

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
Capella Capital, LLC, Capella Carolinas, LLC and Michael Lindley	)	SUMMONS
	)	
	)	
	)	
Plaintiff,	)	
	)	
vs.	)	FILE NO. 2022-CP-40-_____
	)	
Donivon Glassburn,	)	
	)	
Defendant.	)	

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Irmo, South Carolina

s/Todd R. Ellis  
 \_\_\_\_\_  
 Attorney for Plaintiff

Dated: May 17, 2022

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STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) IN THE FIFTH JUDICIAL CIRCUIT  
COUNTY OF RICHLAND )

Capella Capital, LLC, Capella Carolinas, ) Civil Action No. 2022-CP-40-\_\_\_\_\_  
LLC and Michael Lindley )  
 )  
 )  
 ) Plaintiffs, )  
 )  
 ) vs. )  
 ) **COMPLAINT**  
 ) (JURY TRIAL REQUESTED)  
 )  
 ) Donivon Glassburn, )  
 )  
 )  
 ) Defendant. )  
 )  
 \_\_\_\_\_ )

The Plaintiffs, by and through their undersigned attorney, respectfully complain of the Defendant, allege and say:

**PARTIES AND JURISDICTION**

1. Capella Capital, LLC (“Capital”) is a South Carolina limited liability company formed and doing business in the County of Richland, State of South Carolina.
2. Capella Carolinas, LLC (“Carolinas”) is a South Carolina limited liability company formed and doing business in the County of Richland, State of South Carolina. Collectively, these entities may be referred to as “the LLCs.”
3. Michael Lindley (“Lindley”) is a citizen and resident in the County of Travis, State of Texas and is a member of the LLCs.
4. Upon information and belief, Defendant Donivon Glassburn (“Glassburn”) is a citizen and resident of the County of Charleston, State of South Carolina and is a member of the LLCs.

**GENERAL ALLEGATIONS**

5. On July 7, 2012, Lindley and Glassburn formed Capella Capital, LLC to, among other business, purchase commercial real estate properties and commercial retail centers, develop commercial retail centers, purchase partnership interests in other real estate

developments, purchase and service ATM machines, purchase and operate bingo video equipment manufacturers, and invest alongside other investment companies in opportunistic real estate and business opportunities.

6. On March 23, 2013, Lindley and Glassburn formed Capella Carolinas, LLC, for the sole purpose of purchasing 100% of the stock and membership interests in twelve (12) South Carolina entities/corporations which closed on May 1, 2013 to continue the operation of various charitable bingo facilities with South Carolina Bingo Promoters licenses issued by South Carolina Department of Revenue (“SCDOR”) in the State of South Carolina.

7. Lindley and Glassburn each own a 50% interest in Capella Capital, LLC and Capella Carolinas, LLC

8. Additional limited liability companies were formed in South Carolina, Texas, Alabama, and Colorado which again reflected that Lindley and Glassburn each held a 50% interest in the LLCs and each were contributing to the operations of the businesses as needed.

9. As a South Carolina resident at the time of the closing of the acquisition of the stock from twelve (12) South Carolina entities/corporations, Mr. Glassburn was identified as the individual on the Bingo Promoters licenses with SCDOR to legally continue to operate the bingo halls post-acquisition by Capella Carolinas, LLC.

10. Mr. Lindley’s 50% interest in both Capella Capital, LLC and Capella Carolinas, LLC are shown by and through executed Subscription for Membership Agreements, communications of the parties, agreed upon draft of corporate documents, limited liability company documents formed for individual or groups of bingo halls or sub-businesses for which Carolinas was a member, through the course of dealing of the parties in contributing to the management of Carolinas, the sharing of the profits and losses in the entity, the tax handling of

the entity and other operational aspects of the LLCs.

11. In the initial years following the formation of the LLCs, Lindley and Glassburn had each participated in the operational planning and financial decisions involving the bingo halls and related businesses, and their membership interests were reflected in the tax filings for the entities.

12. In recent years, Glassburn, among other things, has operated the LLCs for his personal benefit without regard to Lindley's membership interest nor in furtherance of the best interest of the business of the LLCs.

13. Glassburn has refused to include Lindley in decisions related to material financial expenditures, start-up expenses of investments, substantial operational issues and transfers of property owned by the LLCs.

14. Glassburn has failed to provide or provided Lindley limited or fraudulent financial information related to the LLCs

15. Without the knowledge and consent of Lindley, Glassburn unilaterally paid himself on December 31, 2020, all the salary which the members had agreed to reduce during the COVID19 pandemic.

16. Without the knowledge and consent of Lindley, Glassburn sold property owned by the LLCs and Mr. Lindley.

17. Without the knowledge and consent of Lindley, Glassburn directed proceeds from the sale of property owned by the LLCs to an account which is not utilized nor controlled by the LLCs or Lindley, and he provided no accounting of the transaction.

18. Without the knowledge and consent of Lindley, Glassburn utilized proceeds from the LLCs to pay unauthorized personal expenses and fraudulently accounted for those monies for the purpose of concealing the actions from the Plaintiffs.

19. Without the knowledge and consent of Lindley, Glassburn made distributions to himself for which he did not properly account and did not include Lindley.

20. Without the knowledge and consent of Lindley, Glassburn personally directed and approved wrongful accounting transactions of the LLCs and created potential adverse tax consequences.

21. Without the knowledge and consent of Lindley, Glassburn has embezzled money from the LLCs.

22. Without the knowledge and consent of Lindley, Glassburn has wrongfully usurped corporate opportunities for his personal gain and at the exclusion of the Plaintiffs.

23. Upon information and belief, Glassburn has wrongfully converted the LLCs property and money for his own benefit without the knowledge or consent of the Plaintiffs.

**FOR A FIRST CAUSE OF ACTION**  
(INJUNCTIVE RELIEF)

24. Each and every allegation of the Complaint is reiterated as though fully stated herein and are specifically incorporated by reference hereto.

25. Upon information and belief, Glassburn has control of accounts and the LLCs' property that he has diverted to his personal control and benefit.

26. Without the consent of Plaintiffs, Glassburn, upon information and belief, has done and is doing the following:

- a. Unilaterally converted the LLCs' property and proceeds to an unknown account for his own use;
- b. Using the LLCs' money to pay personal expenses;
- c. Embezzling from the LLCs and Lindley; and,
- d. Directing and conducting an accounting scheme to conceal his embezzlement and wrongfully account to tax agencies.

27. Injunctive relief is necessary to ensure the operation of the LLCs' business, to ensure the security of the LLCs' money and to limit the personal exposure of Lindley.

28. An injunction is warranted to preserve the business, its assets and to pay its creditors.

29. Plaintiffs are likely to succeed on the merits of these claims and the unknown status of the LLCs' assets and Defendants actions in embezzling money, concealing the wrongful use of the LLCs' money for his personal benefit make it most probable that Plaintiffs will prevail in the litigation and have no adequate remedy at law if the litigation proceeds without an injunction.

**FOR A SECOND CAUSE OF ACTION**  
(ACCOUNTING)

30. Each and every allegation of the Complaint is reiterated as though fully stated herein and are specifically incorporated by reference hereto.

31. An accounting of the LLCs business and Glassburn personally is necessary to ensure the viability of the business, the unjust enrichment of the Defendant and Lindley's interest in the LLCs.

32. Lindley has been denied his right to inspect the full accounting of the business, the transfer of LLCs assets, the bank accounts, records, and books of the LLCs. Therefore, Plaintiffs are entitled to an accounting to determine the value, the amount of monies embezzled, the rights of any creditors and the potential liability from tax agencies.

**FOR A THIRD CAUSE OF ACTION**  
(APPOINTMENT OF RECEIVER)

33. Each and every allegation of the Complaint is reiterated as though fully stated herein and are specifically incorporated by reference hereto.

34. Pursuant to S.C. Code Ann. § 15-65-10(1) and (4), for an order appointing a receiver for the LLCs, with authority to take possession of the LLCs' assets, books, accountings, financial records, and management of the operations, collect the rents, profits, and revenues, to hold such rents, profits, and revenues pending further Order of this Court, to otherwise preserve the LLCs.

35. Defendant has not provided Plaintiffs with a full accounting of the LLCs, has provided fraudulent financials for the purpose of concealing his embezzlement the LLCs proceeds for his personal use and gain, he has transferred LLC property without authorization and directed the proceeds to accounts which only he controls.

36. Unless and until the Court orders a receiver to be appointed, the LLCs assets and the rights of Lindley are in imminent danger of insolvency from fraud and forfeit of its corporate rights.

**FOR A FOURTH CAUSE OF ACTION**  
(CONVERSION)

37. Each and every allegation of the Complaint is reiterated as though fully stated herein and are specifically incorporated by reference hereto.

38. Defendant has wrongfully converted LLCs monies to his personal use and did deny Lindley his membership interest in those proceeds.

39. Defendant's conversion of Plaintiffs' property was deliberate, willful, wanton and in reckless disregard of the Plaintiffs' rights.

40. The Plaintiffs are informed and believe that for the Defendant's conversion of the property, Plaintiffs are entitled to actual and punitive damages in an amount to be determined by the trier of fact.

**FOR A FIFTH CAUSE OF ACTION**  
(FRAUD)

41. Each and every allegation of the Complaint is reiterated as though fully stated herein and are specifically incorporated by reference hereto.

42. Glassburn did devise and intend to devise a scheme and artifice to defraud Plaintiffs and to obtain money and property from Plaintiffs by means of false and fraudulent pretenses, representations, and promises.

43. These false representations were intentional and deliberate on the part of the Defendant.

44. The Defendant knew that selling the LLCs property for which Lindley had an interest and authority for his own benefit and charging personal expenses to the company and concealing the nature of the expense through fraudulent accountings was in violation of the membership interest of Lindley and did harm to the LLCs.

45. The Defendant wrongfully and fraudulently used property and proceeds from the LLCs for his own benefit while denying a member access to and an accounting of the assets.

46. Defendant intended that Lindley would rely on Defendant abiding by the duties he had to the LLCs and Plaintiff and that Defendant would secure the LLCs assets without providing false accountings, and his denials that he was wrongfully managing LLC assets.

47. Plaintiff Lindley did in fact reasonably rely on the representations of the Defendant to his detriment.

48. Plaintiffs were justified and reasonable in relying on such representations and were without knowledge that such representations were false.

49. As a result of Defendant's false and fraudulent actions, Plaintiffs have suffered damages, attorney fees, and other expenses and costs resulting from Defendant's fraud.

Plaintiffs are informed and believe they are entitled to actual and punitive damages for Defendant's willful, wanton, intentional, and reckless conduct in an amount to be determined at trial.

**FOR A SIXTH CAUSE OF ACTION**  
**(BREACH OF FIDUCIARY DUTY)**

50. Plaintiff re-alleges each and every preceding paragraph of this Complaint as if specifically set forth herein.

51. As members of the LLCs, Lindley and Glassburn were in a fiduciary relationship whereby each owes the other a mutual trust and confidence and the duties of loyalty and good faith and fair dealing.

52. Defendant owes to Lindley a fiduciary duty as a fellow member of the LLCs.

53. Defendant breached the fiduciary obligation of utmost good faith and integrity owed to Plaintiff by:

- a. Unilaterally converting the LLCs' property and proceeds to an unknown account for his own use;
- b. Using the LLCs' money to pay personal expenses;
- c. Embezzling from the LLCs and Lindley; and,
- d. Directing and conducting an accounting scheme to conceal his embezzlement and wrongfully account to tax agencies

54. Defendant consciously failed to exercise due care in his fiduciary duty to Plaintiffs.

55. Defendant's breach of his fiduciary duty was a reckless, willful, wanton, and malicious attempt to deprive Lindley of his membership rights.

**FOR A SEVENTH CAUSE OF ACTION**  
(BREACH OF DUTY WARRANTING DISASSOCIATION)

56. Each and every allegation of the Complaint is reiterated as though fully stated herein and are specifically incorporated by reference hereto.

57. Glassburn, as a member of the LLCs, had a fiduciary duty to Lindley, the only other member of the LLCs, and to the entity itself.

58. The fiduciary duty owed, included but was not limited to, a mutual trust and confidence, a requirement to act with loyalty, in good faith and fair dealing.

59. Glassburn breached his duty by unilaterally taking possession of the company assets, excluding Lindley from operations and an accounting of the business, usurping LLC rights and opportunities for his own use, and embezzling the LLCs proceeds.

60. Glassburn's breach was reckless, willful, wanton and a malicious attempt to deprive Plaintiffs.

61. As a result of Glassburn's breach, Plaintiffs ask the Court to judicially disassociate Glassburn for his wrongful conduct that materially affected the company's business and did undertake action which makes it not reasonably practical to continue business with Glassburn and to award Plaintiffs both actual and punitive damages.

WHEREFORE, Plaintiffs pray for a judgment against the Defendant as follows:

- a. To enjoin the Defendant from managing, controlling, transferring, or otherwise operating in any way the LLCs monies and assets for any purpose.
- b. For and Order requiring Defendant to immediately give Lindley access to all bank accounts and books related to the business as well as Order that an accounting of the business be done at Defendant's costs so as to ensure the viability of the business, its liabilities and where the LLCs proceeds were used;
- c. For an Order appointing a receiver to manage, operate, control, account for and direct the

LLCs' business during the course of the litigation or until such time as the Court orders otherwise;

- d. For an Order disassociating Glassburn from the LLCs; and,
- e. For an award of Plaintiffs' actual and punitive damages, for attorney's fees and costs, and such further relief as the Court deems just and appropriate.

LAW OFFICE OF TODD ELLIS, P.A.

s/Todd R. Ellis

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May 17, 2022