit B is dated June
14 12th, a letter from me to you, a follow-up document
15 request. You've seen this follow-up request before?

16 A. Yes.

17 Q. And the last letter in this Exhibit B, it's actually an
18 attachment pulled from your e-mail that you sent to me
19 in response to that second document request. Correct?

20 A. Yes.

21 Q. So that itemized list on that last portion of it, 1
22 through 12, that's something you prepared as well.
23 Correct?

24 A. Yes.

25 Q. So the first document request asked for records and

1 documents from current and prior businesses including
2 formation documents, etcetera, for 2016, 2017, 2018 for
3 Revenue Asset Services, LLC Nevada, American Medical
4 Answering Services, LLC and Revenue Asset Services, LLC
5 Michigan.

6 A. Yes.

7 Q. And the documents you produced, you believe that's
8 everything you have on that?

9 A. Yes.

10 Q. Tell me about Revenue Asset Services, LLC Nevada.

11 A. So I had a Revenue Asset Services of Michigan, which I
12 sold to a guy named Joseph Bernardo. Once I sold that
13 to him and he defaulted on our agreement, a few months
14 later I decided I might go back into this business that
15 I sold to him again, but I haven't done anything with it
16 yet.

17 Q. So the intent was to build up and create a company
18 similar to the Revenue Asset Services, LLC of Michigan?

19 A. Or at least have the option to if I wanted to get back
20 into it, but I've not done anything yet.

21 Q. So there's no assets of that business at all?

22 A. Correct.

23 Q. Have you done any work to sort of build a portfolio?

24 A. There's no bank account, there's no infrastructure.

25 Other than like intellectual property, I'm not sure what

1 else to consider there.

2 Q. What do you mean intellectual property?

3 A. Marketing, how to attract clients, how to set up the
4 infrastructure, how to talk to doctors, how to do the
5 things necessary to build that business.

6 Q. So you mean you have that knowledge?

7 A. Yeah, it's in my head.

8 Q. Are there any patents or trademarks or anything owned by
9 Revenue Asset Services, LLC Nevada?

10 A. No patents, no trademarks, no copyrights, anything along
11 those lines.

12 Q. It's never filed a tax return or anything like that?

13 A. No.

14 Q. Is that the same for American Medical Answering Service?

15 A. Correct.

16 Q. In Exhibit B, your response dated June 11, item number 1
17 C, you reference that Mr. Bernardo would have any
18 balance sheets, profit loss statements, ledgers,
19 formation documents, etcetera. Correct?

20 A. Correct. What I did, if I can expound, the last time I
21 met with him in person I put everything into a little
22 green thumb drive that had bank statements, how to run
23 the company, what to do to attract the doctors,
24 frequently asked questions the doctors might have of
25 you, anything I could possibly think of that was in

1 written form that could be put into this little green
2 thumb drive. All the clients, all the vendors I used,
3 anything else I put into a little green thumb drive and
4 handed it to him. I said when you confirm this is
5 everything, I'll destroy everything on mine, which he
6 confirmed for me the next day, maybe a couple hours
7 later. So I went ahead and destroyed everything on my
8 end because that was part of the company's belongings.

9 Q. The next document request asked for financial records or
10 documentation relating to the transfer of Revenue Asset
11 Services, LLC Michigan. You produced several documents
12 in response to that request. Correct?

13 A. Yes.

14 Q. If you want to take a look at those documents before I
15 ask about the documents themselves, what were the assets
16 of Revenue Asset Services, LLC Michigan?

17 A. You mean how was the company run, what was it doing?
18 I'm not sure I understand the question.

19 Q. Sure. You can tell me that. What was the company
20 doing, what was going on with the company?

21 A. The company was very unique. It was a very niche
22 business. It would go out, attract doctors, whether
23 pediatricians or pain doctors, and say basically we will
24 do your medical billing for \$2.99 for every claim we
25 process on your behalf. Generally, one patient visit

1 translates to one claim. We would do it essentially for
2 \$3.00 a claim.

3 I did medical billing many years ago
4 when I bought it from David. I don't want to ever do
5 that again. It's a very tedious process and I wasn't
6 interested in doing the day-to-day work. What I would
7 do is get these doctors under contract and I would put
8 in all those contracts this contract is assignable in
9 its entirety. So then you take that contract and the
10 sell it to someone else who actually wanted to run or
11 own or expand, or whatever, their own medical billing
12 business.

13 People would come to me and say I don't
14 have any skills in sales and marketing but I really want
15 to run a medical billing business. Please help me get
16 clients. So I would get the clients onboard, assign
17 them over to them and that person was supposed to take
18 care of it. If they didn't know how to do medical
19 billing, I would give them training, software that they
20 would need, ongoing support so they could be successful
21 and my job was to bring the doctors onboard.

22 Essentially be the sales arm for other
23 people's medical billing operation. Medical billing was
24 one thing, medical collection, bring doctors onboard
25 that needed medical collection services and then hand it

1 off to other people who wanted to do medical collection.
2 That was the way the business was run.

3 Q. So this Revenue Asset Services, LLC of Michigan, did it
4 already have contracts with doctors to do billing for
5 them when you sold it to Mr. Bernardo?

6 A. No. We considered doctors that would come onboard
7 inventory. We try to keep inventory as close to zero as
8 possible. If a doctor came onboard we would
9 immediately, within an hour, the same day usually,
10 assign it to someone else who needed to get another
11 contract to fill their contract. I call them block
12 owners.

13 If a block owner said give me 15
14 medical billing doctors, I would fill them under an
15 ongoing basis as quickly as they could absorb it. I
16 would keep doing marketing until they got to 15 doctors
17 or however many doctors they needed to get to. So we
18 didn't keep inventory in-house unless it was absolutely
19 necessary. At the time that I ran the company it was
20 never necessary. There was always another block owner
21 who said, okay, I'm ready for another client, send one
22 on over.

23 Q. What was it that was sold if not contracts to Mr.
24 Bernardo, was it the ability to be a block owner? I'm
25 confused.

1 A. I had a couple block owners. I sold all those block
2 owners to Mr. Bernardo and said when this person gets
3 eight contracts, or whatever the number is, they're
4 going to pay a benchmark payment of \$10,000 or whatever
5 it is. When they get to some number of clients, they're
6 going to make you a monthly payment of whatever it is,
7 depending what the block owner's contract says.

8 So the contract with the block owner
9 was sold to Mr. Bernardo as part of Revenue Asset
10 Services because Revenue Asset Services owned that
11 contract. I'm not sure if I'm making sense. I can
12 clarify it more if I need to.

13 Q. I'm not familiar with medical billing at all.

14 A. Okay.

15 Q. So try and break it down for me easily. Let's say A is
16 doctors or a doctor, B is Revenue Asset Services
17 Michigan, C is your block owners. Clarify what does a
18 block owner mean?

19 A. They would get a block of contracts. Like 15 doctors
20 offices would be assigned to them and that would fill
21 their block.

22 Q. So they were the ones processing the claims?

23 A. On a day-to-day basis, correct. They were not my
24 employees. They were just people that came to me and
25 said I will pay you X amount of dollars if you give me Y

1 number of doctors, to break it down in very simple
2 terms.

3 Q. So you would recruit the doctors and then plug them into
4 a block owner?

5 A. Yes.

6 Q. How much did they pay you for that?

7 A. It depended on the contract. Some people went very
8 small and said I don't know you, I've never heard of you
9 so I'm just going to put up \$5,000 or whatever the
10 number is and we'll see how it goes. As clients would
11 come in, like every third client they would pay me
12 another \$5,000. Others said I'm not a small fish, I'm a
13 bigger fish in the sea, I want to do a \$35,000 contract,
14 so I will pay you \$35,000 up front and when I get eight
15 doctors I'll pay you another \$15,000, when I get 15
16 doctors I'll pay you the final \$15,000, and if I still
17 like it after we do that then the next contract I'll put
18 up \$75,000. I never got to a \$75,000 contract with the
19 medical billing, but that was the intent, to keep going
20 for people that were still interested and wanted to
21 become a repeat buyer.

22 Q. Then these doctors are locked in on the contract to stay
23 with the block owner since you have the ability to
24 transfer it?

25 A. The doctor could exit their contract with 30 days

1 notice, that was also written into their contract, and
2 that was fully disclosed to all the block owners.
3 Generally speaking, if you're doing a good job and
4 everything is going smoothly, why would they leave you
5 type of thing. If you're doing a bad job, you're
6 essentially going to kill the doctor's revenue and if
7 they're locked into you for one year or five years or
8 whatever, the doctor is going to go bankrupt before the
9 one year is over, so that's not a good business
10 practice.

11 Q. Tell me how Revenue Asset Services fits into this
12 equation of you getting doctors and then tying them up
13 with the block owners.

14 A. So there are two sides to the business. One is with the
15 doctors and one is with the block owners. Revenue Asset
16 Services would go out and do marketing and sales work by
17 phone, fax, telemarketing. Eventually out of a thousand
18 doctors, or whatever, some percentage of those doctors
19 are going to sign up throughout the sales cycle, whether
20 you call them and explain what we do and how we do what
21 we do. We sell them on all the aspects of what we do.
22 Anyway, some number of those doctors are going to sign
23 up. When they sign up, they're immediately assigned out
24 to a block owner.

25 Q. That doesn't tell me what Revenue Asset Services

1 Michigan has done.

2 A. We would do the marketing, which is -- 80 percent of the
3 job is just doing marketing and controlling the
4 marketing and making sure there's not too much out there
5 or too little. When a block owner says give me clients
6 more aggressively, we increase the marketing. Doing the
7 marketing is really 80 percent of the job, convincing
8 them to sign a contract with us. To let us handle their
9 medical billing is a big undertaking. That's 80 percent
10 of the job. The other 20 percent is managing the block
11 owners, making sure they have the resources that they
12 need, making sure if they have a question, like if this
13 is a workmen's comp claim, it's weird, which is true,
14 then I would go and say here's the stuff you need to go
15 through, call workmen's comp, you're going to need X, Y,
16 Z before you can file the claim because workmen's comp
17 requires medical justifications, on and on and on.

18 Q. You were the party doing that for Revenue Asset
19 Services?

20 A. I was helping, ongoing training with the block owners to
21 make sure they could do their job, but, yeah, I was the
22 one controlling that.

23 Q. And doing the marketing?

24 A. I did it in conjunction with David.

25 Q. David Weinstein?

1 A. Weinstein.

2 Q. Is there any other employees of Revenue Asset Services,
3 Michigan?

4 A. No.

5 Q. Was there?

6 A. No.

7 Q. So you and David were the only employees?

8 A. He was not my employee. He was more like my independent
9 contractor. I guess independent contractor is the
10 correct word.

11 Q. So you were doing the marketing and managing the block
12 owners. What was David doing?

13 A. He was helping with marketing. Marketing is a huge
14 thing. There's no way one person can do it all. He
15 would help with sales calls as they came in. You have
16 to get to these calls in real time. No doctor wants to
17 deal with a billing company that can't answer their
18 sales line. That was his primary job. He also helped
19 me with the telemarketing side of it. He has a
20 telemarketing firm, I don't know if they're his personal
21 employees or not, but he has a team of people that does
22 that.

23 He would coordinate with the list
24 brokers to identify doctors that would be part of our
25 group of people that -- like doctors that work at

1 hospitals we can't do. We can't do hospital billing.
2 The hospital has their own billers. Even if we did get
3 a hospital, I don't know how many thousands of claims
4 they process a day, but that would be ridiculous to give
5 to anyone. He would help me identify who would be part
6 of the appropriate target group. We didn't do dentists
7 because dental billing is a whole different animal. He
8 would identify outpatient private practice doctors that
9 fits certain criteria and then go identify them as part
10 of a list.

11 Q. And so how was the compensation of you and David decided
12 for Revenue Asset Services Michigan?

13 A. The way I would do it is when a person signed up all
14 their up-front money would be used strictly for
15 marketing to get them through as much of their contract
16 until they defaulted on us, they quit, or said I've had
17 enough, this is not the business for me.

18 Q. When you say a person who signed up, you mean a
19 potential block owner?

20 A. Block owner. They would put up some up-front money.
21 That was designed strictly for the marketing. And then
22 we go through their contract and when we came to the end
23 of their contract and whatever was left over was the
24 profit of the business and we would split that equally.

25 Q. You and David would split that equally?

1 A. Yes. If the down payment was big enough, we would take
2 part of the money up front, but that wasn't the way I
3 wanted to do business.

4 Q. When Mr. Bernardo buys this company, is he expected to
5 take over operations as far as doing the work that you
6 were doing and/or David?

7 A. He was expected to replace me. David offered to keep
8 working with them and be his ongoing independent
9 contractor. I'm not a lawyer. I don't know the right
10 word for it. David offered to say I will stay onboard
11 and we'll split up the duties, what you're good at and
12 what I'm good at.

13 Q. So in your 2016 tax return, if you flip backwards and
14 find that. I'm looking at the 2016 Form 1040 U.S.
15 Individual Tax Return for Vijayakumar Reddy as well as
16 the Michigan tax return for that same year, same person.

17 A. Yes.

18 Q. Is this a document that you've seen before?

19 A. Yeah.

20 Q. That's your tax returns?

21 A. Correct.

22 (Deposition Exhibit C was
23 marked for Identification.)

24 BY MR. MILLER:

25 Q. If you look at the federal return, the first one,

- 1 Schedule C, which is profit or loss from business. It's
2 about the fourth page of the document. There it is.
3 You see that on top, Profit or Loss from a Business, and
4 that's for medical consulting sales and marketing is the
5 principal type of business?
- 6 A. Yes.
- 7 Q. And the business name of Revenue Asset Services?
- 8 A. Yes.
- 9 Q. Is that one in the same, Revenue Asset Services of
10 Michigan, LLC, that we've been discussing?
- 11 A. Correct.
- 12 Q. And so the gross receipt or sales of \$81,000, is that
13 what you and David split or is that your split already?
14 Let me clarify. You mentioned you and David would split
15 the income from the business. That \$81,000, does that
16 represent the total gross sales of the business or just
17 your portion of it?
- 18 A. I don't recall. I'm inclined to say that's my part of
19 it. I think that's my part of it.
- 20 Q. Let me ask it another way. Look down at line 31 on that
21 same page. You see that was the net profit after all
22 the business expenses and all that, that number \$36,944.
23 Is that what you received after splitting with David or
24 is that the total income for 2016, total net income for
25 2016 of Revenue Asset Services, LLC Michigan?

1 A. I don't recall how -- I know he had expenses that are
2 not recorded here because he had the telemarketing team,
3 so I'm inclined to say that \$81,000 was my part of what
4 I had to pay off and the \$36,944 is what was left over
5 after I covered my expenses for building brochures,
6 phone, fax, Internet, cell phone, gas.

7 Q. Did Revenue Asset Services, LLC Michigan ever file its
8 own tax return?

9 A. No. It was a pass-through.

10 Q. Do you know if it was listed on Mr. Weinstein's tax
11 return in the same way, on a Schedule C?

12 A. I have no idea how he did his taxes.

13 Q. Understood. The money that was paid to you, how was it
14 paid to you?

15 A. What do you mean?

16 Q. Did it come in the form of checks, was it cash payments,
17 was it direct deposit?

18 A. The block owners would pay the brokerage firm, which in
19 this case was Tannenbaum & Milask. Tannenbaum & Milask
20 would take ten percent of whatever the contract value
21 was and give it to whoever the broker was for that
22 particular transaction that brought the block owner to
23 us and then -- yeah, whatever is left over -- how did we
24 split it, though? Some portion of the profit was just
25 sent to me as a check from Tannenbaum & Milask.

1 Q. So checks you received were issued by Tannenbaum &
2 Milask?

3 A. Yes.

4 Q. Did they issue you a 1099?

5 A. No, I don't think so, although -- it was a couple years
6 ago and I'm trying to recall the information. I have
7 some recollection some of these people might have
8 written a check to me directly and I took ten percent
9 off and paid Tannenbaum, who eventually paid off the
10 broker. I'm sorry. I'm trying to be as complete as
11 possible but I just don't recall how it was done.

12 Q. Expenses you list on the same sheet. If you look at
13 line number 9, you have car and truck expenses. Do you
14 recall what those expenses were for?

15 A. Mostly maintenance of my car that I had to drive around
16 to some of these doctor offices. Anywhere in the
17 Midwest area, if I could, and they were a large enough
18 contract, I'd go meet the doctors personally. I spent a
19 lot of time on the road between the car, the
20 maintenance, the tolls because I'd go to Pennsylvania as
21 well, and it added up to \$4,967.

22 Q. What kind of car was it?

23 A. Toyota RAV4.

24 Q. That's the same Toyota RAV4 that you still have?

25 A. Yes.

1 Q. Do you drive it still, is that how you got here today?

2 A. Yes.

3 Q. Commission and fees, line number 10, \$12,500, is that
4 the portion that was paid to Tannenbaum & Milask?

5 A. Not necessarily. Tannenbaum & Milask was one of the
6 brokers that made themselves available. There was
7 another broker in Florida, John -- I can't think of his
8 company. He had a Florida brokerage firm, I can't
9 recall the name of that company, but he brought in
10 people as well. I believe that he was some part of that
11 \$12,500. It's not strictly \$12,500 all went to
12 Tannenbaum. Some portion of that would have went
13 straight to John.

14 Q. I'm confused. If the income was \$81,000 and you're only
15 keeping ten percent, why would the commissions and fees
16 be so much less?

17 A. Because the commissions and fees are based on the total
18 amount of the contract. If someone said I'll put up
19 \$10,000 now but the total value of their contract when
20 it all was paid off, let's say it's \$55,000, then the
21 commission would be \$5,500. So it throws off the
22 numbers. I can see where the confusion would come in,
23 it's skewed a little bit, so the brokers are making more
24 than their ten percent because if the block owner never
25 completes their contract because they quit the business,

1 they never pay the rest of what's owed then I'm out the
2 money. But the broker made their ten percent off the
3 full amount, whatever the contract amount would have
4 been.

5 Q. You have an expense for supplies. What sort of
6 supplies? Is that just paper, marketing materials?

7 A. Brochure material, marketing material, ink cartridges
8 for a very expensive printer. The printer itself was
9 like \$1,200 but the cartridges for that is really
10 expensive and we run through them very quickly because
11 we send out so many brochures.

12 Q. You have expenses under line 25 for utilities. Does
13 Revenue Asset Services have or did it have an office?

14 A. It did at one point. We shut it down in 2016 because it
15 just didn't make sense to keep an expense that big, but,
16 yeah, I think it was early in the year, I don't recall
17 what time of the year it was, but it just didn't make
18 sense to maintain it.

19 Q. You shut it down before the sale to Bernardo?

20 A. Yes.

21 Q. Do you remember where it was located?

22 A. You want the address? I know how to get there. I can't
23 recall the name of the road. Packard Road in Ann Arbor.

24 Q. Michigan?

25 A. Michigan.

1 Q. So if you go to that same tab of Revenue Asset
2 Management, it should be after the taxes.

3 A. My page starts with 2 of 3. I don't know what happened
4 to 1 of 3. Oh, here it is. My fault.

5 Q. You see an Offer to Purchase?

6 A. Yes.

7 Q. Is that something you prepared?

8 A. I think it was jointly prepared between me and Joseph.

9 Q. So you've seen this document before?

10 A. Yes.

11 Q. And that page 3 of 3, that's your signature there?

12 A. Yes.

13 (Deposition Exhibit D was
14 marked for Identification.)

15 MR. MILLER: Let the record reflect I had
16 that marked as Exhibit D.

17 A. I think the exhibits are missing from this document,
18 though. It's only three pages long.

19 BY MR. MILLER:

20 Q. Number 1 on that Offer to Purchase describes websites,
21 equipment, trade fixtures, inventory, supplies,
22 trademarks, trade names, phone numbers, contracts and
23 all other tangible and intangible assets used in the
24 business known as Revenue Asset Services.

25 A. Correct.

1 Q. What is the website?

2 A. I think the website at that time was
3 revenueassetservices.com or .net.

4 Q. Does it still exist?

5 A. I'm not paying for it. I never tried to go to it again.
6 I'm not sure.

7 Q. The equipment of the business, what was that?

8 A. It would have been any brochure supplies that I had in
9 my possession.

10 Q. Equipment is not necessarily supplies, though. Later on
11 it asks for supplies. What is the equipment, printers?

12 A. No, I didn't give him a printer. I told him he needed
13 to buy a printer and gave him the model number for my
14 printer and said you should get an equivalent one, but
15 mine was seven or eight years old. I told him to get an
16 equivalent one of that model. I don't know if they
17 still manufactured it or not. I think the word was put
18 in there to be sure we were thorough.

19 Q. So there was no equipment then?

20 A. I guess not, no. I don't know the legal terminology of
21 it, but no.

22 Q. What about trade fixtures?

23 A. I'm not even sure what that is. He insisted we put that
24 in there. I don't know the legal significance of that.
25 I guess a fixture is something that's physical, but I

1 don't know what else he got that was physical other than
2 what was on my thumb drive.

3 Q. It references trademarks as well.

4 A. There was no trademarks but I threw it in there because
5 he wanted to be thorough.

6 Q. Did Revenue Asset Services have a phone number?

7 A. Yes, it had 800 numbers, which I transferred to him.

8 Q. And you had mentioned earlier that there were no
9 contracts at the time of the sale?

10 A. There were contracts with block owners but with doctors
11 I had already assigned everything. So inventory was
12 zero with doctors.

13 Q. The contracts with the block owners were I send you a
14 doctor and you pay me ten percent?

15 A. Right. That was Exhibit something that is not here.
16 You might have put it somewhere else.

17 Q. If you flip through a little bit --

18 A. (Interposing) If it's in there, that's fine.

19 Q. -- you'll come upon an acquisition agreement. I believe
20 that's the one you're referring to that would have the
21 exhibits.

22 A. Yeah.

23 (Deposition Exhibit E was
24 marked for Identification.)

25 BY MR. MILLER:

- 1 Q. What we're looking at is an Acquisition Agreement as
2 well as exhibits attached to that that I've had marked
3 as Exhibit E. Do you recognize these documents as well?
- 4 A. Yes. I jointly prepared them with Mr. Bernardo.
- 5 Q. And on Page 4 of that Acquisition Agreement your
6 signature appears there above your name?
- 7 A. Correct.
- 8 Q. And Mr. Bernardo -- is it Bernard or Bernardo?
- 9 A. He's given it to me both ways. He told me Bernardo was
10 his family name but Bernard is what he used with his
11 contracts. I just took his word for it.
- 12 Q. But that's his signature on Page 4?
- 13 A. Yeah. What happened was he signed it, if you look after
14 Page 7, you'll see his signature again. That was his
15 attempt to do a digital signature. He did that around
16 October 27th or 28th. I wasn't satisfied with it so I
17 physical drove down to Chicago and we signed it again
18 and that's where his signature is from November 1st.
- 19 Q. On page 4?
- 20 A. On page 4. The pages after page 4, I don't know if that
21 was binding or not. His personal banker also signed it,
22 which is page 9, not marked.
- 23 Q. Do you know what that name is?
- 24 A. Sumitra Parikh.
- 25 Q. Can you spell that?

- 1 A. Let me find it for you. It's on page 7.
- 2 Q. So Sumitra Parikh was Mr. Bernard's personal banker?
- 3 A. Correct.
- 4 Q. So it mentions in the recitals on the first page you're
- 5 the hundred percent owner of the membership interest in
- 6 Revenue Asset Services?
- 7 A. Correct.
- 8 Q. How does Mr. Weinstein come into play there?
- 9 A. He's not an equity owner. He's my independent
- 10 contractor that helps me with stuff. I don't know the
- 11 legal terminology. I guess that's the best way to
- 12 describe him. The reason he's not part of the company
- 13 is because we don't agree on how to run companies and
- 14 we're better off being I'm the one who owns the company
- 15 and I'll make the decisions about how to do things and
- 16 you just do whatever it is that you do.
- 17 Q. Do you still work with him?
- 18 A. I assist him but he doesn't pay me for the work I'm
- 19 doing. I don't spend more than two hours a week maybe
- 20 doing various things for him because he asks for it.
- 21 It's more of a professional courtesy and at some point
- 22 in the future I might need him. It's partly an
- 23 investment of my time knowing he'll return the favor
- 24 later. It's not like we have a financial arrangement.
- 25 Q. What kind of things will you do for him?

1 A. If he says could you read this document, because he's
2 poor at spelling and grammar, and I'll fix it for him.
3 Like on the website if he says I don't know how to do an
4 SEO for this search term, can you help me, it will take
5 me a few minutes' time. I talk to him more than I work
6 for him. I talk to him a couple hours a week. He's a
7 good friend of mine. I've known him for like 12 years.

8 Q. You said on the website. What website?

9 A. He has a website, medassetmanagement.com, .net.

10 Q. You said Med Asset Management?

11 A. M-e-d management.com, I think. It's still a work in
12 progress. The website is not complete.

13 Q. On that first page of the Acquisition Agreement marked
14 as Exhibit E you see item 1.2, the purchase price for
15 \$500,000?

16 A. Yes.

17 Q. Did you receive any of that purchase price?

18 A. None. There was no down payment because he essentially
19 admitted he lied when he -- he sent a form to Tannenbaum
20 & Milask saying he had a hundred thousand dollars
21 available for funds purchase, but he admitted to me when
22 I met him in person he didn't have the hundred thousand
23 dollars. He really wanted to get out of his current
24 industry and he begged me and said I really, really want
25 to do this so can we work out an arrangement when money

1 comes in you'll get a certain percentage of it until a
2 hundred thousand dollars is paid off? As more money
3 comes in, you'll get 80 percent for the first hundred
4 thousand, 60 percent when we cross that threshold, then
5 40 percent when we cross 200,000 and so on, but he quit
6 the business after about ten days is my recollection.
7 There were people ready to sign up but he refused to do
8 what needed to be done to get them to sign up.

9 Q. What do you mean people ready to sign up?

10 A. The brokers had lined up, Ray something or other,
11 anyway, Ray said I want to do a deal for \$35,000 to
12 start and we'll see how it goes. He was ready, okay,
13 give me the contract, let me put my signature down, but
14 Joseph refused to do anything.

15 Q. The block owners were ready?

16 A. Yes. I think it's referenced in the later e-mails.

17 Q. The second page of that document, item 2.6, it says the
18 broker record of this transaction is Tannenbaum &
19 Milask. That's the one you've been referring to.
20 Correct?

21 A. Correct.

22 Q. It references a broker listing agreement. Is that
23 something you are in possession of?

24 A. Where do you see that?

25 Q. In item 2.6, that second sentence says both parties

1 acknowledge seller will pay any commissions or fees
2 required by Tannenbaum & Milask, Inc. as part of their
3 broker listing agreement.

4 A. I never signed one with Tannenbaum & Milask. I think
5 that was something Joseph put in there, that whole
6 section. It didn't seem to matter that much to me. I
7 think the last sentence was the operative sentence,
8 buyer is not responsible for any fees or commissions
9 payable to the brokers because he didn't want to be
10 paying out anything at closing.

11 Q. So on page 4 of 7 of that same document, the Schedule A
12 - Contingent Assets, CJPS Services, two collection
13 blocks, one billing block. Is that what you've been
14 referring to as a block owner?

15 A. Correct, and there's six of them here.

16 Q. Who owns CJPS Services?

17 A. I don't recall, actually. It was a corporation, a C
18 Corp, and that's all I remember about those people.
19 They were kind of miserable to deal with, as I remember,
20 but I don't recall the owner's name. I think it was a
21 man who was the miserable one but I don't recall his
22 name.

23 Q. And Cindy Tyler, is that an individual?

24 A. Yes. She's in Michigan, Minnesota, Michigan. I'm
25 pretty sure it's Michigan.

1 Q. Do you still work with her?

2 A. I've not heard from her since a little bit after the
3 sale. She called me to complain that Joseph Bernardo
4 wasn't answering her calls.

5 Q. And Gary Tucker, is that an individual?

6 A. Yes.

7 Q. And do you know where he is?

8 A. Somewhere down south but I don't remember which state.

9 Q. Have you talked to him recently?

10 A. Not since the sale went south. He called to complain
11 also about Joseph wouldn't return his calls.

12 Q. What about IBN Corporation?

13 A. They're an Indian company and same thing. They called
14 me to complain Joseph wasn't responding and they wanted
15 advice what they need to do next. Each of these people
16 were pretty close to hitting a benchmark or completing a
17 contract or whatever it was. If he had done a little
18 bit of work, he could have made a little bit of money.

19 Q. Paul V, is that an individual as well?

20 A. Yes. I'm blanking on his last name. I think he's in
21 the same state as Gary, is my recollection, and they're
22 somewhere down south because they had a southern accent.

23 Q. What about DRC Systems USA?

24 A. My recollection is they're an Indian company.

25 Q. What happened to these companies after you sold the

1 business as far as receiving clients? Did they continue
2 to receive clients or did anyone pick up the reigns for
3 Mr. Bernardo?

4 A. The clients -- the doctors you mean?

5 Q. Well, the job of Revenue Asset Services, LLC was to pull
6 in these doctors and plug them into these blocks.
7 Correct?

8 A. Yes.

9 Q. And so what happened with these block owners once Mr.
10 Bernardo stopped or when you sold the business and they
11 stopped getting new clients, new doctors?

12 A. I got a lot of angry phone calls. I think most of these
13 people were far enough along that they got the value of
14 what they already paid for. If they put up 10,000 or
15 20,000 or whatever it was, then they got at least that
16 number of clients, plus the training and other things.
17 This is strictly my conjecture and assumptions. If they
18 were thinking of suing me or Joseph, they went to an
19 attorney and the attorney said they're going to go
20 through all this and we're going to go through
21 mitigation and whatever, how much is your actual damages
22 based on what you paid? I think the answer for probably
23 most or all these people is pretty much almost nothing
24 and is it worth it to litigate for 2,000 or 3,000 based
25 on what they had received up to that point.

1 If you broke down the value of each
2 client plus the training they got and the ongoing
3 support, it came up to some number value, which they got
4 from me with no problems at all. I told them they
5 should do whatever they felt they needed to do, whether
6 it was to sue me or sue Joseph, but I didn't feel it was
7 legal for me to take back a business from him without
8 filing a lawsuit. Maybe I'm wrong about that, I didn't
9 consult with an attorney, but it seemed like he could
10 have sued me if I tried to take back clients that
11 technically belonged to him or the company. I was kind
12 of paralyzed for a few weeks, a month, whatever, and
13 then eventually the phone calls just stopped and I was
14 sort of stunned and didn't do anything for all of 2017.

15 Q. My question after that is, if each of these had gotten
16 most of what they were to receive and there was only a
17 couple thousand left, where is the value that's going to
18 Mr. Bernardo?

19 A. Well, let's say like CJPS, their receivables was
20 \$75,000. Let's say he got nine clients, I have no idea
21 where he was at when he got to the point where he was
22 at, if he was at nine clients then all he needed was one
23 more client then he would have put up \$5,000. There was
24 value there. I think clients did come in because the
25 marketing didn't stop abruptly. Even if I put a bunch

1 of stuff out there today, I just can't stop it once it's
2 out there. People will call and people will send in
3 their contracts.

4 Q. Would these companies then be obligated to keep
5 accepting or, I guess, they would want to keep accepting
6 doctors from Mr. Bernardo?

7 A. I would assume logically that he would want to sign the
8 contract, hand it over, take their money, but he chose
9 not to. He chose not to sign anything at all, even the
10 doctors that were coming in. So there was a lot of
11 value if he had just -- if he literally had done nothing
12 but signed contracts for doctors and handed them out to
13 people but he refused to do anything.

14 Q. How much do you think he would have made?

15 A. He could have made a lot based on the receivable that
16 were out there. So if you just added the receivables,
17 it comes out to about \$250,000 overall. There's still
18 money from the 250 that would go to expenses, so I don't
19 want to say it was all profit. It was not.

20 Q. So there's \$200,000 out there to be gained, you sell it
21 to Mr. Bernardo for supposedly \$500,000?

22 A. That was the asking price. I think that was the
23 acquisition price.

24 Q. And he pays you nothing?

25 A. Correct.

1 Q. Why didn't you see an attorney?

2 A. I was told that he had nothing. He told me when I first
3 met with him that he lied about how much -- he didn't
4 have a hundred thousand dollars available for making an
5 acquisition. He told me about his import-export wine
6 company was doing badly for various economic reasons
7 that I couldn't really follow. He begged me to let him
8 do this and he was a hard worker and he sold me on it,
9 so I went forward with it. I guess it was sort of I've
10 seen this before, like if someone has no money and you
11 go sue them, what is the point on spending \$10,000 on an
12 attorney to get nothing.

13 Q. I don't mean seeing an attorney to sue him for the
14 purchase price, I mean to void the contract so you can
15 pick up where you left off and recover these 250,
16 \$200,000 of receivables.

17 A. I didn't even know that was possible. It didn't occur
18 to me, actually.

19 Q. Weren't you upset when Mr. Bernardo didn't pay you
20 anything for this and you did all this hard work and it
21 was left on the table?

22 A. Yes. I was extremely upset. I probably wasn't thinking
23 clearly. Between them and getting all these people
24 complaining to me that I'm going to come after you and
25 him, I was mostly bracing for the idea that I'm going to

1 get hit with all these lawsuits and there's nothing I
2 can do about it. It didn't occur to me to pick up the
3 reigns. I would assume it would take years to go
4 through litigation that way. Maybe I'm wrong. I did
5 not consult an attorney.

6 Q. Did you ask David Weinstein about that?

7 A. No. He felt sorry for me, you know, he said if there's
8 anything I can do for you let me know. He's not an
9 attorney either.

10 Q. But you do have a lot of schooling, so you understand
11 business clearly and understand medical billing clearly.

12 A. Yeah, but the law is a little bit outside my wheelhouse.

13 Q. Page 5 of 7, the first two contingent liabilities. What
14 is the difference there between Schedule A and Schedule
15 B? It looks like a copy and paste.

16 A. That was something Joseph put together. He said
17 basically, maybe he's wrong, but he said basically when
18 you make a stock purchase that the clients, under this
19 scenario, the clients that are being sold are both
20 assets and liabilities, assets because they have
21 receivables that you'll eventually get, but those assets
22 are also liabilities because it takes money to do the
23 things that need to get done so you can collect those
24 receivables. It sounded like circular logic to me, but
25 it seemed important to him so I said okay.

- 1 Q. So page 7 of 7 there, is that Mr. Bernard's signature as
2 well, Joseph M. Bernard, who we also have been referring
3 to as Mr. Bernardo?
- 4 A. Correct.
- 5 Q. And Mr. Bernardo lives at 3457 West Irving Park Road,
6 Chicago, Illinois, 60618?
- 7 A. I think that's his storage unit he has. I think he
8 lived at the other address, 1313 something Lundergan
9 Avenue.
- 10 Q. Is that on the --
- 11 A. (Interposing) I think it's in the e-mails I turned over.
- 12 Q. Okay. If you need to take a break at any time, just let
13 me know.
- 14 A. No, it's just this cough.
- 15 Q. To your knowledge, is Revenue Asset Services, LLC
16 continuing any business operations?
- 17 A. Revenue Asset Services of Michigan?
- 18 Q. Yes.
- 19 A. My understanding is he just abandoned it and left it.
20 He didn't even contact the State of Michigan to do
21 whatever transfer paperwork was necessary. I sent him
22 the link but he even refused to do that.
- 23 Q. You understand you could have sued Mr. Bernardo.
24 Correct?
- 25 A. Yeah. I mean, I know I could have sued him, you can sue

1 anyone for any reason, but my concern was how much am I
2 going to get back from him, which I think the answer was
3 zero.

4 Q. Is that why you didn't put it on your bankruptcy
5 schedules as far as an asset of yours?

6 A. Yeah. It didn't occur to me it was an asset. If I need
7 to amend my bankruptcy papers, I'm happy to do that, but
8 I don't think it will change anything.

9 Q. To your knowledge, has Mr. Weinstein sued Mr. Bernardo
10 at all?

11 A. No. Well, I think he would have told me but I think the
12 answer is no. I don't know what his grounds would be
13 for suing him.

14 Q. You had mentioned some e-mails you turned over. I did
15 pull some excerpts from them. They're in the front
16 pocket of the binder you have in front of you.

17 (Deposition Exhibit F was
18 marked for Identification.)

19 MR. MILLER: Those are marked as Exhibit
20 F.

21 BY MR. MILLER:

22 Q. Have you seen these documents before?

23 A. Yes. I turned them over to you.

24 Q. That first page looks like an e-mail from you to Joseph,
25 Mr. Bernardo. Correct?

1 A. Correct.

2 Q. And quoting you, you say "Specifically I need to close

3 my bank account before I sign." What bank account are

4 you referring to?

5 A. There is a bank account at TCF Bank that I used for

6 Revenue Asset Services. I think it had a few thousand

7 dollars in it when I closed it.

8 Q. When did you close it?

9 A. It would have been around the end of October 2016 before

10 the sale was complete.

11 Q. This e-mail is dated 10-29-16.

12 A. Then it would have been like 10-30, 10-29 possibly. It

13 was done in the afternoon.

14 Q. Is that a business checking account then?

15 A. Yes. I used to pay for, like, the website maintenance,

16 the 800 numbers, other things for the business.

17 Q. Was it in your name or the business' name?

18 A. The business' name.

19 Q. But you were a signatory on it?

20 A. Right.

21 Q. Was anyone else signed on the account?

22 A. No.

23 Q. My June 8th record request letter had requested copies

24 of all monthly statements, check registers, canceled

25 checks for all checking, savings, investment, credit and

1 other financial accounts in which you had an interest
2 for March 1, 2016 to present including all accounts held
3 in your name, held jointly or any accounts you merely
4 used or had access to including closed accounts. So
5 this account would fall under that request. Correct?

6 A. I don't think so because the account doesn't belong to
7 me. It belongs to the company and the company belongs
8 to Joseph. I didn't think I was permitted to get that
9 and I don't have any bank statements from that time
10 anyways. I put everything on a little green thumb drive,
11 they're all PDF bank statements and whatnot, and I
12 handed it over to him and I destroyed everything that
13 was in my possession. So if there's a way to get it,
14 I'll be happy to turn it over, but I don't think they'll
15 give it to me anymore.

16 Q. The end part of that request says any accounts that
17 debtor merely used or had access. You understand that
18 means accounts that you were a signatory on?

19 A. Correct, but -- with no malicious intent, I didn't think
20 it was appropriate to turn over an account for something
21 I didn't own anymore.

22 Q. You understand that now though. Right?

23 A. If you're telling me the truth, I'll take your word for
24 it.

25 Q. Is there any other accounts you were a signatory on for

1 March 1, 2016 to present?

2 A. No.

3 Q. You're not a signatory on any other bank accounts?

4 A. No, just the ones I turned over to you.

5 Q. The People's Driven Credit Union is what you're

6 referring to?

7 A. Right.

8 Q. Other than the People's Driven Credit Union account

9 statements you turned over and the TCF business checking

10 account in Revenue Asset Services, LLC of Michigan's

11 name, there were no other accounts you were signatory to

12 from March 1, 2016 to present?

13 A. Not that I can recall, no. I'm pretty sure the answer

14 is a complete no.

15 Q. The third page of the e-mail excerpts that have been

16 marked as Exhibit F, the second e-mail on that page from

17 you to Joseph Bernardo, in your third paragraph you

18 reference signing power of attorney paperwork so you can

19 sign documents on the company's behalf?

20 A. Correct.

21 Q. Were those documents executed?

22 A. No.

23 Q. What was going to be the purpose of that?

24 A. I showed him an app on my phone called Sign Now. You

25 can digitally sign documents. So when I would get like

1 a contract from a doctor's office that says I want
2 medical billing, they would fax in their contract, the
3 fax would go to my 800 number and it would convert it to
4 a PDF and send it to me. I could pull it up from my
5 phone, sign it digitally from my phone and forward it to
6 whoever the next block owner was. It was very
7 convenient. When I could do it on my phone, everything
8 was much easier. I showed him the app on my phone and
9 said this is what you should download on your phone. He
10 said that's great but his phone was acting up. It was
11 overheating. He was going to get a new one. I told him
12 when you get your new phone we'll be golden, just
13 download the app.

14 In the meantime I said you'll have to
15 get these contracts, print them at your computer, sign
16 them, scan them, organize them and then e-mail them to
17 the next block owner. It's going to be a little extra
18 work than pushing a button and sending it but that's
19 what happens when you don't have a working phone. He
20 suggested to me why don't we just do it where you sign
21 everything, I'll give you power of attorney and it will
22 be easy to do just until this was done, so we'll make it
23 a limited power of attorney. I think we had a certain
24 number of days set aside.

25 I never drew up the paperwork and as

- 1 far as I know I don't think he did either. I would have
2 insisted that we sign the documents together in front of
3 a notary so that no one could come back at us later, but
4 he never signed -- he never produced the documents. I
5 think by the time we got around to the point we'll do it
6 on this date he stopped talking to me.
- 7 Q. Did you ever meet him in person?
- 8 A. Two or three times, actually. He's in Chicago.
- 9 Q. Do you know about what age he was?
- 10 A. Early to mid 30s.
- 11 Q. Do you know his educational background at all?
- 12 A. I probably knew it back then. I don't know it now.
- 13 Q. Do you think he went to college?
- 14 A. He has maybe an associate's degree but college might be
15 pushing it.
- 16 Q. On the next page of that e-mail excerpt, Exhibit F, the
17 last e-mail on that page is from you to Joseph and
18 references a wire to Tannenbaum. What was that for?
- 19 A. When a block owner signs their initial contract, they
20 either send a check to Tannenbaum or wire to Tannenbaum
21 and the broker works that out with them. They prefer it
22 wired because it's instantaneous and the broker
23 commission gets paid out right away and so forth.
- 24 Q. So this Ray Gillani was one of the block owners?
- 25 A. I don't think he ever signed up. I could be wrong about

1 that. He definitely didn't sign up with Revenue Asset.
2 I don't remember talking to the guy ever.
3 Q. But he was a potential block owner?
4 A. He was a potential. I may have spoken with -- I can't
5 remember.
6 Q. Is this the Ray you referenced earlier?
7 A. Yeah, yes.
8 Q. You had mentioned a Ray but you couldn't remember his
9 last name.
10 A. Yeah.
11 Q. The last page of that Exhibit F, the front side of it,
12 the first e-mail is an e-mail from you to Joseph,
13 November 5th, 2016. It talks about "Between you and
14 David you should be able to handle most of it. I'll
15 keep doing the trainings," etcetera. So, really, he was
16 replacing you in the business?
17 A. That was the intent, yes.
18 Q. How long had this business been in existence?
19 A. About six months before I sold it to him is my
20 recollection, but I'm pretty sure I formed it that year.
21 I got -- we have the formation documents here somewhere.
22 Q. You think it was 2016?
23 A. I'm sorry, it was 2014. I don't think I did anything
24 with it right away. I think it was late 2015, early
25 2016 I started doing stuff with it.

1 Q. You began operations?

2 A. Yeah, I began started doing stuff.

3 Q. So it took you almost a year then to sort of build up
4 this block of business, these block owners, and that's
5 what you were planning on selling to Mr. Bernardo?

6 A. Right.

7 Q. Did you make any income from it in 2015?

8 A. 2015 I don't think so. I'm inclined to say no. Did I
9 have any clients in 2015? 2015 I was working for a guy
10 named Avner (ph), who was in the medical billing
11 business. I basically took care of his clients for him.
12 I can't recall if I had him pay me directly or if he
13 paid my company, but I made a little bit of money off
14 him in 2015. It might have been 2014. I don't think I
15 had any active block owners that early is my
16 recollection but I can't recall.

17 Q. In the backside of that very last page there's a screen
18 shot of an e-mail from you to Joseph on November 9,
19 2016. Have you seen this before?

20 A. Yes. I wrote that e-mail to him.

21 Q. So it looks like you were at that point threatening a
22 lawsuit against him?

23 A. No, I wasn't threatening a lawsuit against him. I was
24 informing him that all the block owners were probably
25 going to file a lawsuit against him. And I didn't say

1 this but I expected they were going to file against both
2 of us because I think that's what people do. When they
3 file lawsuits, they file against everyone. No, I wasn't
4 threatening him with anything.

5 Q. In this e-mail you say, "If you continue this course of
6 action, it will not prevent lawsuits against you."

7 A. Yes. I was referencing everyone else that was probably
8 going to sue him. The previous e-mail to this one I
9 sent he said something to the effect of this is hard or
10 I can't do this or this isn't my personality to run this
11 kind of business. And this e-mail here is dated
12 November 9th, so it was nine or ten days after he bought
13 the business that he decided he didn't want it.

14 Q. You reference here his personal bank account, savings,
15 401 (k) and wine import-export business. Do you have
16 knowledge of those items?

17 A. No. I just threw out stuff because I was trying to get
18 him to come back to the table and he was clearly on his
19 way out.

20 Q. The wine import-export business is oddly specific. Had
21 he mentioned something like that before?

22 A. Yeah. He said he was in the wine import-export business
23 when I met him, but he said it was going downhill for
24 various international -- I don't know about the wine
25 import-export business, but someone else was flooding

1 the market or something and that's why he wanted to exit
2 that business and go into a profitable business in the
3 health care sector because it was recession proof.

4 Q. Did he mention any names of any businesses or anything
5 like that?

6 A. Not that I recall. Unless it's listed in the e-mail, I
7 don't think he did. He may have during one of our
8 conversations but I can't recall from two years ago.

9 Q. The People's Choice Credit Union account statement we
10 referenced earlier that was turned over, there wasn't
11 much going on in that account at all. Correct?

12 A. Correct.

13 Q. The statements that you turned over were from March
14 31st, 2016 to current. Correct?

15 A. I think it goes before that but let me take a look here.

16 Q. I'm sorry, March 1st.

17 A. I believe that's the times you requested it for.

18 Q. You see this is just an excerpt of what you sent me but
19 it's that first statement and then the last statement as
20 well as the balance details.

21 A. Yeah.

22 Q. That you screen-shotted and then it looks like you
23 printed a PDF from the web page for that last page.

24 A. Yeah, whatever.
25

1 (Deposition Exhibit G was
2 marked for Identification.)

3 MR. MILLER: Let the record reflect I've
4 marked these bank account statements as Exhibit G.

5 BY MR. MILLER:

6 Q. You had stated you were making income in 2016 from
7 Revenue Asset Services. Correct?

8 A. Yes.

9 Q. That you would either receive payments directly from the
10 block owners or indirectly through Tannenbaum & Milask?

11 A. Correct.

12 Q. What did you do with that money?

13 A. I would have deposited it. I think I deposited it to my
14 wife's account. In 2016 I don't think I actually made
15 too terribly much. I think I would have kept some of it
16 in the Revenue Asset Service's account. The real profit
17 would have come from the end when these contracts were
18 fulfilled. I don't think I took much.

19 Q. I saw in your 2016 tax return there was \$80,000 of
20 income.

21 A. I think I had them write it to my wife's account because
22 it was easier to get one big check instead of two small
23 checks because my wife was working for David separately
24 from anything I was doing for him.

25 Q. This is money that you earned then and it's being paid

- 1 out, not operational costs. Correct?
- 2 A. Could you restate that?
- 3 Q. So you had mentioned that you had a business bank
- 4 account?
- 5 A. Um-hmm, yes.
- 6 Q. But then that you also had some profit from the
- 7 business.
- 8 A. That's reflected on the tax return.
- 9 Q. Correct. Now, the money that came in and then was paid
- 10 out for your expenses, like we discussed, did that
- 11 happen in your business bank account?
- 12 A. For the website, the 800 numbers and so forth, right,
- 13 that would have come out of the business bank account.
- 14 So I think I refreshed that enough to make sure there
- 15 was enough there to take care of all the monthly
- 16 expenses that might have been incurred. I think the
- 17 rest of the profit I just told David just write me a
- 18 check, my wife a check, rather than sending us two
- 19 separate checks.
- 20 Q. What do you mean rather than sending us two separate
- 21 checks?
- 22 A. He would mail her a check for the work she had done and
- 23 he would mail me a separate check.
- 24 Q. She was doing the same thing?
- 25 A. She was working with David on David's projects. David

1 had been doing other things with medical billing,
2 medical collection, medical transcription, electronic
3 medical record services, a bunch of things I'm not into.

4 Q. But those payments to her were separate from the
5 payments to you for the Revenue Asset Services?

6 A. Right. She made her own money from him doing stuff she
7 was doing for him.

8 Q. But your money then was issued on a separate check but
9 still deposited in your wife's account?

10 A. Yes.

11 Q. So if you look at those bank statements, would you be
12 able to tell which ones were yours or which ones were
13 hers?

14 A. Only because of my tax returns. I could -- well,
15 individual checks? I don't know. I probably could have
16 if I had all the statements and things I gave to Joseph
17 Bernardo. I could have matched up each one from them.

18 Q. Where does she bank at?

19 A. Chase Bank.

20 Q. So often banks will keep, I think actually they're
21 required to keep images of the checks that are deposited
22 and posted to the account. If you looked at those
23 checks, would they be designated in any particular way
24 as to differentiate them between payments to you and
25 payments to your wife?

- 1 A. No. I doubt it. I think it was one giant check he
2 wrote.
- 3 Q. You said before it was two separate checks.
- 4 A. That's what I'm saying, why would he send two separate
5 checks. He did not send two separate checks. He sent
6 one giant check and said here, I'm not going to waste
7 another check going to the same address.
- 8 Q. How would you know between you and your wife what money
9 was yours, what money was hers?
- 10 A. Well, at the time I would have been able to figure it
11 out by looking at all the stuff that's now not in my
12 possession. That's how I figured out my tax returns,
13 was based on what I did with these people, what she did
14 and I could say this much was set aside for this
15 contract and so forth, but she got all the checks but I
16 assigned a certain portion of it to me. That's how I
17 did my tax returns.
- 18 Q. And so why was it going into your wife's account?
- 19 A. Convenience.
- 20 Q. Is it you guys had joint expenses and were paying things
21 together?
- 22 A. Yeah, just convenience. Depositing one check rather
23 than going to two separate banks. It didn't occur to me
24 it was important.
- 25 Q. Within your responses you mentioned when you lived back

1 at 4569 Hickory Pointe Boulevard you had paid something
2 like the home maintenance and some of the taxes on that
3 property. Would that have come from that joint account?

4 A. Yes. The account is strictly owned by my wife. It's
5 not a joint account.

6 Q. You're not a signatory?

7 A. Correct.

8 Q. But that account in your wife's name, that has both your
9 money and her money in it?

10 A. Correct.

11 Q. How do you live day-to-day now? Do you still use that
12 account?

13 A. No.

14 Q. Does your wife?

15 A. Just my wife.

16 Q. You still live together?

17 A. Yes.

18 Q. And so when you need to put gas in your car, what do you
19 do?

20 A. Cash.

21 Q. Where does that cash come from?

22 A. From her. I usually keep about a hundred dollars with
23 me at any given time.

24 Q. She doesn't give you a debit card to use or anything
25 like that?

- 1 A. No.
- 2 Q. Does she give you a certain amount of cash each month?
- 3 A. I ask her for it when I need it. We usually have a
- 4 couple hundred dollars laying around the house. My job
- 5 right now is mostly to take care of our daughter, who is
- 6 sick.
- 7 Q. I'm sorry to hear about your daughter being sick. When
- 8 you say sick, does she have a serious illness?
- 9 A. It's pretty serious. Do you need to know the medical?
- 10 I prefer not to talk about it.
- 11 Q. No, I'm just wondering what the nature is. Is that
- 12 something you do full time?
- 13 A. Someone needs to be with her when she's not in school
- 14 for her safety. I'll leave it at that.
- 15 Q. Do you work around the house?
- 16 A. How do you mean, like a house husband?
- 17 Q. What do you do during your days, what is a day in your
- 18 life spent like?
- 19 A. Cleaning, making sure my daughter doesn't have something
- 20 that could be harmful to her. I check her a lot and
- 21 then I just take care of the household.
- 22 Q. What about your wife?
- 23 A. She works for Kelly Services who contracted her to Ford.
- 24 Q. And then comes home and helps with everything else?
- 25 A. She doesn't do a lot when she gets home, but yeah.

- 1 Q. Eats dinner, watches some TV and hangs out with the
- 2 daughter?
- 3 A. Yeah.
- 4 Q. But she works for Kelly Services full time?
- 5 A. Correct. She started in January. Prior to that she was
- 6 working with David more but the work with him has
- 7 tapered off considerably and he advised her to go get a
- 8 real job, salary job.
- 9 Q. What has caused the work to taper off considerably?
- 10 A. You want my conjecture?
- 11 Q. If you know anything that's not conjecture, I'd like to
- 12 know it but, if not, I'll take the conjecture.
- 13 A. Broadly speaking the market changed so there's not as
- 14 many doctors coming in to do the things we used to do.
- 15 My conjecture is because of various things President
- 16 Trump did, like he tried to kill the Affordable Care Act
- 17 several times, it caused a lot of ripples throughout the
- 18 entire industry and I think it affected this. I don't
- 19 have any hard evidence of that.
- 20 Q. If you would flip to the tab that says pay stubs MR,
- 21 later in that booklet. That's your wife's pay stubs
- 22 there?
- 23 A. Correct.
- 24 Q. She works 40 hours a week, gets a regular paycheck?
- 25 A. Correct.

1 Q. And she's been doing that since December 2017?

2 A. My recollection is January.

3 Q. Is she at the Troy location or does she work from home?

4 A. No, she works on site in Dearborn, I believe.

5 Q. The next document there under Statement of Commissions,
6 if you can take a look at that.

7 (Deposition Exhibit H was
8 marked for Identification.)

9 A. It looks like the car title. Oh.

10 BY MR. MILLER:

11 Q. This is marked as Exhibit H. Have you seen this before?

12 A. I produced it.

13 Q. So you created this?

14 A. With assistance from my wife and David, yeah.

15 Q. This is just like a Word document or Excel document you
16 created?

17 A. Yes.

18 Q. So what did you use to create this?

19 A. I think I went to the bank statements and looked at any
20 deposits and any deposits that would have come from
21 David specifically.

22 Q. You say you went to the bank statements. You mean your
23 wife's Chase Bank account?

24 A. Yeah. She pulled it up on her computer and said how do
25 I do these.

1 Q. So these 2016 deposits, are they all going to be your
2 wife's?

3 A. Yes.

4 Q. So none of these are your deposits for Revenue Asset
5 Services?

6 A. No, because it was sold in October. So some of these
7 must be commingled because David sent one check. I
8 might be able to reconstruct it if I asked David for
9 some of the paperwork.

10 Q. So this is actually a list of deposits from Tannenbaum &
11 Milask to the Chase bank account?

12 A. Correct.

13 Q. Not necessarily only Margaret's income?

14 A. Correct.

15 Q. Some of these 2016 ones --

16 A. (Interposing) Yeah, the May, June, up until -- November
17 1st it was sold, so anything from 10-11 going backward
18 might be some commingled statements. 10-11, time looks
19 too small, but I can look at it, but yeah, 5-12-16 to
20 10-11 might be some commingled statements.

21 Q. If you go back to the tax returns, I want to look at
22 your wife's tax returns that you provided.

23 MR. MILLER: Off the record.

24 (A brief discussion was held
25 off the record.)

1 MR. MILLER: Back on the record here.

2 BY MR. MILLER:

3 Q. We were about to look at your wife's tax returns. It
4 looks like in 2016 she had both wages and business
5 income?

6 A. Yes.

7 (Deposition Exhibit I was
8 marked for Identification.)

9 MR. MILLER: I had marked as Exhibit I the
10 2016 and 2017 tax returns of Margaret Reddy. I will be
11 retaining this exhibit and redacting the Social Security
12 numbers prior to giving it back to our court reporter
13 here for the record.

14 BY MR. MILLER:

15 Q. It looks like she had wages and business income in 2016?

16 A. Yes.

17 Q. Do you know where she was working?

18 A. I think she was working at United Health Group at that
19 time.

20 Q. She also was getting business income?

21 A. Yes.

22 Q. Do you know what business it was?

23 A. It was with David, what she does now.

24 Q. Do you know what particular business entity or is it
25 just work for Milask, Tannenbaum & Milask?

1 A. I don't know which entity she was getting the money
2 from. He has several businesses. I don't know all the
3 things she was doing for each one of them.

4 Q. How did you get these tax returns?

5 A. She gave them to me. She didn't raise a stink about it.
6 She said hold on, I'm going to pull them up.

7 Q. Would she give you those Chase Bank statements as well?

8 A. Yes.

9 Q. Would she give them to you to turn over to me?

10 A. I don't see why not.

11 Q. You can have her do that for that same applicable
12 period?

13 A. Sure. Could you e-mail me? That will work.

14 Q. But all this consulting work on her Schedule C, 2016,
15 that would all be work for David?

16 A. Correct.

17 Q. And/or Tannenbaum & Milask?

18 A. Correct.

19 Q. And remind me again what this work entails.

20 A. She pretty much did all the behind-the-scenes work, took
21 sales calls, built brochures. She managed people who
22 had tempers, she in some cases managed David, she helped
23 with the web site, she put her voice on all the 800
24 numbers to say like welcome to whatever the company's
25 name was, press 1 for this, press 2 for that. All the

1 behind-the-scene's work that no one likes to think about
2 she took care of.

3 Q. And the commissions then, how was she paid commissions
4 for that behind-the-scene work?

5 A. The word commissions -- I see why it's confusing, but
6 she wasn't doing commission-based work, like she made a
7 sale and made a commission off of it. That was internal
8 lingo that all of us used with each other because just
9 the way we've been working. The same way David was a
10 silent partner for me, she was a silent partner for him
11 in doing things. I don't know what his formula was for
12 how much she got paid, I never thought to ask, but it
13 was always a very generous amount and I wasn't about to
14 look a gift horse in the mouth. Every time he made a
15 sale with whatever work he was doing with her, whether
16 it was with medical collection or transcription, he set
17 aside a certain portion for how much he thought was his
18 profit margin from that and he would pay her based on
19 his formula. I don't know how much he paid himself, but
20 I know how much she got paid and that's where it all
21 came from. He used the word commission. I'm not sure
22 if misnomer in the right word. It's not the way that
23 other people use the word commission in a more
24 traditional business model.

25 Q. That commission statement that we looked at marked as

1 Exhibit H, they're not actually commissions?

2 A. If I can put more context around it. Let's say someone
3 came in and said I want to buy an electronic medical
4 record system from you, here's my -- I'm just making up
5 numbers, these aren't real -- hundred thousand dollars.
6 David would take that and say I need to set aside
7 \$30,000 for taking care of getting the things this guy
8 needs. The other \$70,000 is my profit margin. Of that
9 \$70,000 I'm going to keep X and Y goes to Margaret. Is
10 that a commission? I don't really know.

11 Q. So do you know what percentage, you said you and David
12 were 50/50, but do you know what percentage your wife
13 was?

14 A. It was not 50/50, and I don't really know the formula,
15 but he had a formula that he plugged in and divided by
16 two and multiplied by that and it came out to whatever
17 number it was. David would know the formula but I never
18 asked him for it.

19 Q. Did you think it was less than half?

20 A. I'm pretty sure it was less than half but -- there's no
21 way it would be more than half. Is it less than half?
22 Probably, but I don't know how much less.

23 Q. Was there any agreements written between you and David
24 or your wife and David ever?

25 A. Yes, there was -- not in the recent period. When I

1 first met him in 2005, anyway, at that point when I
2 didn't know him at all we had agreements on everything,
3 like for whatever transaction we had, bar none. After a
4 couple of years getting to know him and being good
5 friends with him, they just sort of faded away because
6 we just understood each other. The only reason that
7 people would write up contracts that way is because they
8 don't trust the other party not to screw them. It's
9 kind of the unspoken sentiment between us. And I would
10 not sue him either. I can't even think in what context
11 I would sue him.

12 Q. In law school they called contracts planning for the
13 divorce, plan for when bad things happen. So you don't
14 imagine that happening with David?

15 A. No. Short of him having a heart attack and not having
16 paid us the last commission, I can't think of any
17 scenario that would upset me with him.

18 Q. Does David have other, quote-unquote, other silent
19 partners other than you and your wife?

20 A. Conjecture, yes, but I don't know who they would be or
21 who they are or what they do.

22 Q. You think he has other businesses besides the ones you
23 and your wife are helping him out with?

24 A. He certainly has other -- he's always working on
25 something. He's not the kind of guy that sits still and

1 coasts along. He's the guy that has to keep doing
2 something. I'm not sure if I'm a hundred percent aware
3 of every business he's engaged in and I never asked him
4 for it. When I was working with him it kept me busy
5 enough, but with what my wife does with him kept her
6 busy enough, too. She's not doing almost anything with
7 him now.

8 Q. Was she doing this at the same time as working for
9 United?

10 A. I think there was a very little, if any, overlap between
11 the two. I think she'd come to the end of her time at
12 United because she was miserable there and David says
13 why don't you come work with me and we'll work on this
14 other project I've got going, so that's how that kind of
15 got started. There might have been some overlap at the
16 end but I don't think it was fairly significant.

17 Q. On her 2016 Schedule C there is an expense listed on
18 line 11 for contract labor and \$126,766. Do you know
19 who that contract labor was or what company?

20 A. It was with Karthik Thalmarla. He's my cousin
21 essentially. They were working on something. He worked
22 for Black Rock and financially he's kind of a brilliant
23 guy, but he had been doing stuff and I don't fully
24 understand the nature what of he was doing but it was
25 around businesses that my wife had.

- 1 Q. How do you spell his first name?
- 2 A. K-a-r-t-h-i-k. He is now working with my uncles in
- 3 Africa. I think he's back, but he works in the African
- 4 businesses now.
- 5 Q. You mentioned Black Rock. What is that?
- 6 A. A consulting firm, like Deloitte & Touche. One of the
- 7 big ten, big five. He has an MBA.
- 8 Q. What was the work that he did for your wife?
- 9 A. I don't know. I know they would talk everyday and
- 10 working on stuff. I think with the EMR system but I
- 11 don't want to conjecture on things I don't have good
- 12 knowledge of.
- 13 Q. She lists car and truck expenses on her Schedule C as
- 14 well. Do you know what that is for?
- 15 A. She did a lot of traveling to Chicago specifically but
- 16 also to meet with vendors for the EMR. She met with
- 17 Advanced MD, a couple others. I don't fully understand
- 18 what that was for but it was for a lot of travel expense
- 19 she incurred.
- 20 Q. Is that for the same RAV4?
- 21 A. No. I believe it was for her Toyota Highlander.
- 22 Q. That's what she drives?
- 23 A. That's what she drives.
- 24 Q. You drive the RAV4?
- 25 A. Yes.

1 Q. But they're both titled in her name?

2 A. Yes.

3 Q. They're both paid off?

4 A. Yes.

5 Q. Who paid those?

6 A. She did.

7 Q. When, do you know?

8 A. Whatever year they were bought. I think one was bought
9 in 2015 and the other was 2014. The 2014 one was the
10 RAV4, but my father actually paid for that and then we
11 reimbursed him a few weeks after the sale, but it was
12 still titled in her name.

13 Q. There were never any loans then?

14 A. Right.

15 Q. What does your father do?

16 A. He's a retired physician. He's not working anymore. He
17 does have properties. He has a couple gas stations. He
18 lives in Florida. He has a condo down there. He also
19 owns a home in Indiana, right at the Indiana-Illinois
20 border. He's trying to sell that, too, but he was a
21 physician for 35 odd years.

22 Q. So now he's sort of a property owner and
23 jack-of-all-trades?

24 A. Yeah. He's mostly retired. He's 80 percent retired and
25 20 percent dabbles in stuff.

- 1 Q. On the same Schedule C of your wife's 2016 tax returns
2 there is \$15,000 in expenses for travel, meals and
3 entertainment. Is that for her visits to Chicago?
- 4 A. No, she flew a couple places. She flew to Las Vegas,
5 flew to Philadelphia, the hotel and Uber and then to
6 take out the people she was entertaining.
- 7 Q. Again there's utilities listed on here in the amount of
8 \$10,000. Does she have an office she works out of?
- 9 A. No. I'll have to ask her about it. I don't know. I
10 wonder what that is.
- 11 Q. When she was doing this consulting work, where was she
12 working?
- 13 A. From a home office. She might have taken out a space
14 for a home office deduction. I think that would be --
15 I'll have to ask her.
- 16 Q. And on the line 27 A, other expenses, it lists \$125,000.
17 If you flip the page, part B details the other expenses
18 and there's just one line. Under part 5, do you see
19 other expenses? It says consulting fees, Max Global
20 Inc., \$125,000. Do you know what that is for?
- 21 A. Consulting. I can get a breakdown for you. I don't
22 know what it is.
- 23 Q. What is Max Global Inc.?
- 24 A. A company in Chicago. It's owned by my uncle.
- 25 Q. Which uncle?

1 A. Mohan.

2 Q. It looks like she was receiving income from David then
3 paying out to your cousin for some contract labor?

4 A. She was doing stuff with David. She took a lot of the
5 money she was doing with him and had a separate thing
6 she was doing with my uncle and my cousin.

7 Q. Do you know what that separate thing was?

8 A. It was in the medical industry. They were trying to put
9 together a software package for something with all their
10 expertise. They had an outsource team in India that was
11 coding to create EMR is my understanding. My
12 understanding is pretty poor when it comes to this
13 stuff. My wife is an IT person. I don't know her -- or
14 like that stuff and when she explains it to me it makes
15 my eyes glaze over. I don't have the details what she
16 was doing.

17 Q. Do you know if any of this income came from that
18 separate venture she was doing with your cousin and
19 uncle?

20 A. I don't understand the question.

21 Q. On the Schedule C, 2016, there's gross income of
22 \$462,774. Was that income all from her dealings with
23 David or was some of it income from whatever side
24 business she had with your cousin and uncle?

25 A. I don't think the side business has generated anything

1 yet. I think it will soon but it hasn't yet. I'm
2 always told we'll have to wait a few more months and
3 that's all I hear from my uncle, my cousin and wife.
4 I'll leave it to them to do whatever they're doing.

5 Q. Does your wife have any business interests in her name?

6 A. No. This is a sole proprietorship that she was
7 operating under.

8 Q. She doesn't have any LLCs or corporations or anything in
9 her name?

10 A. No.

11 Q. Remind me again. Max Global Inc., that's Mohan
12 Thalmarla's business?

13 A. Yeah.

14 Q. What does he do?

15 A. One of his things is the mining I mentioned earlier in
16 Ghana or wherever it's at. I don't know if he still has
17 an interest in the company or not, but he used to have a
18 flower-type of business. Basically I don't know which
19 country in Africa it is but in some African country
20 there's certain soil conditions and weather conditions
21 that a certain type of flower that's apparently very
22 expensive will grow, so he harvests that and sells it to
23 Israel, Japan, Poland, a couple other countries. That's
24 another thing he does. I don't know if this is part of
25 Max Global or not. But then he has other building

1 projects in India. His brothers might be more involved
2 than him, but they're building, for lack of a better
3 word, a skyscraper in one of the more industrial cities
4 in India, in Mumbai, I believe. He has a couple other
5 things I'm blanking on. He's got his hand on lots of
6 certain pots and he's constantly traveling.

7 Q. Is the Thalmarlas, are they related to you by blood?

8 A. Yes. They're my mother's brothers. Mohan, I don't know
9 this but I've heard a rumor that Mohan isn't technically
10 our blood relative, he might be more of a distant cousin
11 that might be adopted, but we don't bring it up.

12 There's someone else in the family, Madhavi,
13 M-a-d-h-a-v-i, she is definitely not related to us. She
14 was essentially adopted by, like, a second cousin type
15 of thing, but that's a story from 30 years ago.

16 Q. So when you call him an uncle that's sort of --

17 A. (Interposing) I call Havi my aunt even though she's not.
18 It's like a respect thing. Even people who are
19 definitely not related to you but like your father's
20 friend, you call them uncle or aunty.

21 Q. Did your wife know the Thalmarlas prior to being married
22 to you or was she introduced to them by marriage?

23 A. She met them after we got married. My family didn't
24 approve of my wife because she's white, so they didn't
25 want anything to do with her. When I married her they

1 didn't really have much choice but to accept her. They
2 met in about 2002.

3 Q. It seems like they accept her now.

4 A. Oh, yeah.

5 Q. That's good. Her 2016 return references a health
6 savings account. Has she used that account for medical
7 expenses for yourself?

8 A. For me, yes; for herself, yes; for our daughter, yes. I
9 don't know how much is left in the HSA because she's not
10 working for United Health Group who was funding the HSA.

11 Q. But it was used for all three of your expenses?

12 A. Yes, our household.

13 Q. Do you guys get insurance through Tannenbaum & Milask?

14 A. She gets it threw Kelly Services. She doesn't get
15 health insurance because she wasn't satisfied with their
16 plan, so we pay for it privately through Blue Cross.

17 Q. And it covers you and your daughter?

18 A. And my wife. Although the deductible is so high, it's
19 practically useless.

20 Q. In between her work for United and working now for Kelly
21 Services, did you guys just buy private insurance then?

22 A. Yeah. There might have been a gap of a month or two,
23 but, yeah, pretty much we just bought it from Blue
24 Cross.

25 Q. Correct me if I'm wrong, but she stopped working for

1 United in 2016?

2 A. Right.

3 Q. And then throughout 2017 up through December of 2017 she
4 was strictly doing commission work. Both of you were?

5 A. I was doing Revenue Asset Services and she did
6 commissioned work and she worked with my uncles but --
7 I'm not sure what the question is.

8 Q. So throughout 2017 neither of you had a W-2 employer.
9 Correct?

10 A. Yeah, I'm pretty sure that's correct.

11 Q. Except for maybe at the very end of December when she
12 started working for Kelly Services?

13 A. Yeah. I think Kelly Services was January of this year.

14 Q. So during that time you had no employer with which to
15 provide you health care?

16 A. Correct.

17 Q. So did you have health care?

18 A. Yeah, we paid for it privately. I think there was a
19 month or two there was a gap but otherwise it was paid
20 for privately.

21 Q. Were you continuing to work for commissions as well in
22 2017?

23 A. In 2017? No, I didn't do anything. I just took care of
24 my daughter.

25 Q. Did your wife work from home throughout 2017 then?

1 A. Yeah, except for when she was looking for a job with
2 Kelly Services. She went on interviews prior to that
3 with a few other firms, but for all intents and purposes
4 she worked from home.

5 Q. You had mentioned she had all these different roles as
6 far as filling gaps where it needed to be for David,
7 like doing marketing, doing various other roles in this
8 commission-based job.

9 A. Correct.

10 Q. Did you ever help her with that, I mean if she was
11 pressed for time or if she had various things to be
12 completed?

13 A. I don't think she was ever pressed, quote-unquote, for
14 time. If she asked me for help I would have helped her,
15 but I don't recall helping her tremendously much.

16 Q. There's a lot of leg work as far as printing, stuffing
17 envelopes?

18 A. That's a little more -- we don't print and stuff
19 envelopes because that would take a tremendous amount of
20 time. There's actually a mail house that mails and
21 stuffs and prints thousands of envelopes for us, so they
22 would be doing that sort of thing, and David would take
23 care of paying them. So for every, like, thousand
24 pieces of mail that go out to various doctors offices,
25 one percent maybe will answer, so you got like ten, give

1 or take, that respond and want a brochure. Building ten
2 brochures doesn't take that much of her time. Even if
3 they came in daily, they would take five minutes a
4 piece.

5 Q. In other words, it's a lot of work on the computer then?

6 A. Yeah, maintaining the website, doing the SEO for it,
7 stuff I have no expertise for, answering the sales
8 calls. I don't recall there being a point I can't do
9 anymore, there's 60 hours of work coming in a week, I
10 can't keep up, I don't think I ever heard her say that.
11 If anything, I think I'd say she was probably under 40
12 hours a week, which is why she had free time doing work
13 for my uncles and cousin.

14 Q. If you look at her 2017 Schedule C, you can see she had
15 gross income of \$205,700. What was the source of those
16 funds?

17 A. My assumption is all David.

18 Q. And the line item 11 again is a \$10,000 expense for
19 contract labor. Do you know what that's for?

20 A. I think she had hired certain other people to take care
21 of small projects. It might have been on the website to
22 make it look pretty because it's not something she's
23 good at. I think there might have been some other
24 people that might have been helping her with grunt work,
25 for lack of a better word, and that probably would have

1 been more along the lines of stuffing envelopes that any
2 monkey can do.

3 Q. Throughout 2017 she's doing this work for David and
4 you're staying at home taking care of your daughter and
5 you are living at the Hickory Pointe house. Correct?

6 A. Correct.

7 Q. And in your response you mentioned that originally when
8 you moved into Hickory Pointe you were paying the
9 mortgage. Was that you and your wife paying the
10 mortgage together?

11 A. Yes, because back then I was working for Henry Ford
12 Hospital and I think she was working for a company
13 called Arial (ph), which is no longer around.

14 Q. How long did you pay the mortgage for?

15 A. Three or four years.

16 Q. You lived there about ten years?

17 A. I think a little more than that. Bear with me. We
18 moved in in 2004 and we moved out in December of last
19 year.

20 Q. So 13 years?

21 A. Yeah.

22 Q. And the house is titled in your father's name?

23 A. Correct.

24 Q. Except that you're the power of attorney on the title.
25 Correct?

1 A. When the house was sold he gave me power of attorney to
2 sell the house because he couldn't be there, just for
3 the closing.

4 Q. The deed to the buyer?

5 A. Yeah.

6 Q. Did you know the buyer?

7 A. No.

8 Q. So you paid the mortgage for maybe three or four years
9 with your wife. The mortgage is also in your dad's
10 name?

11 A. Yes.

12 Q. Not in your wife's name or not in your name?

13 A. No.

14 Q. Do you remember what the mortgage payment was?

15 A. It was around a thousand dollars, give or take.

16 Q. And during that time your dad is paying the taxes?

17 A. The first couple of years, yes, and the house insurance.

18 Q. And then what causes you to sort of switch that
19 arrangement?

20 A. I stopped working for Henry Ford, my wife wasn't working
21 for Arial and we said we have a problem, so he's like
22 let's see how it goes, you'll find a job. So we went
23 through quite awhile of difficulty. It gets into a
24 little bit of family drama, but my wife and father
25 didn't get along for a while for various reasons. Do

1 you need the reasons?

2 Q. If they're pertinent.

3 A. Basically she didn't spend enough time with my parents,
4 didn't call them enough. My father is an easily angered
5 type of man. I don't remember what year it was, but
6 basically he told my wife the house belongs to me, the
7 car you're driving belongs to me, it was a Toyota
8 something, not either of the cars we drive now, but I
9 bought all this stuff, done all this stuff for you. So
10 they had a big argument. The final product was take
11 your lipstick and get out of my house. So we were
12 planning on moving out even though we didn't know where
13 we were going to go, so we were thinking of moving in
14 with my sister-in-law but my mother told my father if
15 they do that we're pretty much never going to see them
16 again and I want to see my granddaughter.

17 So at that point it triggered another
18 series of events that brought my father on the paying
19 for the house and saying you can stay there as long as
20 you want but the house belongs to me, just take care of
21 the lawn and taxes and house insurance and etcetera, and
22 that's how we got to that arrangement.

23 Q. So for the next ten years, nine to ten years then, you
24 paid the taxes on the house and the insurance?

25 A. And other upkeep/maintenance.

1 Q. Was there any major projects you did as far as putting
2 on a new roof?

3 A. Yes, the roof was replaced. I don't remember what year
4 that was, ten years ago, give or take. The carpet was
5 taken out and replaced. The basement was carpeted, too.

6 Q. That was replaced as well? Replaced or newly carpeted?

7 A. There was nothing there before so I guess newly
8 carpeted.

9 Q. But the other carpets in the house were then replaced?

10 A. Yeah. Hot water heater was replaced. A back porch --
11 my son-in-law went ahead and built a back porch for us.
12 We just paid him for the material and he essentially did
13 it for free. Other than that it was like little things,
14 planting flowers, cutting the lawn.

15 Q. And the insurance and taxes as well?

16 A. Yeah.

17 Q. So that was the situation then for the next ten years
18 through to the end of 2017?

19 A. Yes, December.

20 Q. And so when you and your wife went back to work or were
21 making income then, your dad didn't say you got money
22 now, let's pay the mortgage?

23 A. No. We didn't talk to him about -- my relationship with
24 my father is complicated. I told him very clearly I'm
25 not working in 2017 and every single, well, every couple

1 days he would call, because he calls me every couple
2 days, he would say do you have a job yet? It got
3 ridiculous and he would be insulting about it that I'm a
4 house husband. I didn't tell him about my daughter and
5 what was going on at that time. I told him, because I
6 was tired of all the abuse I was taking from him, I told
7 him that I was working for Blue Cross, which was not
8 true, but that stopped the conversation of what are you
9 doing, when are you going to get a real job, when are
10 you going to start being a man, so he stopped that. He
11 still continues to believe that I work for Blue Cross,
12 even though I do not, because it's easier for me to live
13 and have some sort of relationship with him than to deal
14 with what it would otherwise be. What was the question
15 again?

16 Q. When was it that you told him you worked for Blue Cross?

17 A. It was early 2017. I don't recall the exact date.

18 Q. But you had worked other jobs in between during that
19 nine to ten years. Right?

20 A. I actually did work at Blue Cross in Philadelphia and I
21 worked for the VA, I worked for a guy named Avner out in
22 New York doing medical billing work for him. I had done
23 other things in the meantime.

24 Q. My question is, during that nine to ten years when you
25 would get a job and make some income, I'm not sure

1 exactly what was happening with your wife, but he never
2 said you need to pay this mortgage again or you guys
3 just kept the agreement?

4 A. We kind of kept the agreement. I never brought it up
5 again.

6 Q. You weren't going to upset the status quo?

7 A. I wasn't going to rock the boat when I had a decent
8 arrangement that I could be happy with. If he did bring
9 it up and say I want to get paid, I would have resumed
10 payment, but I didn't bring it up. I think partially he
11 was concerned with my mother's wrath with him if it came
12 to take your lipstick and get out of my house type of
13 thing again. I think he wanted to ask but he didn't and
14 I think he was waiting for me to say something and I was
15 sort of in the same boat. I don't know how much this is
16 pertinent.

17 Q. It helps me understand the situation at the very least.
18 So at the end of that 13, 14 year period you guys decide
19 to move to a different home?

20 A. Yes.

21 Q. And sell the house?

22 A. Right. My father made it clear that the house was still
23 his. He's always made snide comments, to either me or
24 my daughter, that the house is his and she's his guest.
25 I guess he thought it was teasing but I was not happy

1 with it.

2 Q. Sometimes parents can be that way.

3 A. Yes. My wife, she holds a grudge against take your
4 lipstick and get out of the house. That was the impetus
5 for we're financially stabilized more than we've ever
6 been, let's get out of here.

7 Q. When that house is sold do you know what the mortgage
8 was?

9 A. There was no -- you mean to the new person?

10 Q. No, no, the original mortgage that was taken out when
11 you guys first moved in.

12 A. The purchase price. It was 230,000 the price, somewhere
13 around there.

14 Q. So the Hickory Pointe house was sold for about \$233,000?

15 A. Something like that, yeah.

16 Q. And there was no mortgage on it when it was sold?

17 A. No. My father paid it off years before.

18 Q. How long ago?

19 A. He paid it off like four years into us living there,
20 five years. That was the time the get your lipstick and
21 get out of my house conversation happened.

22 Q. It wasn't that he continued to make the payments
23 according to the term, it's he had the cash and paid it
24 off?

25 A. Yeah. He's not into paying interest. He thinks that's

1 highway robbery and he's got the cash to do it.

2 Q. So he paid it off sometime during that nine to ten year

3 period?

4 A. Yes.

5 Q. So the end of 2017 you're financially stable, you want

6 to move. What becomes of that, you said, that \$230,000?

7 A. Yeah, I think the selling price was \$205,000. That's

8 what ended up being after closing costs and this and

9 that was taken out. I think about \$205,000 was the

10 final check that was cut to my father.

11 Q. The net proceeds?

12 A. Yes.

13 Q. And he kept those net proceeds?

14 A. Yeah.

15 Q. He didn't share any with you or your wife?

16 A. No. He deposited it to his bank account and I never

17 heard about it again.

18 Q. Did you feel entitled to any of that?

19 A. I didn't do anything to earn it. No, he paid off the

20 house. I don't see how I would have any equity stake in

21 that, no.

22 Q. Well, you did pay the mortgage for four years or so.

23 A. Well, when you rent an apartment you don't get money

24 back from the apartment complex. That's the way I

25 thought of it, that I was a renter.

- 1 Q. You did pay the mortgage for three to four years?
- 2 A. Yeah, but I don't think that was -- I never thought -- I
- 3 never thought of it as mine.
- 4 Q. For the nine or ten years you did pay the insurance and
- 5 taxes?
- 6 A. Correct.
- 7 Q. And did those repairs you mentioned?
- 8 A. Yes.
- 9 Q. As well as generally maintaining the house?
- 10 A. Yeah.
- 11 Q. You said you're more financially stable than you've ever
- 12 been so you decide to get a new house.
- 13 A. Well, I should clarify. I didn't decide, my wife
- 14 insisted we get a new house because she didn't want to
- 15 keep living in a place she was told to get out of.
- 16 Q. That's the Kingston Drive property you moved to?
- 17 A. Correct.
- 18 Q. And the purchase price of that particular property was
- 19 something like \$300,000?
- 20 A. Like 330.
- 21 Q. Who is Robert Hugh McCurren?
- 22 A. He's the guy that bought the house on Hickory Pointe
- 23 Boulevard.
- 24 Q. Do you know him outside of him buying the house?
- 25 A. No. I didn't meet him at closing. I met him the week

1 before closing when he was doing the final walk-through.

2 That's the first and last time I ever met him.

3 Q. How do you say your father's name?

4 A. Rama-chandra.

5 Q. In the closing documents he's listed as, he or you, I'm
6 not sure, is listed as Ramachandra Jay Reddy. Is Jay
7 his middle name?

8 A. No. Can I see that?

9 Q. Sure. We'll mark it as an exhibit.

10 (Deposition Exhibit J was
11 marked for Identification.)

12 BY MR. MILLER:

13 Q. This is the closing package of the Hickory Pointe
14 property marked as Exhibit J. Let me make sure you're
15 on the right page. See the tab that says Hickory
16 property? That's the first page there. If you flip to
17 the fourth page, Wall Mount Addendum. There it is.

18 A. I don't see the Jay.

19 Q. See under seller?

20 A. Yeah, Ramachandra Jay Reddy. Oh, the real estate agent
21 put it in that way. That is all her.

22 Q. Whose signature appears there?

23 A. I had power of attorney so I signed it.

24 Q. That is your signature?

25 A. Right, and my initials next to it.

- 1 Q. Then your wife's signature below that?
- 2 A. Correct, because that's what they asked us to do. I did
- 3 not prepare this paperwork, Real Estate One did.
- 4 Q. Have you seen it before?
- 5 A. I've seen it before but I'm not the author of it.
- 6 Q. The page right before that, where it says Ramachandra V.
- 7 Reddy, that's your signature as well?
- 8 A. Yes, power of attorney, POA.
- 9 Q. Is your father's middle initial V?
- 10 A. Yes.
- 11 Q. That may have been where they confusion lied.
- 12 A. V stands for Vanam, V-a-n-a-m. That's the family name.
- 13 Q. So if you look at the form at the top it says 2017
- 14 Substitute Form 1099 S, 1099 for a sales tax form.
- 15 That's it. See the gross proceeds there? So this
- 16 account or escrow number there, is that your father's
- 17 account, is that the escrow account? Do you know whose
- 18 account that is?
- 19 A. It's not mine. It might be Real Estate One or the
- 20 closing company.
- 21 Q. Is that your signature there, though?
- 22 A. Yes. This is one of the papers that they gave us at
- 23 closing. I'm not sure I understand all the legal
- 24 significance of everything.
- 25 Q. So then the Kingston Drive property, that's the new one,

1 the sales price of that is \$327,000; is that right?

2 A. Yes. I thought it was 330. No, you're right. I think
3 they took off a little bit because there was some things
4 that needed to get fixed.

5 Q. That's in your wife's name?

6 A. Correct.

7 Q. And the purchase of that property, where did the money
8 come from?

9 A. From my uncle.

10 Q. And is that just cash he had on hand or did he himself
11 take out a loan to fund it?

12 A. I believe it's cash he had on hand, but I never asked
13 him where he got the funds from.

14 Q. Obviously if he has \$300,000 to throw around --

15 A. (Interposing) My uncle is pretty wealthy. His net worth
16 is a very large number, one I'll never see in my
17 lifetime.

18 Q. I understand why you want to go work for him then. All
19 these signatures are your wife's signature?

20 A. Yes.

21 Q. Do you know Joseph Fox and Jamie Fox outside of the
22 previous owners and sellers of the property?

23 A. No. Until the day we moved in, I never met them.

24 Q. So your wife executed a promissory note to pay Mohan
25 Thalmarla back for the 330 that was borrowed from him?

- 1 A. Correct, because she didn't want to get into another
2 situation like she did with my father. Although, my
3 uncle doesn't have the temper issues my father does.
- 4 Q. So that \$1,978.52, has that been paid starting in June
5 2018?
- 6 A. She mailed the check on June 1st but he's in Africa so
7 he hasn't deposited it, as far as we know.
- 8 Q. Is that check from the same Chase account?
- 9 A. Yes.
- 10 Q. And you plan on continuing to make those payments,
11 you're going to make another one in July?
- 12 A. Yes. I expect on July 1st it will go out.
- 13 Q. And that's his signature there on that fourth page?
- 14 A. Yeah.
- 15 (Deposition Exhibit K was
16 marked for Identification.)
- 17 BY MR. MILLER:
- 18 Q. Marked as Exhibit K is a promissory note as well as an
19 insurance contract on the Kingston property we've been
20 discussing. Have you seen this promissory note before?
- 21 A. Yes.
- 22 Q. The insurance on the property mentioned specific
23 coverage. There's an itemization on the insurance held
24 on that property. The coverage of the property for
25 personal property and other structures is \$37,100 for

1 other structures and \$259,700.00 for the personal
2 property?

3 A. Correct.

4 Q. Do you know what that covers?

5 A. Yeah. I think when I called GEICO to have them explain
6 to me what all this means, they basically said if a
7 typhoon completely wiped out your property what would it
8 cost to restore everything? The outside structures
9 include things like the deck, the driveway, the fencing
10 around parts of the property, tool shed, foundation for
11 a structure that's out there already, and possibly large
12 trees and bushes. When she added that together, it's
13 probably about this much. GEICO never came out and did
14 an estimate. The other 239 odd thousand was if a
15 typhoon wiped out the house and it had to be completely
16 bulldozed away, what would it cost to replace it. It
17 was estimated at about 239 odd thousand is what it would
18 cost to recover all that.

19 Q. What I'm referring to is not the real property coverage.
20 I understand the other structures. There's a personal
21 property portion of it for 259 in addition to the real
22 property and other structures.

23 A. I think you're mistaken. If we're paying for it, I
24 think we should reverse that. There's nothing in the
25 house that that's valuable.

- 1 Q. I may be mistaken.
- 2 A. If you add the two pieces together, it adds up pretty
3 close to the cost of the house we paid for and you throw
4 in the value of the real estate for location or
5 whatever. If there's a gold mine, I'd love to know
6 about it.
- 7 Q. Do you have any personal property insurance policies or
8 does your wife?
- 9 A. I thought whatever GEICO covered. We did file a claim
10 when we first moved in because one of the toilets on the
11 first floor we flushed and apparently it didn't work
12 right and it caused some significant damage on the first
13 floor, so they reimbursed like \$2,000 or something, but
14 there was no content damage. I can't think of what
15 would be worth \$259,000 in my house.
- 16 Q. Sometimes in the case where there's jewelry in the home
17 or any other expensive items they'll do a rider on it
18 and do personal property coverage as well. To your
19 knowledge, there's nothing covered under that GEICO
20 insurance policy?
- 21 A. Other than my wedding ring and my wife's wedding ring,
22 we don't have stuff like that.
- 23 Q. We're almost done, I promise.
- 24 A. Do you need to see my driver's license to confirm who I
25 say I am?

1 Q. I think your testimony here today confirms.

2 A. Do you mind if I use the rest room?

3 Q. Go ahead.

4 (A brief recess was held during
5 the deposition.)

6 BY MR. MILLER:

7 Q. The main reason you filed this case it seems is a
8 judgment against you?

9 A. Yes.

10 Q. From Mr. Holmes?

11 A. Yes.

12 Q. In relation to a business that you sold him and he
13 alleged was a fraudulent transaction?

14 A. Yes.

15 Q. Has he been making collection attempts against you?

16 A. In 2009 he won the judgment and I think in 2015 he tried
17 to secure the judgment. Other than that, nothing.

18 Q. What do you mean secure the judgment?

19 A. I think there's paperwork after you go through
20 arbitration that you have to tell the judge you won and
21 you want to do whatever it is so you can secure the
22 judgment so you can garnish bank accounts or garnish
23 wages. But he finally started legal proceedings to
24 secure the judgment, but whatever that procedure is he
25 did that in 2015. I did try to oppose it because there

1 was a Michigan Supreme Court case that said you got one
2 year to secure the judgment. Between my attorney and
3 his attorney wrangling over it I lost that motion, but I
4 never heard from him again after that point.

5 Q. So it went to arbitration?

6 A. Correct, in 2009.

7 Q. And the arbitrator decided --

8 A. (Interposing) It was a breach of contract.

9 Q. And you owed him \$200,000?

10 A. Right, but there was no fraud.

11 Q. So when you say secure the judgment, do you mean that to
12 transform the arbitration result into a judgment?

13 A. Yes. I'm not really sure of the legal wording that's
14 correct here, but I think that's what it is.

15 Q. Did you employ an attorney in this matter?

16 A. Yes. My attorney never showed up for the arbitration so
17 I ended up defending myself.

18 Q. Did you pay the attorney?

19 A. I paid him in advance, which was my problem, and all he
20 said was settle, settle, settle. I said I didn't do
21 anything wrong, I refuse to settle when I've not done
22 anything wrong. When the arbitration date came, he
23 pretty much called me the day before and said I'm not
24 going to be there but go ahead and do it anyway, you're
25 smart, and if you need me you can call me.

1 I went through and prepared it as best
2 I could. When I got there the arbitrator said it's fine
3 that you want to do this and it's your choice but you're
4 going up against a very experienced attorney so you're
5 at a disadvantage. So I called my attorney and he said
6 don't worry about it, you're fine, you got all the facts
7 on your side. I apparently chose the wrong attorney
8 because that was terrible legal advice.

9 Q. This attorney you're referring to, is that Michael
10 Maddaloni?

11 A. Yes.

12 Q. How much did you pay him?

13 A. I think it was \$3,500, but it was so long ago, plus
14 whatever it costs for depositions and whatever other
15 court costs.

16 Q. What work did he do on the case?

17 A. My opinion? Nothing. I think I did most of the work
18 myself because I would put together everything. I would
19 say here's what I want to file a motion for, here's what
20 our legal strategy should be and he said basically yeah,
21 that's good. He was present for my deposition. He was
22 not present when the other side wanted to do a
23 creditor's exam and he wasn't present at all for the
24 arbitration. I wrote the closing argument myself and I
25 e-mailed it to him and he forwarded it to the

1 arbitrator, I'm not sure he read it, and the arbitrator
2 sent back the decision. That's kind of where I'm at
3 now. I should have delayed but Mr. Maddaloni told me it
4 was okay.

5 The other attorney had me sign this
6 form before we started arbitration saying I agree I was
7 going to do it pro se hac. I had to sign a form saying
8 I wouldn't use this as a reason to dismiss the judgment
9 or the arbitrator's award. My attorney said go ahead
10 and sign it, and here we are.

11 Q. When this happens you're living at the Hickory Pointe
12 Drive house?

13 A. Yes.

14 Q. And were you still working at that time? Refresh my
15 memory. Still working in 2010?

16 A. No. I think I was not working until -- it was a couple
17 years later I think I went to Philadelphia. I guess I
18 was working on this quite a bit of my time.

19 Q. Did they ever garnish your wages or your bank account?

20 A. No. There never was an attempt to and I didn't hide
21 where I was banking. I didn't close any accounts. I'm
22 sorry. I did have account with Fifth Third at the time
23 but I closed that account because I was upset with their
24 customer service because they were charging me every
25 month a fee and my balance is so much more than what

1 you're telling me it has to be, but they kept charging
2 me like ten dollars a month and I eventually closed that
3 account but not because of any of this.

4 Q. Have you been contacted by Mr. Holmes or his attorney,
5 John Perrin, since then?

6 A. No. I did include it with the bankruptcy filing in the
7 sense I'm filing bankruptcy, so he knows.

8 Q. Are you aware of the criminal allegation against Mr.
9 Weinstein?

10 A. Yeah. You mean from Florida?

11 Q. Yes.

12 A. Yes. I found out after this litigation was complete. I
13 asked him about it and he said for the most part it was
14 blown over and he had all the civil rights restored. He
15 didn't get a pardon but -- basically everything he was
16 doing at the time is now legal in Florida but at the
17 time it was political. I looked into it and I confirmed
18 it all.

19 Q. And as of right now does he have any sort of
20 investigation against him?

21 A. Not criminally or anything else like that, no.

22 Q. Your wife hired attorneys who filed an appearance in
23 your bankruptcy case.

24 A. I'm aware.

25 Q. The attorneys are based out of New Jersey. I can't

1 recall the name at the moment.

2 A. Kasen, K-a-s-e-n.

3 Q. Have you spoken with them at all?

4 A. I've spoken with them.

5 Q. Are you a client of theirs?

6 A. No. He's made it clear I'm not a client of his and
7 nothing we talk about is confidential.

8 Q. Has he asked you questions in relation with your
9 bankruptcy case?

10 A. The reason my wife hired him at the time she hired him,
11 at the time, it's sort of in flux now, but we were
12 discussing getting a divorce at some point. We
13 previously decided if we do we're going to wait until my
14 daughter is finished with high school, she just finished
15 her freshman year, because of her safety concerns and
16 mental health issues. We don't want to add more stress
17 than what's already going on, but she wanted to be sure
18 she wouldn't be liable for my old business debts that
19 she had nothing to do with. So she hired an attorney to
20 represent her for that in that way.

21 Q. And what has been the nature of your conversations with
22 them?

23 A. I just told them I'm filing. I didn't tell them I was
24 going to come meet with you and do one of these meetings
25 to answer questions. I asked them is it okay that we

1 get, like, various things from my wife like her tax
2 returns. I asked her initially and she said go talk to
3 the attorney, so I called him up and he said that's
4 fine.

5 Q. The 2004 order is on the docket, they get electronic
6 notice of that, so they are aware you are appearing, or
7 they have notice you're appearing here today.

8 A. You said 2004? 2009.

9 Q. I'm sorry, 2004 is the bankruptcy rule under which
10 you're appearing for examination. It's a legal term of
11 art, Bankruptcy Rule 2004 Examination. That's what I
12 was referring to.

13 A. Got you.

14 Q. The attorneys that she employed, is there a reason she
15 went to New Jersey to employ bankruptcy attorneys as
16 opposed to finding a local attorney?

17 A. My understanding is she spoke with David because we're
18 all friends and he said he used a bankruptcy attorney
19 way back when and his name is David Kasen, here's his
20 number, and I think that's how she found him.

21 Q. Do you know if Mr. Weinstein is a client of theirs
22 currently?

23 A. He's not. He filed bankruptcy in 2000.

24 Q. Probably in Florida?

25 A. Yes.

1 Q. Other than the Chase Bank account statements that are in
2 your wife's name from March 1, 2016 to current, that
3 concludes my questioning. I may have questions about
4 those statements. So at this time I will hold the
5 examination open until I have time to receive those
6 documents and review them, if you can get them to me in
7 the next two weeks. I'm trying to think of my schedule,
8 but I think within two weeks of reviewing them I should
9 be -- that should conclude the examination as far as
10 today goes. There may be other questions I have for you
11 in general, but at this time that concludes the
12 examination.

13 (The Examination was concluded
14 at 3:55 p.m.)
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25

1 STATE OF MICHIGAN)

2 COUNTY OF OAKLAND)

3 I, Glenn G. Miller, Notary Public
4 within and for the County of Oakland, State of Michigan,
5 do hereby certify that the witness whose attached
6 examination was taken before me in the above-entitled
7 matter was by me duly sworn at the aforementioned time
8 and place; that the testimony given by said witness was
9 stenographically recorded in the presence of said
10 witness and afterwards transcribed by computer under my
11 personal supervision, and that the said deposition is a
12 full, true and correct transcript of the testimony given
13 by the witness.

14 I further certify that I am not connected
15 by blood or marriage with any of the parties or their
16 attorneys, and that I am not an employee of either of
17 them, nor financially interested in the action.

18 IN WITNESS WHEREOF, I have hereunto set
19 my hand at the City of Pontiac, County of Oakland, this
20 day of , 2018.

21
22 

23 Glenn G. Miller

24 Notary Public, Oakland County, MI

25 My Commission expires 8-27-18

Exhibit 6

FILED
1/17/2019 3:59 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018L010586

company, Plaintiff, Medappeal, LLC. Defendants' actions were part of an ongoing scam, from which they have taken an amount estimated to be in the millions of dollars from unsuspecting victims. (*see* Exhibit 5 to Plaintiff's Complaint)

Now, after entering into an ongoing agreement with an Illinois limited liability company, receiving \$75,000 from Plaintiff's Illinois-based bank, and being informed of Plaintiff's Illinois residency via written, telephonic, and electronic communication, Defendants argue that they cannot be brought into an Illinois court to answer for their fraudulent conduct. In addition, despite threatening to sue Plaintiff for "venue" and claiming to have "a history of suing attorneys," Defendants feign ignorance as to the difference between mandatory and permissive choice of venue clauses. Despite their claims, the law is clear that "to be mandatory, a clause must contain language that clearly designates a forum as the exclusive one." *Northern California Dist. Council of Laborers v. Pittsburg-Des Moines Steel Co.*, 69 F.3d 1034 (9th Cir. 1995).

RELEVANT BACKGROUND

Plaintiff is an Illinois limited liability company. (*See* Affidavit of Seth Johnson, attached hereto as Exhibit A). Plaintiff's parent company, Liberty, is also an Illinois limited liability company. (*Id.*). The owners of Plaintiff and Liberty are Seth Johnson ("Seth") and Eli Johnson ("Eli"), who are both residents of Illinois. (*Id.*). Seth and Eli's contact and communications with Defendants on behalf of Plaintiff and Liberty were at all times conducted from Illinois. (*Id.*). This includes incoming and outgoing telephone calls, the sending and receiving of emails, the electronic transfer of money, and the transmission and receipt of documents. (*Id.*). All online training from Reddy took place at Plaintiff's office in Illinois. (*Id.*). Furthermore, all of the 90 client accounts Defendants promised would have been serviced at Plaintiff's office in Illinois, had Defendants intended to fulfill their agreement rather than perpetrate fraud. (*Id.*).

Defendants were undeniably aware of Plaintiff's connection to Illinois. Seth and Eli both signed and returned Confidentiality Agreements listing their state of residence as Illinois. (*Id.*). Seth and Eli's place of residence was mentioned during all introductory calls made with Defendants. (*Id.*; see also Exhibit 4 to Plaintiff's Complaint). The wire transfer of \$75,000 to Defendants clearly shows it was initiated by Plaintiff from North Shore Community Bank & Trust, which is a bank located exclusively in Illinois. (*Id.*). Defendants' present attempt at ignorance as to the time and place of their fraudulent conduct is both absurd and dishonest.

LEGAL STANDARD

In ruling on a motion to dismiss, a court is required to accept all well-pled facts alleged in the complaint as true and to draw all reasonable inferences in the light most favorable to the plaintiff. *Wiggen v. Wiggen*, 2011 IL App (2d) 100982, ¶ 20 (2nd Dist. 2011) (*quoting Bolger v. Nautica International, Inc.*, 369 Ill.App.3d 947, 949 (2nd Dist. 2007)). Where, as here, lack of personal jurisdiction is raised on a motion to dismiss, a plaintiff need only make a "*prima facie* case for jurisdiction when seeking jurisdiction over a nonresident defendant." *Id.* "In reviewing affidavits and pleadings," courts must "resolve conflicts between the documents in the plaintiff's favor for purposes of determining whether a *prima facie* case for jurisdiction has been shown." *Id.*

Section 2-209 of the Illinois Code of Civil Procedure, the Illinois long-arm statute, sets forth the grounds for when Illinois courts can exercise personal jurisdiction over a non-resident defendant. Relevant here, "section 2-209(c) of the long-arm statute allows an Illinois court to exercise personal jurisdiction on any basis permitted by the Illinois Constitution and the Constitution of the United States." *Innovative Garage Door Co. v. High Ranking Domains, LLC*, 2012 IL App (2d) 120117, ¶ 12 (2nd Dist. 2012) (*citing* 735 ILCS 5/2-209(c)). "Accordingly, if the contacts between a defendant and Illinois are sufficient to satisfy both federal and state due

process concerns, the requirements of Illinois' long-arm statute have been met, and no other inquiry is necessary." *Cardenas Mktg. Network, Inc. v. Pabon*, 2012 IL App (1st) 111645, ¶ 29 (1st Dist. 2012).

LEGAL ARGUMENT

I. THIS COURT HAS PERSONAL JURISDICTION OVER DEFENDANTS

At issue in Defendants' Motion is whether Defendants had sufficient minimum contacts with Illinois to satisfy due process concerns. "In order for personal jurisdiction to comport with federal due process requirements, the defendant must have certain minimum contacts with the forum state such that maintaining the suit there does not offend traditional notions of fair play and substantial justice." *Innovative Garage Door*, 2012 IL App (2d) 120117 at ¶ 12. "The minimum contacts required for the exercise of personal jurisdiction differ depending on whether general jurisdiction or specific jurisdiction is being sought." *Id.* at ¶ 14 (*quoting Wiggen*, 2011 IL App (2d) 100983 at ¶ 24).

For a court to exercise general jurisdiction over a nonresident defendant, the defendant has to have "continuous and systematic general business contacts," such that it may be sued in the forum state for suits unrelated to its contacts within the forum. *Cardenas Mktg. Network, Inc.*, 2012 IL App (1st) at ¶ 30. "Specific jurisdiction exists when there is an affiliation 'between the forum and the underlying controversy,' i.e., some activity or occurrence 'that takes place in the forum State and is therefore subject to the State's regulation.'" *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). Moreover, "specific personal jurisdiction is appropriate when the defendant purposefully directs [its] activities at the forum state and the alleged injury arises out of those activities." *Mobile Anesthesiologists Chicago, LLC v. Anesthesia Associates of Houston Metroplex, P.A.*, 623 F.3d 440, 443 (7th Cir. 2010) (*citing Burger King*

Corp. v. Rudzewicz, 471 U.S. 462, 472 (1985)); *see also Jackson v. City of Harvey*, 2013 U.S. Dist. LEXIS 96501 (N.D. Ill. July 9, 2013).

A. DEFENDANTS' AFFIDAVITS ARE FALSE AND AT THIS STAGE ANY FACTUAL DIFFERENCES MUST BE RESOLVED IN PLAINTIFF'S FAVOR

Defendants submitted multiple affidavits to dispute or allege factual deficiencies in Plaintiff's Complaint. However, these affidavits are knowingly false and misleading, and should be rejected, except for the purpose of impeaching Defendants' credibility. Under penalties of perjury, Reddy and Brown falsely state that "Except for the Liberty transaction that is the subject of this case, I have never been involved in any capacity in any business transaction in which Mr. Weinstein or Medasset was involved and the client was based in Illinois." (Exhibits B and C to Defendants' Motion to Dismiss). For his part, Weinstein deceptively states, "Liberty is the only Illinois-based client that Medasset has ever done business with." (Exhibit A to Defendants' Motion to Dismiss).

Defendants are clearly attempting to deceive the Court, as these claims are demonstrably false. Brown, Reddy, and Weinstein were all involved in defrauding multiple other victims using the same or similar scheme they used to defraud Plaintiff. For instance, Michael Bradley ("Bradley"), a resident of Marion, Illinois, paid Defendants \$240,000 for 1,200 client accounts, but never received a fraction of what was promised. (*See* Affidavit of Michael Bradley, attached hereto as Exhibit B). Evidence of this scam is attached to Bradley's Affidavit, and includes a copy of the sales agreement signed by Defendant Reddy and Bradley, as well as a copy of the wire transfer from the Eldorado, Illinois-based bank to Defendants Weinstein and Brown, via their "brokerage firm" of Tannenbaum & Milask. (*Id.*).

In addition to Bradley, Defendants also defrauded Camille Batiste ("Batiste"), a resident of Decatur, Illinois. In 2016, Batiste paid Defendants \$75,000 for 300 medical answering service

accounts. (*See* Affidavit of Camille Batiste, attached hereto as Exhibit C). For this fraudulent transaction, Defendant Reddy held himself out as the seller of a “business opportunity,” with the money being wired to Defendants Weinstein and Brown via Tannenbaum & Milask. (*Id.*). As of this writing, Batiste, a mother of two, has received only 12 client accounts. (*Id.*).

Additionally, Defendants’ “marketing efforts” have extended into Illinois. Dr. Craig Ramsdell (“Ramsdell”) paid Defendants \$75,000 for 300 medical answering service clients. (*See* Affidavit of Dr. Craig Ramsdell, attached hereto as Exhibit D). Before Defendants broke off all communication with Ramsdell, they had delivered a grand total of approximately 3 of the 300 client accounts promised to Ramsdell. (*Id.*). One of these client accounts was with a medical office located in Park Ridge, Illinois. (*Id.*). Another client account was with a medical office located in Joliet, Illinois. (*Id.*) As with the other victims, Defendant Reddy held himself out as the seller of the “business,” with Defendants Brown and Weinstein acting as the brokers. (*Id.*). In light of this evidence, Defendants’ adamant denial that they have no “history of conducting business in Illinois,” is both audacious and an affront to the Court. As all factual disputes must be viewed in a light most favorable to the non-movant at this stage of the litigation, Defendants’ Motion lacks a factual basis on which to stand.

B. DEFENDANTS HAVE SUFFICIENT MINIMUM CONTACTS WITH ILLINOIS TO JUSTIFY PERSONAL JURISDICTION OVER THEM

Defendants’ Motion places great significance on the fact that Defendants were not physically present in Illinois during their transactions with Plaintiff, that the online advertisement for their “business opportunity” was not directed at any specific state, and that they are all physically located in different states (Nevada, New Jersey, and Michigan). (Defendants’ Motion, p. 11). Defendants also emphasize that they have had no prior business dealings with anyone in Illinois, which as demonstrated above, is untrue.

In their focus on only their physical presence in Illinois, Defendants ignore the fact that the US Supreme Court long ago “rejected the notion that personal jurisdiction might turn on ‘mechanical’ tests, or on ‘conceptualistic...theories of the place of contracting or of performance.’” *Burger King Corp.*, 471 U.S. at 478-79. Rather, “specific personal jurisdiction exists where a defendant has ‘purposefully directed’ his or her activities at the forum state and the claimed injuries arise out of those activities.” *Innovative Garage Door Co.*, 2012 IL App (2d) 120117 at ¶23.

Defendants advertised their “business opportunity” online to residents of any state. However, before proceeding, Defendants required any interested buyers to fill out a Confidentiality Agreement (“CA”) listing their state of residence. (Exhibit A). Only after the CA was completed and returned would Defendants choose to send interested buyers their “Executive Summary,” and invite further communication and negotiations through private email and telephone calls. (*Id.*). Thus, Defendants’ online advertisement was only the beginning of their contacts involving the State of Illinois and its residents. After Defendants made initial contact with Plaintiff and were advised of its and its owners’ Illinois residency, Defendants further solicited Plaintiff to execute a contract with terms Defendants would never fulfill.

By entering into negotiations with and ultimately executing a contract with Plaintiff, an Illinois resident, Defendants were “indicating a willingness to do business with the state’s residents,” and were “purposefully availing themselves of the protection of the state’s laws.” *Illinois v. Hemi Group LLC*, 622 F.3d 754, 758 (7th Cir. 2010). There is nothing “random, fortuitous, or attenuated” (*Wiggen*, 2011 IL App (2d) 100982 at ¶ 24.) about Defendants’ contact with Plaintiff, as it reflects a deliberate decision to do business with an Illinois resident and incur substantial obligations in the State.

The long-term nature contemplated by the Purchase and Sale Agreement between Plaintiff, an Illinois business, and Defendants also demonstrates the significant contacts between Defendants and Illinois. At the core of the relationship is Defendants' promise to provide 90 client accounts to Plaintiff. (See Exhibit 4 to Plaintiff's Complaint). The accounts were to be provided on a rolling basis, *i.e.*, Defendants would recruit and enter into contracts with medical providers, and subsequently transfer the contracts to Plaintiff for ongoing service. At the time of writing this Memorandum, Defendants have provided approximately 3 accounts since May 2018. (Exhibit A). At this rate, Defendants' relationship with Plaintiff could last for 20 years before all 90 promised accounts are delivered.

The Supreme Court has held that where a defendant "has created 'continuing obligations' between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by 'the benefits and protections' of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well." *Burger King Corp.*, 471 U.S. at 478-79. Defendants counter that whether the making of a contract with an Illinois resident provides grounds for jurisdiction depends on (1) who initiated the transaction, (2) where the contract was negotiated, (3) where the contract was formed, and (4) where performance of the contract was to take place, and argue that these factors weigh against Plaintiff.

However, the Court in *Innovative Garage Door, Co.* addressed the same argument, and noted that the first three factors "seem inconsistent with the Supreme Court's admonishment that it had 'long ago rejected the notion that personal jurisdiction might turn on 'mechanical tests' or on 'conceptualistic...theories of the place of contracting or of performance.'" *Innovative Garage Door*, 2012 IL App (2d) 120117 at ¶ 28 (citing *Burger King*, 471 U.S. at 478-79). The *Innovative*

Garage Door. Co. Court reconciled this conflict between Illinois and Supreme Court precedent by explaining that the first three factors listed by Defendants are not applicable “to a due process analysis.” 2012 IL App (2d) 120117 at ¶ 28. While the factors may apply to subsections 2-209(a)(1) and 2-209(a)(7) of the Illinois long-arm statute (735 ILCS 5/2-209 (a)(1), (a)(7)), they do not apply to “subsection 2-209(c), which allows an Illinois court to exercise jurisdiction on any basis permitted by the federal constitution.” *Id.* “Thus, so long as federal due process requirements are met, there is no need to consider whether the application of the factors upon which...[Defendants] rely would allow an assertion of jurisdiction under an additional portion of the long-arm statute.” *Id.*

The fourth factor cited by Defendants, “where performance of the contract was to take place,” is consistent with federal due process principles. *Id.* at ¶ 29. Nevertheless, the Supreme Court has held that “so long as a commercial actor’s efforts are ‘purposefully directed’ toward residents of another state, [it has] consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction.” *Burger King*, 471 U.S. at 476.

Whether a defendant has purposefully directed activities at a forum “depends in large part on the type of claim at issue.” *Felland v. Clifton*, 682 F.3d 665, 674 (7th Cir. 2012). With torts, courts apply the “express aiming test” and look to whether the defendant engaged in “(1) intentional conduct (or ‘intentional and allegedly tortious’ conduct); (2) expressly aimed at the forum state; (3) with the defendant’s knowledge that the effects would be felt—that is, the plaintiff would be injured—in the forum state.” *Tamburo*, 601 F.3d 693, 703 (7th Cir. 2010) (citing *Calder v. Jones*, 465 U.S. 783, 789-90, (1984)).

In this case, Defendants’ intentionally sold Plaintiff a fraudulent “business opportunity” by way of deceit. Defendants expressly aimed their conduct at Illinois from the moment they received

Plaintiff's signed Confidentiality Agreements listing Plaintiff's Illinois residency, which Defendants required to be signed prior to any further discussion of the "business opportunity." Defendants also knew that the results of their scam would be felt in Illinois, as Plaintiff is an Illinois resident. Given Defendants' specific targeting of Plaintiff, an Illinois limited liability company, and the long-term obligations their fraudulent Purchase Agreement created in Illinois, it is wholly disingenuous for Defendants to suggest that they cannot properly be held accountable for their actions in a suit brought in an Illinois court.

II. VENUE IS PROPER IN COOK COUNTY, ILLINOIS

In a further attempt to avoid accountability for their scam, Defendants' contend that this case must be dismissed under 735 ILCS 5/2-615 based on forum selection clauses contained in the Purchase Agreement and in the non-operative Promissory Note ("Note") attached to it. In doing so, the Defendants: (1) attempt to rely on the terms of the Promissory Note - a separate, void, and inoperable agreement, which is outside the scope of Plaintiff's Complaint; (2) fail to admit that the Purchase Agreement contains a forum selection clause in a section entitled "Venue" that is indisputably *permissive and not mandatory*; and (3) seek to benefit from a provision drafted for the purpose of carrying out an ongoing multi-state scheme.

A. **DEFENDANTS IMPROPERLY INCORPORATE THE PROMISSORY NOTE INTO THEIR ARGUMENT AGAINST ILLINOIS VENUE**

Plaintiff's Complaint is based on the Purchase Agreement and Defendants' conduct relating thereto. Plaintiff is *not* bringing suit based on the Promissory Note. By incorporating the language of the Promissory Note into their Motion, Defendants are disingenuously trying to control Plaintiff's causes of action.

In *Dearborn Maple Venture, LLC v. SCI Illinois Servs., Inc.*, the court was faced with reviewing a three-part agreement and held that "such instruments must be construed as separate

agreements when there is evidence that the parties intended for the documents to be read separately.” 2012 IL App (1st) 103513, ¶ 31 (1st Dist. 2012) (citing *International Supply Co. v. Campbell*, 391 Ill.App.3d 439, 448 (3rd Dist. 2009)). The court further stated that although all three agreements “were executed by the parties in connection with the same business deal, each agreement set forth the specific terms by which its separate and unique purpose would be fulfilled.” *Id.* at ¶ 32. The court noted that the codependency of multiple agreements on one another, “is not evidence that they should be construed as a single agreement.” *Id.*

In the current case, the Purchase Agreement and the Promissory Note are two separate and distinct documents. Each was independently signed and contains differing terms and conditions as it pertains to venue. Notably, Defendants drafted both of these agreements. Should Defendants have desired them to have the same terms and conditions, then they should have simply written them with the same terms and conditions. Equally significant is the fact that the Promissory Note is void and inoperable. Per the Purchase Agreement, the Note does not even mature unless the terms of the Purchase Agreement are met by Defendants, which were not. Furthermore, the Promissory Note is independently transferable, further demonstrating the fact that the Purchase Agreement and the Promissory Note are independent of one another.

B. THE FORUM SELECTION CLAUSE IS PERMISSIVE AND NOT MANDATORY

As Defendants note, forum selection clauses may be mandatory or permissive. (Defendants’ Motion to Dismiss, p. 15). Permissive venue clauses allow a case to be brought in a specific jurisdiction, but do not limit the case only to that jurisdiction. *Kachal, Inc. v. Menzie*, 738 F.Supp. 371, 373 (D. Nev. 1990). In this case, the language used in the Purchase Agreement is indisputably permissive. The Purchase Agreement merely ambiguously states: “**Venue:** The venue is the State of Nevada and the County of Clark.” (Exhibit 3 to Plaintiff’s Complaint). Courts

in both Illinois and Nevada have found nearly identical language to be permissive and non-exclusive to a specific venue.

“A forum selection clause providing a particular court or state has jurisdiction, but says nothing about it being exclusive jurisdiction, is permissive rather than mandatory.” *Hunt Wesson Foods Inc. v. Supreme Oil Co.*, 817 F.2d 75, 77 (9th Cir. 1987). Nevada courts have consistently held that mandatory forum selection clauses must contain exclusive language that designates a court as the *only* one with jurisdiction. *Kachal*, 738 F.Supp. at 378. For example, in *Wiggins v. Seeley*, the forum selection clause at issue stated: “Jurisdiction is Douglas County, Nevada.” 2017 WL 969186, at *2 (D. Nev. Mar. 13, 2017). The court held this clause to be permissive and not mandatory. *Id.* at *9.

The same holds true under Illinois law, as “[a] forum selection clause is mandatory where its ‘language is obligatory’ and ‘clearly manifests an intent to make venue compulsory and exclusive.’” *Profl LED Lighting, Ltd. v. Aadyan Tech., LLC*, 2014 WL 6613012, at *6 (N.D. Ill. Nov. 21, 2014) (quoting *Paper Express, Ltd. v. Pfankuch Maschinen GmbH*, 972 F.2d 753, 756 (7th Cir. 1992)). In *Davis Buick GMC, Inc. v. Riddle, Inc.*, the court held that “clauses that do not contain mandatory language are only permissive and not enforceable.” 2017 WL 2290826, at *2 (C.D. Ill. May 25, 2017) (citing *Duggan O'Rourke, Inc. v. Intelligent Office Sys., LLC*, 2012 WL 4057215, at *2 (S.D. Ind. Sept. 14, 2012)). The court further held that if an “agreement's forum selection clause does not contain language indicating an intent to rule out other jurisdictions or venues, the Court will not construe it as mandatory.” *Id.* The forum selection clause in this case contains no such language ruling out Cook County, Illinois, or any other venue.

In fact, it is not at all clear as to what the supposed forum selection clause is even supposed to apply. The clause states nothing more than “The venue is the State of Nevada and the County

of Clark.” (Exhibit 3 to Plaintiff’s Complaint). But venue for what? Defendants claim that it applies to lawsuits, but that is not at all clear based on a plain reading of the language. At best, the forum selection clause at issue is ambiguous. As is well established under Illinois law, “ambiguity in the terms of a contract must be resolved against the drafter of the disputed provision.” *Virendra S. Bisla, M.D., Ltd. v. Parvaiz*, 379 Ill.App.3d 567, 573–74 (1st Dist. 2008) (citing *Duldulao v. Saint Mary of Nazareth Hospital Center*, 115 Ill.2d 482, 493 (1987)). Courts applying Illinois law have held that this general rule of contract interpretation specifically applies to a forum selection clause, and that any ambiguity must be construed against the drafter. See *DNB Fitness, LLC v. Anytime Fitness, LLC*, 2012 WL 1952662, at *4 (N.D. Ill. May 30, 2012). The same result would be mandated under Nevada law. See *Hunt Wesson Foods, Inc. v. Supreme Oil Co.*, 817 F.2d 75, 78 (9th Cir. 1987). The clause must be construed against Defendants and permit this lawsuit to proceed in Cook County, Illinois.

In this case, Defendants drafted an ambiguous venue clause that falls far short of containing the necessary language required by Illinois and Nevada courts to make it exclusive. Considering Defendants’ litigious past and ongoing threats involving venue, Defendants should not receive the benefit of their poorly drafted and ambiguous contract.

C. ENFORCEMENT OF DEFENDANTS’ POORLY DRAFTED, PERMISSIVE VENUE CLAUSE WOULD CONTRAVENE PUBLIC POLICY AND NOTIONS OF JUSTICE

Defendants have a history of relying upon their poorly drafted venue provision as a way to intimidate victims from seeking justice. Public policy dictates that Defendants should not be allowed to hide behind poorly drafted contract provisions when they are used specifically for the purpose of carrying out an ongoing, multi-state fraudulent scheme. Both Plaintiff and other victims have received threatening communications from Defendants regarding venue provisions, in an effort to thwart litigation. For example, Defendant Reddy tells one of his victims in an email

that “any attempt to file a suit in any other jurisdiction will result in me asking for sanctions against you and your lawyer for filing a frivolous suit in the wrong venue.” (See Email Correspondence, attached hereto as Exhibit E). Additionally, Defendant Weinstein, in one of his incoherent and aggressive emails, attempts to intimidate Plaintiff from seeking justice in Cook County, Illinois. (Attachment to Exhibit A). It would be contrary to notions of fair play and justice to force victims to seek relief in distant jurisdictions where Defendants choose to open their various shell companies.

CONCLUSION

For the foregoing reasons, this Court should deny Defendants’ Motion to Dismiss, and require them to answer the Complaint.

Respectfully submitted:

By: /s/ Eli Johnson
One of the Attorneys for Medappeal, LLC

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Exhibit 7

EXHIBIT A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT – LAW DIVISION

FILED
1/17/2019 3:59 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018L010586

MEDAPPEAL, LLC,
an Illinois Limited Liability Company,

Plaintiff,

v.

DAVID WEINSTEIN,
VIJAY REDDY,
KEVIN BROWN,
VISIONARY BUSINESS BROKERS LLC
& MEDASSET CORPORATION,

Defendants.

No. 18-L-010586

Judge Brigid Mary McGrath

SWORN AFFIDAVIT OF SETH JOHNSON

1. I am over the age of 18 years, have knowledge of the matters stated herein and, if called as a witness, could competently testify thereto.

2. I am a resident of Chicago, Illinois and part-owner of Medappeal, LLC and its parent company, Liberty Consulting & Management Services, LLC, which are both Illinois limited liability companies.

3. I responded to an advertisement for a Medical Appeals and Credentialing business posted on the website BizQuest.com on or about April 2018.

4. After submitting an initial inquiry about the business through the website, I received an e-mail from Kevin Brown, who sent me a Confidentiality Agreement/Non-Disclosure Agreement. True and correct copies of communications with Mr. Brown are attached hereto.

5. The Confidentiality Agreement required me to list my address, to include city, state, and zip code. I was required to fill out and return the Confidentiality Agreement before Defendants would arrange phone calls and send me the selling memo.

6. My business partner, Eli Johnson, was also required to fill out a Confidentiality Agreement before Defendants would choose to disclose any information about the business to him. Eli Johnson listed his place of residence as Illinois. Mr. Brown attached a copy of this agreement to his affidavit.

7. After Defendants received the signed agreements listing Illinois as the place of residence, they arranged phone calls and sent me information about the business.

8. All of my negotiations and communications with Defendants were conducted from my office in Wilmette, Illinois.

9. During my introductory phone calls with each Defendant, I mentioned my place of residence. It was important that this was disclosed given the different time zones for the Defendants.

10. I wired Defendants \$75,000 from a bank account at North Shore Community Bank & Trust, located in Wilmette, Illinois.

11. After receiving the money, Defendants arranged for training sessions. All training was completed at our office in Illinois, via internet and phone communication with Mr. Reddy. I informed Mr. Reddy that myself and my employees are in the Chicago area. A true copy of this communication is attached hereto.

12. All client accounts received from Defendants were to be serviced from our office in Illinois, and indeed the few accounts we did receive were serviced from our Illinois office.

13. Defendants promised to deliver 90 client contracts. They never delivered a fraction of that amount. Each time I contacted Defendants about why they were not sending the promised client accounts, they came up with excuses or failed to respond.

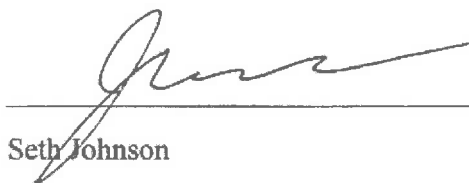
14. After serving Defendants with the Complaint, I received multiple threatening and often incoherent emails from Mr. Weinstein. A true and correct copy of these emails are attached hereto.

15. One email was entitled "Let's dance" which I took as an attempt by Mr. Weinstein as intimidation. Another email was entitled "E/O" where Mr. Weinstein talks about his history of suing attorneys.

16. In addition to Mr. Weinstein's emails, I have also included true and correct copies of communications with Defendants.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this Affidavit and supporting documentation are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Executed on January 17, 2019


Seth Johnson



S.D. Johnson <sdjohnsonlaw@gmail.com>

Let's dance

2 messages

David Weinstein <davidsunbelt@gmail.com>
To: sdjohnsonlaw@gmail.com

Thu, Nov 8, 2018 at 10:22 AM

My Friend
You never identified yourself as an attorney
Talk about fraud lol
My turn for my suit
Ethics
Venue?
Rico
Better check the statues in your state
I did.

S.D. Johnson <sdjohnsonlaw@gmail.com>
To: eli@jjalawllc.com

Thu, Nov 8, 2018 at 11:08 AM

[Quoted text hidden]

FILED DATE: 1/17/2019 3:59 PM 2018L010586



S.D. Johnson <sdjohnsonlaw@gmail.com>

E/O

2 messages

David Weinstein <davidsunbelt@gmail.com>
To: sdjohnsonlaw@gmail.com

Thu, Nov 8, 2018 at 10:28 AM

Kindly notify me which E/O carriers you have. Or shall I call Mr Slim esquire who I have a history of suing attorneys

S.D. Johnson <sdjohnsonlaw@gmail.com>
To: eli@jjalawllc.com

Thu, Nov 8, 2018 at 11:08 AM

[Quoted text hidden]

FILED DATE: 1/17/2019 3:59 PM 2018L010586



S.D. Johnson <sdjohnsonlaw@gmail.com>

Not intimate

David Weinstein <davidsunbelt@gmail.com>
To: sdjohnsonlaw@gmail.com

Tue, Nov 13, 2018 at 8:23 PM

FILED DATE: 1/17/2019 3:59 PM 2018L010586



S.D. Johnson <sdjohnsonlaw@gmail.com>

Follow up

David Weinstein <davidsunbelt@gmail.com>
To: Seth Johnson <sdjohnsonlaw@gmail.com>

Tue, Nov 13, 2018 at 8:27 PM

I have counsel. Counter suit in progress

[Quoted text hidden]

FILED DATE: 1/17/2019 3:59 PM 2018L010586

FILED DATE: 1/17/2019 3:59 PM 2018L010586

Business Inquiry Confirmation - Medical Credentialing / Medical Appeals

service@bizquest.com

Thu 4/19/2018, 9:41 PM

To: n_j178@hotmail.com <n_j178@hotmail.com>



BUSINESSES FOR SALE | SELL A BUSINESS | FIND A FRANCHISE

Your interest request has been sent

Your message has been sent to the seller of:

Medical Credentialing / Medical Appeals

Today's date: Thursday, April 19, 2018

For your convenience, we have also added this listing to the **My Inquiries, Businesses for Sale** section of your BizQuest account. To access your account, go to [My Account](#).

My Account

Thank you for using BizQuest.

Sincerely,

The BizQuest Staff

This email is being automatically sent to you in response to your use of the BizQuest website. Please do not respond directly to this email. If you wish to contact BizQuest for any reason, please use our [online contact form](#).

This email is being sent to n_j178@hotmail.com because you signed up to receive notification about new business listings matching your search criteria. If your buying requirements have changed, [click here to update your preferences](#). To unsubscribe from this email, [click here](#). Thank you for choosing BizQuest.

©1994-present BizQuest.com

NDA for the medical business you are inquiring about

Kevin Brown <kevin@visionarybusinessbroker.com>

Thu 4/19/2018, 10:19 PM

To: n_j178@hotmail.com <n_j178@hotmail.com>

 1 attachments (120 KB)

Visionary BB NDA 2018.pdf;

Hi Seth,

Thank you for your interest in the medical business for sale.

Kindly complete the attached NDA and email it back to me. Alternatively, you may fax it to 856-210-7470.

After I receive it back from you, I'd like to do a quick call and then send you the selling memo.

Best,
Kevin Brown

--

Kevin Brown
Business Broker
856-533-8173
kevin@visionarybusinessbroker.com

"Take care of your body. *It's the only place you have to live.*" - Jim Rohn

FILED DATE: 1/17/2019 3:59 PM 2018L010586

Re: NDA for the medical business you are inquiring about

N J

Thu 4/19/2018, 11:35 PM

To: Kevin Brown <kevin@visionarybusinessbroker.com>

1 attachments (474 KB)

CCF04192018.pdf;

Hello Kevin,

Attached is the signed NDA. Just to make sure, since the broker name was not listed on the ad, this is for the Medical Credentialing / Medical Appeals company?

regards,

Seth

From: Kevin Brown <kevin@visionarybusinessbroker.com>

Sent: Thursday, April 19, 2018 10:19 PM

To: n_j178@hotmail.com

Subject: NDA for the medical business you are inquiring about

Hi Seth,

Thank you for your interest in the medical business for sale.

Kindly complete the attached NDA and email it back to me. Alternatively, you may fax it to 856-210-7470.

After I receive it back from you, I'd like to do a quick call and then send you the selling memo.

Best,
Kevin Brown

--

Kevin Brown
Business Broker
856-533-8173

Business Brokers
VISIONARY

1401-L Route 130 S. Suite 343
Cinnaminson, NJ 08077

Confidentiality Agreement

THIS AGREEMENT is made and entered into this 19 day of April, 2018 by and between Visionary Business Brokers LLC.® ("Company"), and Seth Johnson ("Buyer"); collectively, the "Parties"

Buyer understands that the Company represents certain businesses (hereinafter "Clients") who wish to sell their business (es) and the Company has an agreement with such Clients to be paid a fee based on any transaction with the Buyer. The Buyer agrees not to attempt to circumvent this agreement in any way. Company and Buyer desire to explore the possibility of the acquisition of Clients of the Company and, in the course of the Parties' discussions and due diligence investigations, Company will disclose confidential and proprietary information, both of a financial and business nature regarding its Clients. The confidential and proprietary information disclosed relates generally to the identity of businesses that are for sale, marketing, sales, billing, pricing, accounting, and other operations of the Clients, as well as other proprietary information including trade secrets of the Clients, all of which is designated "Subject Matter".

In consideration of the mutual promises, terms and conditions, intending to be legally bound hereby, the Parties agree as follows:

1. "Confidential Information" means information given by the Company which relates to the above-identified Subject Matter, including without limitation, financial information, business concepts and business plans (whether or not they include intellectual property rights), confidential ideas, trade secrets, software, processes, data, marketing and sales information, customer names, customer contacts, accounting and pricing information, or other business and/or related technical information, or which, although not related to such Subject Matter, is nevertheless disclosed. Confidential Information may be disclosed either orally, visually or in tangible form (whether by document, electronic media, or other form). Even though Company or Clients may not mark, label or identify any of the above-described information as proprietary or confidential for purposes of this Agreement, it shall not affect its status as part of the Confidential Information protected by this Agreement.
2. Buyer shall hold and maintain the Confidential Information in strict confidence and shall use such Confidential Information only for the purpose of assisting it in the assessment, determination, investigation and or negotiation of terms mutually agreeable for the acquisition of the Company's Clients. Buyer shall not reproduce such Confidential Information, or disclose any of such Confidential Information to any third party, or other person or business entity of any kind without prior written approval of the Company. Buyer shall not approach, write to, discuss or have contact with the Client's customers, vendors, employees or other agents. Buyer agrees that it shall not use the Confidential Information in any manner in any way inconsistent with the use and purpose described in this Agreement.

3. All Confidential Information disclosed under this Agreement shall remain the exclusive property of the Company. All such information in tangible form shall be returned to the Company the sooner of ten (10) days of request, upon termination of this Agreement for any reason, or as soon as Buyer no longer has an interest in the Clients.
4. Buyer acknowledges and agrees that the Confidential Information is unique and valuable and that disclosure or use of Confidential Information in breach of this Agreement will result in irreparable injury for which monetary damages alone would not be an adequate remedy. Therefore, Buyer agrees that in the event of a breach or threatened breach of confidentiality, Company shall be entitled to specific performance, injunctive or other equitable relief, including, but not limited to, reasonable attorney's fees. Any such relief shall be in addition to and not in lieu of any appropriate relief in the way of monetary damages.
5. Buyer shall bear its own costs and expenses for conducting the due diligence investigation and negotiations undertaken herein, including but not limited to accounting, tax, and legal fees. The Parties shall not be liable to each other for any such costs and expenses in the event an acquisition is not consummated.
6. All obligations undertaken herein by the Parties shall survive termination of this agreement or the contemplated transaction between the Company's Clients and the Buyer.
7. Buyer understands that all Subject Matter and Confidential Information received by the Company has been given to the Company by the Clients and Company has done no due diligence; therefore, no representation or warranty, expressed or implied, is given to the accuracy of such information by the Company. The Buyer will perform its own due diligence and hold the Company harmless from any claims or obligations related to a transaction with one of the Company's Clients. The Buyer understands that the Company represents its Clients. The Buyer will not contact the Clients disclosed by the Company and will direct all negotiations, offers to purchase, letters of intent or other communication with the Clients through the Company.
8. This Agreement (i) constitutes the entire understanding between the Parties concerning the Subject Matter and Confidential Information and supersedes any prior discussions between them; (ii) may not be amended or modified except by a written instrument signed by each of the Parties; (iii) shall be governed by the laws of the State of New Jersey; (iv) the Parties agree to personal jurisdiction and venue in the State of New Jersey; and (v) may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
9. The invalidity, illegality, or unenforceability of any obligation or provision under this agreement shall not affect or impair the enforceability or legality of any remaining provision or obligation under this agreement.
10. From time to time, the Buyer may be required to sign additional non-disclosure and/or confidentiality agreements. In the event of a conflict between such additional documents, this agreement shall prevail. Each of the Parties has executed or caused this Agreement to be executed, as of the date first written above.

Pertaining to the following listing (s)

Agreed and accepted this 19 day of April, 2018.

Name of Individual: Seth Johnson

Signature:

Address: 1000 Skokie Blvd.

City: Wilmette

State: IL

Zip: 60091

Phone:

Fax:

Cell:

E-Mail: N.T.@hotmail.com

Available Funds for Purchase:

Current Occupation/ Work: Attorney / Business owner

Business Brokers
VISIONARY

215-806-4534 direct 856-210-7470 fax

FILED DATE: 1/17/2019 3:59 PM 2018L010586

Re: NDA for the medical business you are inquiring about

Kevin Brown <kevin@visionarybusinessbroker.com>

Fri 4/20/2018, 2:36 PM

To: N J <N_J178@hotmail.com>

 1 attachments (120 KB)

Visionary BB NDA 2018.pdf;

Hi Seth,

He would, and I am not available that late today.

Would need to speak with you before 2PM ET.

otherwise Monday. I have attached NDA

Regards,
Kevin

On Thu, Apr 19, 2018 at 11:02 PM, N J <N_J178@hotmail.com> wrote:

Hello Kevin,

If I want to have my accountant on the call, does he also need to sign an NDA? Would anytime around 3-4 PM central time work?

From: Kevin Brown <kevin@visionarybusinessbroker.com>

Sent: Friday, April 20, 2018 1:37 AM

To: N J

Subject: Re: NDA for the medical business you are inquiring about

Hi Seth,

Yes it is and I will reach out to you tomorrow.

Regards,
Kevin

On Thu, Apr 19, 2018 at 7:35 PM, N J <N_J178@hotmail.com> wrote:

Hello Kevin,

FILED DATE: 1/17/2019 3:59 PM 2018L010586

Attached is the signed NDA. Just to make sure, since the broker name was not listed on the ad, this is for the Medical Credentialing / Medical Appeals company?

regards,

Seth

From: Kevin Brown <kevin@visionarybusinessbroker.com>
Sent: Thursday, April 19, 2018 10:19 PM
To: n_j178@hotmail.com
Subject: NDA for the medical business you are inquiring about

Hi Seth,

Thank you for your interest in the medical business for sale.

Kindly complete the attached NDA and email it back to me. Alternatively, you may fax it to 856-210-7470.

After I receive it back from you, I'd like to do a quick call and then send you the selling memo.

Best,
Kevin Brown

--

Kevin Brown
Business Broker
856-533-8173
kevin@visionarybusinessbroker.com

"Take care of your body. It's the only place you have to live." - Jim Rohn

--

Kevin Brown
Business Broker
856-533-8173

kevin@visionarybusinessbroker.com

"Take care of your body. *It's the only place you have to live.*" - Jim Rohn

--

Kevin Brown

Business Broker

856-533-8173

kevin@visionarybusinessbroker.com

"Take care of your body. *It's the only place you have to live.*" - Jim Rohn

FILED DATE: 1/17/2019 3:59 PM 2018L010586



S.D. Johnson <sdjohnsonlaw@gmail.com>

Revised contract

Seth Johnson <sdjohnsonlaw@gmail.com>

Thu, May 3, 2018 at 11:06 AM

To: Kevin Brown <kevin@visionarybusinessbroker.com>

Hi Kevin,

Questions:

1) How should we sign the contract? As "Liberty Consulting, on behalf of an entity to be formed later" or is there other language to use? I'd prefer to wait and register the new company as the real name David will use, rather than register a company and then do a DBA.

2) I have reserve duty tomorrow so I will be out of the office. Eli will be in all day. If you can send him the wiring instructions he will be able to take care of it. I think you have his email, but it is [eli@](#) [REDACTED] and he can be reached at the same office line 847-[REDACTED]. His cell is 847-[REDACTED].

Also, please let me know if there is anything else that needs to be done.

thanks,

Seth

[Quoted text hidden]



S.D. Johnson <sdjohnsonlaw@gmail.com>

Revised contract

Kevin Brown <kevin@visionarybusinessbroker.com>
To: Seth Johnson <sdjohnsonlaw@gmail.com>

Thu, May 3, 2018 at 11:16 AM

Hi Seth,

I just checked with David and he said yes, that is exactly how to sign it.

Should be fine with Eli, wires need to get started early in the day for same day delivery.

Kind Regards,
Kevin

[Quoted text hidden]

FILED DATE: 1/17/2019 3:59 PM 2018L010586



S.D. Johnson <sdjohnsonlaw@gmail.com>

Re: Fwd: Medical Appeals Training

1 message

Jay Reddy <vreddy33@yahoo.com>

Tue, May 8, 2018 at 6:05 PM

Reply-To: Jay Reddy <vreddy33@yahoo.com>

To: Lakhi Lala <lakhi@[REDACTED]>, Seth Johnson <seth@[REDACTED]>, "sdjohnsonlaw@gmail.com" <sdjohnsonlaw@gmail.com>

Cc: davidsunbelt@gmail.com

We are confirmed for Thursday morning at 9:30am CST / 10:30 EST.

I look forward to working with you. If you are comfortable doing so, please send me a meeting invite. Then I'll just join you in the conference (audio and video).

Jay Reddy, MBA, MA, CBA
(734) 306-1425

On Tuesday, May 8, 2018, 12:20:05 PM EDT, Seth Johnson <seth@[REDACTED]> wrote:

Hello Jay,

We look forward to training with you. Thursday morning works for us. We are in the Chicago area, so we are on Central Time. Anything 9:30 am and after would be good. We have used GoToMeeting before so that should be ok.

Also, would you be able to add my other email to any correspondence? For some reason I didn't get the original you sent. My second e-mail is sdjohnsonlaw@gmail.com.

Our contact information is below in the signature block. The phone number listed is our main line, so you can use it to get ahold of myself or Lakhi.

regards,

Seth D. Johnson, Esq.
Chief Operating Officer
Liberty Consulting & Management Services, LLC
[1000 Skokie Blvd., Suite 225](#)
[Wilmette, IL 60091](#)
[seth@\[REDACTED\]](mailto:seth@[REDACTED])

Tel.: 847-[REDACTED]
Fax: 847-[REDACTED]

FILED DATE: 1/17/2019 3:59 PM 2018L010586

This email and any files transmitted with it are confidential and intended

solely for the use of the individual or entity to whom they are addressed.

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This message contains confidential information and is intended only for the

individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. If you are not the intended recipient

you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

On 2018-05-08 11:03, Lakhi Lala wrote:

> ---

> Regards,

>

> Lakhi Lala

> Liberty Consulting & Management Services, LLC

> 1000 Skokie Blvd., Suite 225

> Wilmette, IL 60091

> Lakhi@ [REDACTED]

>

> Tel.: 847 [REDACTED]

> [REDACTED] m [1]

>

> This email and any files transmitted with it are confidential and intended

> solely for the use of the individual or entity to whom they are addressed.

> If you have received this email in error please notify the system manager.

> This message contains confidential information and is intended only for the

> individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete

> this e-mail from your system. If you are not the intended recipient you are

> notified that disclosing, copying, distributing or taking any action in

> reliance on the contents of this information is strictly prohibited.

>

> ----- Original Message -----

>

> SUBJECT:

> [SPAM] Medical Appeals Training

>

> DATE:

> 2018-05-07 21:43

>

> FROM:

FILED DATE: 1/17/2019 3:59 PM 2018L010586

> Jay Reddy <vreddy33@yahoo.com>
 >
 > TO:
 > "lakhi@ [REDACTED]" <[lakhi@\[REDACTED\]](mailto:lakhi@[REDACTED])>,
 > "seth@ [REDACTED]" <[seth@\[REDACTED\]](mailto:seth@[REDACTED])>
 >
 > CC:
 > David Weinstein <davidsunbelt@gmail.com>
 >
 > Hi Seth and Lakhi,
 >
 > My name is Jay Reddy. David gave me your contact email addresses. I
 > will be your trainer for the medical appeals unit.
 >
 > David told me that you guys are already in the medical space, so
 > training should go smoothly. Having said that, because I don't know
 > how much background you have, I'm sending you all the training
 > documents. During our first training session, we can talk about how
 > much you know and tailor training to your level of knowledge.
 >
 > Attached please find all the training documents. We will cover all the
 > documents together during the course of training. If you are not
 > familiar with it, I would closely review and memorize the "Glossary of
 > Terms" document. All the other documents, we will cover during the
 > course of training.
 >
 > We will need a method to share computer screens. I recommend that you
 > set up a Gotomeeting account at <http://www.gotomeeting.com>. They
 > provide a 2 week free trial (no need for a credit card). They will
 > also allow you to record all the training sessions (they will email
 > the file to you when a meeting concludes). If you have some other
 > program that you prefer, please let me know.
 >
 > David indicated that you wanted to start training on Thursday.
 > Mornings work best for me. Each training session will run for about 2
 > hours (again, we will tailor this as needed). If you could let me know
 > what time zone you are located in and if Thursday morning works for
 > you, we can set that time in stone.
 >
 > If you have any questions or concerns, please feel free to call or
 > email me.
 >
 > I look forward to working with you welcome aboard!
 >
 > Best,
 >
 > Jay Reddy, MBA, MA, CBA
 > (734) 306-1425
 >
 > Links:
 > -----
 > [1] <http://www.libertycms.com>



S.D. Johnson <sdjohnsonlaw@gmail.com>

Clients

2 messages

David Weinstein <davidsunbelt@gmail.com>

Thu, Sep 13, 2018 at 2:49 PM

To: sdjohnsonlaw@gmail.com

Cc: kevintmbroker@gmail.com

I am working on more clients for you

Please be aware I am fighting the

Whooping cough illness and have been back and forth to the er several times and might need hospitalization

Dave

Btw I have left you several return messages on your voicemail

S.D. Johnson <sdjohnsonlaw@gmail.com>

Thu, Sep 13, 2018 at 3:22 PM

To: David Weinstein <davidsunbelt@gmail.com>, Eli Johnson <eli@[REDACTED]>

Cc: kevintmbroker@gmail.com

Bcc: [REDACTED]

Hello Dave,

I am sorry to hear about your illness. We have not received any voicemail messages on any of our lines. What number are you calling?

We would like to set up a status call meeting sometime next week. What date and time work for you?

For any future calls, please call us at 847-[REDACTED]. Alternatively, you can reach me at 847-[REDACTED] or Eli at 847-[REDACTED].

regards,

Seth

[Quoted text hidden]

FILED DATE: 1/17/2019 3:59 PM 2018L010586



S.D. Johnson <sdjohnsonlaw@gmail.com>

Medical Appeals

David Weinstein <davidsunbelt@gmail.com>
To: sdjohnsonlaw@gmail.com

Sat, May 5, 2018 at 12:48 PM

Good Afternoon ,
Welcome aboard! This is my personal email. Feel free to contact me here.
I have your training set for Thursday
Kindly give me your employee's contact information. I actually got an existing end user in Appeals to train
Regards
Dave

FILED DATE: 1/17/2019 3:59 PM 2018L010586

EXHIBIT B**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – LAW DIVISION**

MEDAPPEAL, LLC,
an Illinois Limited Liability Company

Plaintiff

v.

DAVID WEINSTEIN,
VIJAY REDDY,
KEVIN BROWN,
& MEDASSET CORPORATION

Defendants.

No. 18-L-010586

Judge Brigid Mary McGrath

SWORN AFFIDAVIT OF MICHAEL BRADLEY

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this Affidavit and supporting documentation are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

1. I am over the age of 18 years, have knowledge of the matters stated herein and, if called as a witness, could competently testify thereto.

2. I am a resident of Marion, Illinois and I was a resident of Marion, Illinois during my dealings with David Weinstein, Vijay Reddy, and Kevin Brown.

3. In 2016 I inquired about a business opportunity advertised on BizBuySell.com to provide ancillary services to medical practices.

4. My goal was to find a business so I could generate more income in order to help my mom return home after being in a nursing home due to a stroke.

5. I was contacted by Kevin Brown, who was the sales agent for the brokerage firm Tannenbaum & Milask, located in New Jersey.

6. Tannenbaum & Milask is owned by David Weinstein. David Weinstein is also listed as the First Board of Directors and Registered Agent for Tannenbaum & Milask.

7. Kevin Brown then put me in touch via phone and email with Vijay Reddy, who was held out as the seller of the business.

8. After various representations made by Mr. Reddy, I agreed to pay for the business. I wired \$240,000 from my Illinois bank to Tannenbaum & Milask (David Weinstein's Agency) on November 22, 2016.

9. Mr. Reddy never came close to fulfilling the terms of the contract. He promised to deliver 100 clients a month for a total of 1,200 clients. Only a fraction of said clients were ever received.

10. After failing to deliver, Vijay Reddy, David Weinstein, and Kevin Brown made excuses, cut off communication, and refused to return the money I sent them.

11. I have since lost **\$240,000.00**, in addition to over \$17,000 in operating costs due to the lies, misrepresentations, and fraudulent conduct of Vijay Reddy, David Weinstein, and Kevin Brown.

12. When Kevin Brown, David Weinstein, and Vijay Reddy state in their affidavits that **"Liberty is the only Illinois-based client"** that they have dealt with, **this is categorically false and an outright lie.**

13. As proof of this falsehood, I attach hereto:

(A) the Purchase Agreement signed by myself and Vijay Reddy on October 13, 2016,

(B) the wire transfer I made for \$250,000 from my account at Legence Bank in Eldorado, Illinois to Tannenbaum & Milask, Inc., and

(C) the New Jersey Certificate of Incorporation showing David Weinstein as the sole director, incorporator, and registered agent of Tannenbaum & Milask.

14. At the time of our transaction, Kevin Brown, Vijay Reddy, and David Weinstein undeniably knew I was (and remain) a resident of Illinois.

15. Based on information and belief, the different corporate structures used by Reddy, Weinstein, and Brown are nothing but shell entities; the corporations do not exist beyond themselves and any given fraudulent scheme.

16. The actions of Kevin, David, and Vijay have significantly hurt me and my family financially and emotionally. My goal was to have a home-based business to support my sick mother. Not only do I not have said business, but I am out all of my savings, while having to support a child in graduate school.

Executed on

1/3

2018



Michael Bradley

WHEREAS Revenue Asset Services, LLC (hereinafter known collectively as the "Seller") and who has agreed to sell certain systems, assets, as well as intellectual property and where

MICHAEL BRADLEY (hereinafter known as "Buyer") or his corporate nominee agrees to buy certain systems, assets, and intellectual property, both parties agree to the following:

The purchase price will be \$240,000.00 US (Two Hundred Forty Thousand Dollars and 00/xx US). At Closing, Buyer will give Seller \$240,000.00 US (Two Hundred Forty Thousand Dollars and 00/xx US).

The following are to be provided:

1. **Answering Service:** Seller will deliver 1200 medical answering service contracts at a minimum charge of \$69 per office per month. *AND BY DOCTORS OFFICES MB*
2. Seller will introduce a subcontractor who will charge \$25/office/month to Buyer for answering services for the first 12 months of service. The subcontractor will be responsible for answering calls from patients who attempt to reach their healthcare professionals during non-business hours. Customer service, interfacing with the doctors' offices, communication between the subcontractor and the Buyer, and invoicing will be the sole responsibility of the Buyer. *VR*

At the signing of this contract, Buyer agrees to the following performance guidelines, ~~including~~ but not limited to: *MB VR*

Answering Service:

1. Buyer will service clients immediately upon receipt and no less than 24 hours of receipt.
2. Buyer agrees to accept all contracts assigned to them.
3. Buyer agrees to a high standard of customer service and to promptly return calls and all correspondence and contracts that were assigned to them.
4. Seller will introduce Buyer to a Back Office Call Center. Buyer has the option to enter into contracts with the Back Office Call Center. Should Buyer choose to use the back office introduced by Seller, all payments of back office charges are the sole responsibility of the Buyer for all assigned contracts. Buyer is not obligated to use the Back Office Call Center introduced by Seller.
5. Buyer will be solely responsible for the phone number(s) that the doctors' offices forward their calls to, and all related charges.
6. Buyer will be solely responsible for the quality of the answering service provided by the back office. Buyer will monitor call quality as required.
7. Buyer will be responsible for monthly invoicing of clients.

Seller hereby represents and agrees:

1. **Corporate Status:** Seller has been duly created, validity exists, and is in good standing.
2. **Title to Assets:** Seller holds valid and marketable legal and beneficial title to the Assets and the Modules, which are free and clear of all liens, claims, encumbrances and security interests.
3. Seller has the right and power to transfer clients to Buyer as contemplated herein. Seller's contracts with Clients permit the assignment of those contracts to Buyer.
4. No restrictions will be placed on Seller to attract their own clients through their own marketing methods including, but not limited to, Request for Proposals, referrals, telesales, telemarketing, or personal sales. If any new clients are acquired and a contract is signed, Seller may inform Buyer, and Buyer will remove that clinic from active solicitation.
5. Seller will replace any lost clinic within one year of assigning that clinic's contract, if the clinic discontinues services due to no fault of the Buyer. Furthermore, any replacement doctors will also be guaranteed for one year from their replacement.

Terms:

Buyer will provide a wire transfer or certified check in the amount of \$240,000.00 US (Two Hundred Forty Thousand Dollars and 00/xx US) at the time of execution of this agreement. Within 3 business days of the Closing, Buyer and Seller will schedule training for the services to be provided. Seller will provide ongoing support and training as needed for up to 1 year. The Agreement including all exhibits, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and merges and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions. Neither of the Parties will be bound by any conditions, definitions, warranties, understandings, or representations with respect to the subject matter hereof other than as expressly provided herein. ~~No oral explanations or oral information by either party hereto will alter the meaning or interpretation of this Agreement. The terms and conditions of this Agreement will prevail notwithstanding any different, conflicting or additional terms and conditions that may appear on any letter, email or other communication or other writing not expressly incorporated into this Agreement.~~ MB ✓ R

Training and Transition:

At no cost to the Buyer, the Seller will train and transition for up to 5 consecutive days for up to 2 hours per day. If additional training, beyond the aforementioned time, is required or requested, Seller will provide up to 100 additional hours of training. These 100 additional hours may be spread out over the course of one year. Training shall not exceed 1 year from the signing of this

agreement for any reason. Buyer will make themselves available for this training and may not refuse the training. If Buyer is not available for training or refuses training it will be considered as though they have been trained for the full period allotted.

Confidentiality:

At all times, the Buyer will respect the confidentiality and the extensive work put into the intellectual property, assets, and systems. Buyer will not attempt to reverse engineer the marketing methodology for personal gain or publishing purposes.

Assignment:

This agreement and all the contracts provided from Seller to Buyer are assignable in their entirety. All contracts with medical offices that Seller signs with medical offices will explicitly state that contracts are assignable in their entirety.

Commercial Transaction:

This transaction is considered a commercial transaction.

Venue:

The venue is the State of Michigan and the County of Washtenaw.

Governing Law:

This Agreement will be governed by the laws of Michigan and the County of Washtenaw.

Pro-Rata Refund:

Seller will provide all 1200 medical answering service contracts within 14 months of the signing of this agreement. If 1200 medical answering service contracts are not provided, then a pro-rata refund, based on what has not been delivered will be paid from Seller to Buyer. In consideration of this paragraph, Buyer must accept all clients as they are assigned. The formula for the refund will be as follows:

$\$240,000 * [1 - (\text{total clients assigned} / 1200)] = \text{refund to be paid to Buyer.}$

The refund will be paid within 10 business days.

Restrictive Covenant:

Unless a default occurs, the Seller will be prohibited, once the contract has been transferred to Buyer, from contacting or soliciting those clients. The one exception would be to verify the reason of loss of a client unless the Buyer directs the Seller to contact the medical office on their behalf. Buyer will void this clause if Buyer chooses to use Seller's resources in order to service Buyer's clients however, Seller will not solicit Buyer's clients. Buyer will not solicit Seller's third party resources.

Uniform Commercial Code:

Article 2 of the Uniform Commercial Code (UCC) will apply to the entirety of this Agreement.

MB. [Signature] DATE: 10/13/16
Buyer

[Signature] DATE: October 13, 2016
Seller
Revenue Asset Services, LLC

EXHIBIT A**ALLOCATION OF PURCHASE PRICE**

Intellectual Property and Systems \$ 100,000.00

Goodwill \$ 100,000.00

Training \$ 15,000.00

Restrictive Covenant \$ 25,000.00

Buyer

DATE:

10/13/16

Seller

DATE:

October 13, 2016

Revenue Asset Services, LLC

Legence[®] Bank

Wire Transfer Form

Date: 11-22-16

Reference #: 3809377

METHOD FORM TAKEN (Required)

In Person: ☒

ORIGINATOR INFO	Name (Business or Personal):	Lacey Kingston
	Address:	1200 U.S. Hwy 45 N.
	City, State, Zip:	Eldorado, IL 62934
	Contact Phone #:	618-297-9872
	Email Address: (For confirmation)	
	Account to Debit:	11-22-16 [REDACTED] 06-6
	Amount of Wire:	\$240,000.00
	Date to Send Wire:	11-22-16
BENEFICIARY INFO	Beneficiary Address:	Tannenbaum & Milask, Inc.
	Beneficiary City, State, Zip:	
	Beneficiary Contact Name:	
	Beneficiary Contact Phone #:	
	Beneficiary Account Number:	[REDACTED] 028
	Bank Routing Number:	036002247
	Bank Name:	Republic Bank
	Bank Address:	50 S. 16th St.
	Bank City, State, Zip:	Philadelphia, PA 19102
Memo Reference:	Daily Call Support, LLC./Michael Bradley	
INTERMEDIARY INFO (If Applicable)	Bank Name:	
	Bank Address:	
	Bank City, State, Zip:	
	Routing Number:	
	Account Number:	

Authorization Signature:

Benjamin S. Lander
11/22/16

Bank/Branch Use Only	Received By:	<i>A. Hogner</i>	
	Date/Time Received:	11-22-16 11:00am	
	Signature Card or Funds Transfer Agreement Verified By:		
	Wire Amount	Wire Fee	Total Debit Amount
	240,000.00		240,000.00

(For items below initial, enter date and time where applicable)

Operations Use	Entered By (WDW)	<i>A. Hogner</i>	
	Imported By (Fed Line)	<i>A. Hogner</i>	
	Confirmed With (Name of Customer, Date & Time)	<i>w/ Lacey</i>	
	Verified (Fed Line)	<i>gmaus</i>	
	Call Back (If Applicable)		
	Date & Time:	11/22/16 11:22am	
		11/22/16 QMGFT007-000752	

Outgoing Wire Fee: \$25

Wires Received after 2:00 pm will be sent on the following business day.

NEW JERSEY DEPARTMENT OF THE TREASURY
DIVISION OF REVENUE

CERTIFICATE OF INC, (PROFIT)

TANNENBAUM & MILASK INC
0400460233

The above-named DOMESTIC PROFIT CORPORATION was duly filed in accordance with New Jersey State Law on 12/28/2011 and was assigned identification number 0400460233. Following are the articles that constitute its original certificate.

1. **Name:**
TANNENBAUM & MILASK INC

2. **Registered Agent:**
DAVID WEINSTEIN

3. **Registered Office:**
532 OLD MARLTON PIKE
NO. 105
MARLTON, NJ 08003

4. **Business Purpose:**
BUSINESS CONSULTING

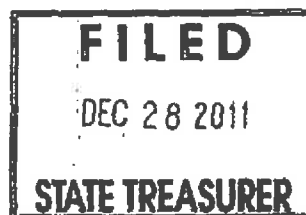
5. **Stock:**
2000

6. **Effective Date of this filing is:**
01/01/2012

7. **First Board of Directors:**
DAVID WEINSTEIN
532 OLD MARLTON PIKE
NO. 105
MARLTON, NJ 08003

8. **Incorporators:**
DAVID WEINSTEIN.
532 OLD MARLTON PIKE
NO. 105
MARLTON, NJ 08003

Signatures:
DAVID WEINSTEIN.



Continued on next page ...

NEW JERSEY DEPARTMENT OF THE TREASURY
DIVISION OF REVENUE

CERTIFICATE OF INC, (PROFIT)

TANNENBAUM & MILASK INC
0400460233



IN TESTIMONY WHEREOF, I have
hereunto set my hand and
affixed my Official Seal
at Trenton, this
29th day of December, 2011

A handwritten signature in black ink, appearing to read "Andrew P. Sidamon-Eristoff".

Andrew P Sidamon-Eristoff
State Treasurer

Certificate Number: 122546930

Verify this certificate online at

https://www1.state.nj.us/TYTR_StandingCervJSP/Verify_Cert.jsp

NEW JERSEY DEPARTMENT OF THE TREASURY
DIVISION OF REVENUE AND ENTERPRISE SERVICES

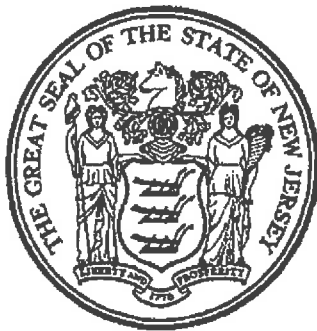
CERTIFICATE OF FORMATION

TANNENBAUM BUSINESS BROKERS LLC
0400666617

The above-named DOMESTIC LIMITED LIABILITY COMPANY was duly filed in accordance with New Jersey State Law on 06/16/2014 and was assigned identification number 0400666617. Following are the articles that constitute its original certificate.

1. **Name:**
TANNENBAUM BUSINESS BROKERS LLC
2. **Registered Agent:**
DAVID WEINSTEIN
3. **Registered Office:**
532 OLD MARLTON PIKE SUITE 105
MARLTON, NJ 08053
4. **Business Purpose:**
BUSINESS BROKER
5. **Members/Managers:**
DAVID WEINSTEIN
532 OLD MARLTON PIKE SUITE 105
MARLTON, NJ 08053

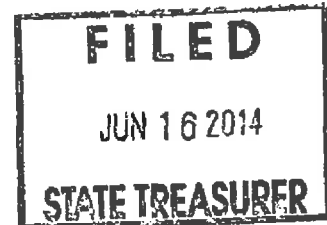
Signatures:
KERRY WALSH
AUTHORIZED REPRESENTATIVE



Certificate Number: 132578620

Verify this certificate online at

https://www1.state.nj.us/TYTR_StandingCervJSP/Verify_Cert.jsp



IN TESTIMONY WHEREOF, I have
hereunto set my hand and
affixed my Official Seal
at Trenton, this
17th day of June, 2014

Andrew P Sidamon-Eristoff
State Treasurer

**STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF REVENUE AND ENTERPRISE SERVICES
CHANGE OF REGISTERED AGENT CERTIFICATE**

**TANNENBAUM & MILASK INC
0400460233**

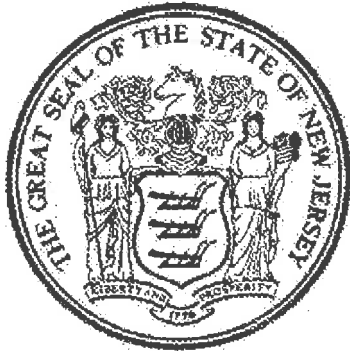
The Division of Revenue and Enterprise Services hereby affirms that the following change was submitted on 10/03/2016 for TANNENBAUM & MILASK INC.

Previous Registered Agent and Office

DAVID WEINSTEIN
532 OLD MARLTON PIKE
NO. 105
MARLTON, NJ 08003

New Registered Agent and Office

David Weinstein
525 RTE 73 North
Suite 104
Marlton, NJ 08053



Certificate Number : 2226876763
Verify this certificate online at
https://www1.state.nj.us/TYTR_StandingCert/JSP/Verify_Cert.jsp

*IN TESTIMONY WHEREOF, I have
hereunto set my hand and affixed
my Official Seal, this
4th day of October, 2016*

A stylized, dark ink signature of Ford M. Scudder.

*Ford M. Scudder
State Treasurer*

EXHIBIT C

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – LAW DIVISION**

MEDAPPEAL, LLC,
an Illinois Limited Liability Company

Plaintiff

V.

DAVID WEINSTEIN,
VIJAY REDDY,
KEVIN BROWN,
& MEDASSET CORPORATION

Defendants.

No. 18-L-010586

Judge Brigid Mary McGrath

SWORN AFFIDAVIT OF CAMILLE BATISTE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this Affidavit and supporting documentation are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

1. I am over the age of 18 years, have knowledge of the matters stated herein and, if called as a witness, could competently testify thereto.
2. I am a resident of Decatur, Illinois and the mother of two children.
3. In 2016, I paid \$75,000 to Kevin Brown, David Weinstein, and Vijay Reddy for a start-up business in Medical Answering Services.
4. I was promised 300 client accounts. To this day, I have only received 12 accounts.
5. Kevin Brown acted as the business broker for my transaction, holding himself out as an agent and employee of Tannenbaum & Milask.
6. According to the New Jersey Secretary of State, David Weinstein was the sole owner and agent of Tannenbaum & Milask.

7. Vijay Reddy presented himself as the seller of the business opportunity.
8. When I asked Mr. Reddy about his failure to perform, he made excuses and then eventually cut off communication with me.
9. When I did research into Mr. Reddy's background, I found that he has used many different shell companies to perpetrate the same scam.
10. I paid for the business in order to spend more time with my family.
11. Vijay, Kevin, and David not only destroyed that dream, but also stole the money that I could have used for my children or for a legitimate business opportunity.

Executed on December 18 2018

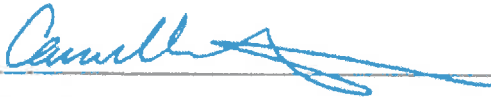

Camille Batiste

EXHIBIT D

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT - LAW DIVISION

MEDAPPEAL, LLC,
an Illinois Limited Liability Company

Plaintiff

v.

DAVID WEINSTEIN,
VIJAY REDDY,
KEVIN BROWN,
VISIONARY BUSINESS BROKERS LLC,
& MEDASSET CORPORATION

Defendants.

No. 18-L-010586

Judge Brigid Mary McGrath

SWORN AFFIDAVIT OF DR. CRAIG RAMSDELL

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this Affidavit and supporting documentation are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

1. I am over the age of 18 years, have knowledge of the matters stated herein and, if called as a witness, could competently testify thereto.
2. I am a resident of the State of Michigan.
3. In 2016, I paid \$75,000 for the acquisition of a medical answering service business.
4. Kevin Brown acted as the business broker for my transaction, holding himself out as an agent and employee of Tannenbaum & Milask a business brokerage company.
5. According to the New Jersey Secretary of State, David Weinstein was the sole owner and agent of Tannenbaum & Milask.
6. I was introduced to Vijay Reddy who presented himself as the seller of the business opportunity.

7. As part of the transaction, I was promised 300 client accounts. To date, I have received approximately 3 accounts.

8. Of these accounts, two were medical offices located in the State of Illinois. One was with a medical office located in Joliet, Illinois and the other was located in Park Ridge, Illinois. I have attached copies of the contracts with the personal information from the various practitioners redacted.

9. Mr. Reddy claimed to have acquired the Joliet and Park Ridge, Illinois accounts through his ongoing marketing efforts. Both contracts are signed by Mr. Reddy.

10. I had multiple conversations and emails with Mr. Reddy about his failure to fulfill the agreement. Each time, Mr. Reddy used delay tactics and made excuses. Eventually, Mr. Reddy cut off all communication with me.

11. As a result of Reddy, Weinstein, and Brown's actions in their various roles, I was personally financially harmed and believe various Illinois residents were also harmed.

Executed on 1/17/ 2019

Craig D. Ramsdell

Dr. Craig Ramsdell

FACSIMILE TRANSMITTAL FORM

Date/Time: 4/14/2016 12:34:28 PM

Pages: 5

Subject: TiffDocument

To: attn: jay [REDACTED]

Fax Number: 1888-244-4313

From: La [REDACTED]

Fax Number: 847-[REDACTED]

Business Phone: 847-[REDACTED]

Company: [REDACTED] Ltd

NOTE: PLEASE CALL 847-[REDACTED] IF DOCUMENTS ARE INCOMPLETE
OR NOT LEGIBLE.

The information contained in the facsimile message may be confidential and/or legally privileged information intended only for the use of the individual or entity named above.

If the reader of this message is not the intended recipient, you are hereby notified that any copying, dissemination, or distribution of confidential or privileged information is strictly prohibited.

If you have received this communication in error, please notify us immediately by telephone and we will arrange for return of the documents.

FILED DATE: 1/17/2019 3:59 PM 2018L010586

PRACTICE INTAKE INFORMATION

Your secure toll free fax number is (888) 244-4313
Please fax all documents. Do not mail.

Practice Name:	[REDACTED]
Street Address:	[REDACTED] Rd Joliet
City:	Joliet
State:	IL
Zip:	60435
Phone Number (incl. area code):	815 [REDACTED]
Fax Number (incl. area code):	815 [REDACTED]
Email Address:	[REDACTED]@ya.hoo.com
Website:	[REDACTED].com

**Please list below the names of doctors
for whom our Operators will be taking messages.**

Doctors Name	Mobile Number	Pager/Fax/Alternate Number
Dr. [REDACTED]	515 [REDACTED]	

Please List Your Hours of Operations

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Open Time	9	9	9	12	9	starting Sept. 10-2	off
Close Time	5	5	5	7	2		

Delivery options for NON-urgent messages: (please check at least one):

☐ I would like to have my messages emailed (please provide email address)

email address: _____

☒ I would prefer to have my messages sent via text.

Phone # to send text message to: (515) [REDACTED] (please include area code)

☐ Other (please specify) _____