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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Mikell R. Scarborough
Master in Equity

Appellate Case No. 2025-001384

John Kachmarsky, individually, as Manager of K&T Group, LLC, and as Trustee of the Revocable Trust of John Kachmarsky dated November 30, 2007, as member of K&T Group, LLC, Appellant,

v.

David G. Taylor, individually and as Manager of K&T Group, LLC; Taylor Capital, LLC, as member of K&T Group, LLC; and K&T Group, LLC, and Foley Bullock, LLC, Respondents.

RECORD ON APPEAL
VOLUME II

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**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

**IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2022-CP-10-02589**

**John Kachmarsky, Individually, as
Manager of K&T Group, LLC, and as
Trustee of the Revocable Trust of John
Kachmarsky dated November 30, 2007, as
Member of K&T Group, LLC,**

Plaintiffs,

v.

**David G. Taylor, Individually and as
Manager of K&T Group, LLC; Taylor
Capital, LLC, as Member of K&T Group,
LLC; and K&T Group, LLC,**

Defendants.

**DEFENDANTS' RESPONSE TO
PLAINTIFFS' MOTION FOR RELIEF
FROM JUDGMENT**

COME NOW Defendants and respectfully submit this response in opposition to Plaintiffs' motion for relief from judgment.

Despite Plaintiffs' attempt to scandalize the Court with inflammatory language and allegations of fraud and secrecy, there is nothing at all nefarious or unusual about facts Plaintiffs present for the first time in their motion for relief from judgment—except for the fact that they try to present it as evidence that “could not have been discovered” earlier. Nor is there anything material about the evidence Plaintiffs present. Plaintiffs have long been in possession of evidence they now frame as shocking, and they opted not to conduct any discovery on the topic. Although Defendants present a more detailed analysis herein, one point alone sinks Plaintiffs' belated effort to keep their claims afloat: Plaintiffs rely on the January 15, 2025 affidavit of a witness who was disclosed as a witness on November 9, 2022, and even as a witness on topics to include “payment of rents to K&T Group, LLC”—and Plaintiffs never asked her a question. And Plaintiffs were well

aware that payments to K&T were made by Taylor Tax Law, as Plaintiffs' own document production in November of 2022 demonstrates.

Under South Carolina law, a party cannot escape a final judgment by framing long-available evidence as "newly discovered." *Lanier v. Lanier*, 364 S.C. 211, 217, 612 S.E.2d 456, 459 (Ct. App. 2005) ("South Carolina's strong policy towards finality of judgments trumps a party's ability to set aside a judgment where, as here, the party could have discovered the evidence prior to trial."). The Court should reject Plaintiffs' request to reopen this action—which was litigated for more than two years and tried to a final judgment—for the following reasons.

First, there is no plausible argument that the evidence Plaintiffs now present "could not have been discovered by due diligence prior to trial." *Lanier*, 364 S.C. at 220, 612 S.E.2d at 460. Plaintiffs claim that they only just learned that rent payments to K&T Group, LLC ("K&T" or the "Company") were made by Taylor Tax Law, LLC ("Taylor Tax"), who sub-leased the office space to Taylor Foley, LLC ("Taylor Foley"), which is the entity that occupied the space. But Plaintiffs produced, in their own document production, checks reflecting rental payments from Taylor Tax to K&T:

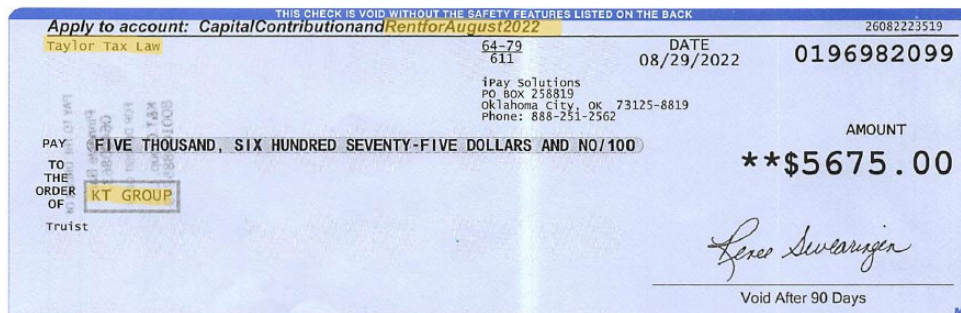


Exhibit A (emphasis added). In other words, evidence that Taylor Tax, and not Taylor Foley, made rental payments to K&T was actually in Plaintiffs' possession long prior to trial and certainly prior Plaintiffs' deadline "to move for a new trial under Rule 59(b)[.]" SCRCp 60(b)(2). Of course, "[e]vidence is not 'newly discovered' if it is known to the party at trial and in the party's

possession.” *Se. Hous. Found. v. Smith*, 380 S.C. 621, 637, 670 S.E.2d 680, 688 (Ct. App. 2008) (citing *Lanier*, 364 S.C. at 218, 612 S.E.2d at 459).

Further, Plaintiffs rely on testimony from April Shores that the payments made from Taylor Foley to Taylor Tax exceed the payments made from Taylor Tax to the Company. Plaintiffs cannot rely on “new” testimony from Ms. Shores because Plaintiffs had every opportunity to obtain Ms. Shores’ testimony prior to trial, and they had every opportunity to discover the facts about which Ms. Shores testifies. It is well-settled that a party may not support a Rule 60(b) motion with evidence that that he would have discovered but for his failure to exercise due diligence. “Where a litigant could have discovered the new evidence prior to trial, he or she is not entitled to relief under Rule 60(b)(2).” *Lanier*, 364 S.C. 211, 220, 612 S.E.2d at 461. In November 2022, Defendants responded to Plaintiffs’ Interrogatories and listed April Shores as the first witness with knowledge of relevant facts:

ANSWERS TO INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

- **April M. Shores** (171 Church Street, Suite 330, Charleston, South Carolina 29401)
- **David M. Foley** (171 Church Street, Suite 330, Charleston, South Carolina 29401)
- **Katie McConathy** (171 Church Street, Suite 330, Charleston, South Carolina 29401)
- **Brent Bullock** (171 Church Street, Suite 330, Charleston, South Carolina 29401)

Exhibit B at 3. Plaintiffs never deposed Ms. Shores and therefore never availed themselves of her testimony.

Prior to trial, Defendants included Ms. Shores as the only non-party on their witness list:

WITNESSES

Defendants may call the following witnesses at trial.

- David Taylor
- John Kachmarsky
- April Shores
- Any witness listed by the Plaintiffs

Exhibit C at 5 (emphasis added). At trial, Plaintiffs did not ask Ms. Shores a single question. The South Carolina Supreme Court has found that a party cannot rely on “new” testimony from a witness where the party failed to depose that witness prior to trial. *Raby Const., L.L.P. v. Orr*, 358 S.C. 10, 22, 594 S.E.2d 478, 484 (2004) (holding that the moving party failed to practice due diligence where the newly testifying witness “was identified in [] answers to interrogatories as a witness [y]et was not deposed”).

It was always known to Plaintiffs that Taylor Foley occupied office space in Suite 330, and it was known to Plaintiffs that Taylor Tax made rental payments to K&T for the same office space. Yet, over more than two years of discovery, Plaintiffs never sought a single document or any information related to Taylor Tax’s rental payments to K&T, the transactions between Taylor Foley and Taylor Tax, or any agreement between Taylor Foley and Taylor Tax. Nor did they ask David Taylor a single question on these topics during his deposition. Because Plaintiffs rely completely on evidence that they could have discovered prior to trial, the Court should deny their motion. *Lanier*, 364 S.C. at 220, 612 S.E.2d at 461 (“South Carolina’s strong policy towards finality of judgments trumps a party’s ability to set aside a judgment where, as here, the party could have discovered the evidence prior to trial.”).

Second, Plaintiffs’ “new” evidence does nothing to support their claims against Defendants. K&T leased office space to an entity owned by David Taylor, and it also leased office space to an entity owned by John Kachmarsky. Taylor and Kachmarsky agreed on a formula for

the rent that each entity would owe, and the Company received rent from each entity according to that formula. Now, for the first time, Plaintiffs present evidence that Taylor Tax was the tenant who made rental payments to the Company, rather than Taylor Foley, the entity that actually occupied the space. And Plaintiffs present testimony—for the first time—purporting to demonstrate that Taylor Foley (the sub-tenant) paid more to Taylor Tax (the tenant) than Taylor Tax paid to the Company. But Plaintiffs do not claim, and there is absolutely no evidence demonstrating, that the Company ever received less than the agreed-upon rent from Taylor Tax.¹ Instead, Plaintiffs claim that David Taylor breached a fiduciary duty owed to the Company by failing to direct his entity, Taylor Tax, to pay more than the agreed-upon rent, and to pay rent in excess of the formula used to determine Kachmarsky's rent. No fiduciary duty imposes such an obligation. The Court should deny Plaintiffs' motion.

A. Facts

This dispute involves the interests of a limited liability company formed in 2003: K&T Group, LLC ("K&T" or the "Company"). K&T's interests are owned in equal halves by Plaintiff the Revocable Trust of John Kachmarsky dated November 30, 2007 (the "Kachmarsky Trust"), and Defendant Taylor Capital, LLC ("Taylor Capital"). The respective principals of those member entities are John Kachmarsky (Trustee) and David Taylor, who are also the managers of K&T. The primary asset of the Company is a commercial office known as Suite 330 of the Franke Building at 171 Church Street in Charleston ("Suite 330").

¹ There is no dispute that David Taylor's entities paid rent to K&T according to the agreed-upon formula, save for the dispute over \$3,750 in rent payments that the parties disputed were owed based on Taylor Foley's impermanent occupation of excess office space, which was the subject of the trial in this case. The Court resolved that dispute by finding that no rental payments were owed to K&T.

Under the Company's Operating Agreement, K&T is a Term company. Under the South Carolina Uniform Limited Liability Act (the "LLC Act"), a Term company like K&T has limited rights of transfer and exit. *See* S.C. Code Ann. § 33-44-101(19) ("Term company means a limited liability company in which its members have agreed to remain members until the expiration of a term specified in the articles of organization."); Trial Tr. 104:20 – 105:4. According to the Operating Agreement, the stated purpose of the Company is "to hold and manage Company Property." (Defs' Ex. 1, § 1.10.) Kachmarsky and Taylor operate different commercial entities within Suite 330, and K&T rents the remaining office space in Suite 330 to third parties. For the last several years, Suite 330 has been occupied by rent-paying tenants, save for infrequent vacancies. (Trial Tr. 100:21–101:9.)

At trial, Plaintiffs presented evidence of payment disputes having arisen a few times during the more than twenty years of company operations. The disagreements raised by Plaintiffs occurred prior to the statutory period, that is, more than three years before the filing of this action, save one. (Trial Tr. 82:3 – 83:11.) The one disagreement that occurred during the statutory period involves the Taylor Foley law firm's use of an otherwise vacant office in Suite 330 for the firm's summer intern in 2021. At trial, the Court received evidence and testimony regarding that dispute, as set forth in the Order.

B. Procedural History

Plaintiffs filed this lawsuit in June 2022, asserting three claims against Defendants: (1) breach of the Operating Agreement, (2) judicial expulsion under S.C. Code Ann. § 33-44-601, and (3) judicial dissolution under S.C. Code Ann. § 33-44-801. On August 19, 2022, Defendants filed an answer and asserted a counterclaim for breach of the Operating Agreement. On September 16, 2024, Defendants filed a motion to amend their answer and counterclaim, attaching a proposed

amended answer and counterclaim as an exhibit to the motion. The Court granted that motion during a pretrial hearing on September 17, 2024. The Court then held a non-jury trial on Plaintiffs' claims and Defendants' counterclaim, where it received documentary evidence and live witness testimony.

On November 26, 2024, the Court issued the Order, finding that Plaintiffs did not satisfy their burden of proof for the claims asserted in their Complaint and dismissing those claims with prejudice, and finding that Defendants satisfied their burden of proof for their counterclaim and entering judgment in Defendants' favor on that claim. On December 6, 2024, Plaintiffs filed a motion for reconsideration, arguing that the Court failed to adequately consider evidence proffered during the trial. On January 17, 2025, Plaintiffs filed the instant motion for relief from judgment, arguing that purportedly "newly discovered" evidence justifies relief from the final judgment entered in this case.

C. Standard

Plaintiffs move for relief from judgment under South Carolina Rules of Civil Procedure 60(b)(2), which authorizes the Court to relieve a party from a final judgment on the basis of "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)[.]" SCRCP 60(b)(2). To obtain a new trial based on newly discovered evidence, a movant must establish that the newly discovered evidence: (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching. *Lanier*, 364 S.C. at 217, 612 S.E.2d at 459.

"A party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence entitling him to the requested relief." *Perry v. Heirs at Law of Gadsden*, 357

S.C. 42, 46, 590 S.E.2d 502, 504 (Ct. App. 2003). “South Carolina's strong policy towards finality of judgments trumps a party’s ability to set aside a judgment where. . . the party could have discovered the evidence prior to trial.” *Lanier*, 364 S.C. at 217, 612 S.E.2d at 459 (quoting *Bowman v. Bowman*, 357 S.C. 146, 591 S.E.2d 654, 657 (Ct. App. 2004)). “Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge.” *Raby Constr.*, 358 S.C. at 18, 594 S.E.2d at 482.

D. Argument

The Court should deny Plaintiffs’ motion for relief from judgment because (1) Plaintiffs could have easily discovered the evidence they now rely upon, but they failed to exercise due diligence during more than two years of discovery, and (2) the evidence Plaintiffs rely upon does not support Plaintiffs’ claims.

1. Plaintiffs could have discovered the evidence they now rely upon, but they failed to exercise due diligence.

A Court may relieve a party from a final judgment only in the presence of “newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)[.]” SCRPC 60(b)(2). “Evidence is not ‘newly discovered’ if it is known to the party at trial and in the party’s possession.” *Se. Hous. Found.*, 380 S.C. at 637, 670 S.E.2d at 688 (citing *Lanier*, 364 S.C. at 218, 612 S.E.2d at 459). Further, “Rule 60(b)(2) allows the court to grant a new trial only if the newly discovered evidence could not have been discovered by due diligence prior to trial . . . ‘Diligence looks not to what the litigant actually discovered, but what he or she *could* have discovered.’” *Lanier*, 364 S.C. at 220, 612 S.E.2d at 460 (citing 12 *Moore’s Federal Practice* § 60.42 (3rd ed.)). Thus, “[w]here a litigant could have discovered the new evidence prior to trial, he or she is not entitled to relief under Rule 60(b)(2).” *Id.* (“South Carolina's strong policy towards finality of judgments trumps a party’s ability to set

aside a judgment where. . . the party could have discovered the evidence prior to trial.”).

It is beyond reasonable dispute that Plaintiffs could have discovered, prior to trial, the evidence they now present, i.e., evidence demonstrating that Taylor Tax made rental payments to the Company, and testimony that payments from Taylor Foley to Taylor Tax exceeded payments from Taylor Tax to the Company. For one, according to his own testimony, John Kachmarsky managed the Company’s leases and finances. Trial Tr. 48:10-14 (“Q. John, just for clarity for the Court, during the duration of this partnership, other than a period of about two years, who has been the person who has managed everything? A. I have. I mean, I have done all the leasing, kept the books.”); 80:24-81:9 (“I mean, I have handled the leasing, and I have handled the books.”). Therefore, Kachmarsky had actual knowledge that Taylor Tax, and not Taylor Foley, was the entity making rental payments to K&T.

It’s not surprising, then, that Plaintiffs themselves produced documents clearly demonstrating Taylor Tax’s payment of rent to K&T. Ex. A. Nevertheless, in more than two years of discovery, Plaintiffs did not request any documents related to Taylor Tax’s rental payments to K&T, the transactions between Taylor Foley and Taylor Tax, or any agreement between Taylor Foley and Taylor Tax. Nor did Plaintiffs serve any Interrogatories on those topics. Likewise, Plaintiffs’ counsel deposed David Taylor for three hours, but did not ask a single question on those topics. Plaintiffs failed, prior to trial, to discover the facts they now present because they failed to exercise any due diligence during discovery, not because Defendants “surreptitiously” concealed transactions. Pls’ Mot. at 1, 3, 7. Plaintiffs’ lack of due diligence is fatal to their motion. *Lanier*, 364 S.C. at 220, 612 S.E.2d at 460 (“Rule 60(b)(2) allows the court to grant a new trial only if the newly discovered evidence could not have been discovered by due diligence prior to trial.”).

Similarly, Plaintiffs had every opportunity, prior to trial, to obtain testimony from Ms.

Shores, the witness they now proffer for “newly discovered” testimony. In response to Plaintiffs’ Interrogatories, Defendants listed April Shores as a witness with knowledge back in 2022. Ex. B at 3. Nevertheless, in more than two years of discovery, Plaintiffs never deposed Ms. Shores. Prior to trial, Defendants listed April Shores as the only non-party on their witness list. Ex. C at 5. Plaintiffs did not call Ms. Shores as a witness at trial. In other words, Defendants offered Ms. Shores, from the earliest moments of discovery, as a witness with knowledge, but Plaintiffs never endeavored to obtain the knowledge Ms. Shores had. Accordingly, Plaintiffs may not now present her testimony as “newly discovered” evidence that supports a motion under Rule 60(b)(2). *See Raby Const., L.L.P. v. Orr*, 358 S.C. 10, 22, 594 S.E.2d 478, 484 (2004) (holding that the moving party failed to practice due diligence where the newly testifying witness “was identified in [] answers to interrogatories as a witness [y]et was not deposed”).

Because Plaintiffs could have discovered the evidence they now rely upon, the Court should deny their motion for relief from judgment. *Lanier*, 364 S.C. at 220, 612 S.E.2d at 461 (“South Carolina’s strong policy towards finality of judgments trumps a party’s ability to set aside a judgment where, as here, the party could have discovered the evidence prior to trial.”).

2. The evidence Plaintiffs rely upon does not support their claims.

Under Rule 60(b)(2), the moving party must establish that the newly discovered evidence “will probably change the result if a new trial is granted.” *Lanier*, 364 S.C. at 217, 612 S.E.2d at 459. Put differently, the new evidence must be “outcome changing.” *Morin v. Innegrity, LLC*, 424 S.C. 559, 578, 819 S.E.2d 131, 141 (Ct. App. 2018).

Even assuming that the Court considered Plaintiffs’ evidence as “newly discovered,” there is nothing remotely outcome-changing from this new evidence. K&T leased office space to an entity owned by David Taylor, and it also leased office space to an entity owned by John

Kachmarsky. It is not in dispute that Taylor and Kachmarsky agreed on a formula for the rent that each entity would owe, and K&T received rent from each entity according to that formula. (Trial Tr. 102:16-103:3). Plaintiffs' "new" evidence does not indicate that Taylor's entity paid less than it owed to K&T according to that formula. In other words, Plaintiffs' "new" evidence does not call into doubt the agreement between Taylor and Kachmarsky, and it does not change the fact that K&T received the rent that it was entitled to under that agreement. Instead, Plaintiffs present evidence that Taylor Tax was the tenant who made rental payments to the Company, rather than Taylor Foley, the entity that actually occupied the space. And Plaintiffs present testimony from Ms. Shores purporting to demonstrate that Taylor Foley (the sub-tenant) paid more to Taylor Tax (the tenant) than Taylor Tax paid to K&T. Those facts have no material legal consequence.

Plaintiffs claim that David Taylor has a fiduciary obligation to pay every cent received by Taylor Tax to K&T. Not surprisingly, Plaintiffs cite no law in support of that proposition. Taylor Tax paid the full amount of rent due to K&T under the parties' agreement. The fact that Taylor Foley allegedly paid more in rent to Taylor Tax does not obligate David Taylor to direct the difference to K&T. No fiduciary duty imposes such an obligation, and Plaintiffs' cannot provide citation to any case that stands for that proposition. And, of course, if David Taylor was required to direct every cent received by Taylor Tax to K&T, Taylor Tax would be paying rent well above and beyond the parties' agreement, and according to a formula different than the formula applicable to Kachmarsky. In arguing Taylor must pay rent to K&T in amount more than the agreed-upon formula, Kachmarsky seeks to strike a different bargain than the one that was agreed to—one that benefits only him.²

² At trial, Kachmarsky admitted that his law firm does not pay fair market value for the space it occupies in Suite 330, and that he rejected a proposal to enter into fair-market-value leases. (Trial Tr. 80:10-23).

Further, the Court has held that K&T is fulfilling its purpose, and Plaintiffs' new evidence does nothing to alter that conclusion. In its November 26, 2024 Order (the "Order"), the Court correctly found that Plaintiffs failed to satisfy the "high bar" set by South Carolina law for judicial expulsion or dissolution under the LLC Act. In so finding, the Court stated: "[Limited liability company] members seeking to expel a fellow member . . . are required to clear a high bar' and a court may not order disassociation 'merely because there is a conflict.' [I]t must be unfeasible, despite reasonable efforts, to keep the [limited liability company] operating while the disputed member remains affiliated with it." Order at 8 (citing *Boathouse at Breach Inlet, LLC by & through Stoney v. Stoney*, 442 S.C. 633, 652, 900 S.E.2d 483, 493 (Ct. App. 2024), *reh'g denied* (Apr. 29, 2024) (quoting *IE Test, LLC v. Carroll*, 226 N.J. 166, 140 A.3d 1268, 1279 (2016)) (alterations in original).

In the Order, the Court correctly held: "[T]here is no evidence in the record indicating that the continued operation of K&T would be 'unfeasible' if Taylor Capital were not expelled." Order at 9. Nothing referenced in Plaintiffs' motion contradicts that conclusion. As the Court held, K&T continues to fulfil its purpose "to hold and manage Company Property," and it continues to do so according to the deal struck by Taylor and Kachmarsky. Order at 8. For these reasons, Plaintiffs' evidence will not "probably change the result if a new trial is granted." *Lanier*, 364 S.C. at 217, 612 S.E.2d at 459.

E. Conclusion

Accordingly, Defendants respectfully request that the Court deny Plaintiffs' motion for relief from judgment.

Respectfully submitted

s/ Brian C. Duffy

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January 24, 2025
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EXHIBIT A

CHARLESTON SC 29401-3140
171 CHURCH ST STE 330
KT GROUP
5178 1 AB 0.488 *0018960 SI

BIT Payment Processing Center
PO BOX 258819
Oklahoma City, OK 73125-8819

Account Name: Taylor Tax Law

Account Number: CapitalContributionandRentforA
ugust2022
Account Holder Name: Taylor Tax Law LLC
171 Church Street Ste 330
Charleston, SC 29401

Amount: 0196982099
5675.00

Date 8/29/2022
Total \$5675.00

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Lene Swearingen

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EXHIBIT B

DUFFY & YOUNG LLC

96 BROAD STREET, CHARLESTON SC, 29401

telephone 843-720-2044 fax 843-720-2047

ATTORNEYS AT LAW

November 9, 2022

VIA EMAIL

Daniel S. Slotchiver, Esq.
Slotchiver & Slotchiver, LLP
751 Johnnie Dodds Blvd., Suite 100
Mt. Pleasant, SC 29464
dan@slotchiverlaw.com

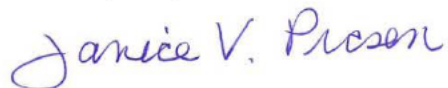
RE: John Kachmarsky, et al. v. David G. Taylor, et al.
Case No. 2022-CP-10-2589

Dear Mr. Slotchiver:

Enclosed please find for service upon you Defendants' Answers to Interrogatories and Responses to Requests for Production.

Should you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,



Janice V. Prosen
Paralegal

/jvp

Attachments

jprosen@duffyandyoung.com
WWW.DUFFYANDYOUNG.COM

ELECTRONICALLY FILED - 2025 Jan 24 9:11 AM - CHARLESTON - COMMON PLEAS - CASE#2022CP1002589

ROA - 0510

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2022-CP-10-02589

John Kachmarsky, Individually, as
Manager of K&T Group, LLC, and as
Trustee of the Revocable Trust of John
Kachmarsky dated November 30, 2007, as
Member of K&T Group, LLC,

Plaintiffs,

v.

David G. Taylor, Individually and as
Manager of K&T Group, LLC; Taylor
Capital, LLC, as Member of K&T Group,
LLC; and K&T Group, LLC,

Defendants.

DEFENDANTS' ANSWERS TO
INTERROGATORIES

TO: DANIEL S. SLOTCHIVER, ESQ., COUNSEL FOR PLAINTIFFS

COME NOW Defendants David G. Taylor, Individually and as Manager of K&T Group, LLC; Taylor Capital, LLC, as Member of K&T Group, LLC; and K&T Group, LLC ("Defendants"), by and through the undersigned counsel, and responds to the Plaintiffs John Kachmarsky, Individually, as Manager of K&T Group, LLC, and as Trustee of the Revocable Trust of John Kachmarsky dated November 30, 2007, as Member of K&T Group, LLC's ("Plaintiffs") Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure.

GENERAL OBJECTIONS

1. Defendants object to the Requests to the extent that they attempt to impose obligations that are inconsistent with or beyond those imposed by the South Carolina Rules of Civil Procedure, applicable law, or any orders issued by the Court.

2. Defendants object to the Requests to the extent that they call for information protected by the attorney-client privilege, work-product doctrine, or any other applicable privilege, protection, restriction, or immunity from discovery.

3. Defendants construe each document Request not to seek the identification or contents of legal memoranda, drafts of pleadings, attorney notes, letters, documents, or information created for this or other litigation.

4. Defendants' investigation of facts and review of relevant documents is ongoing. Defendants reserve the right to modify or supplement any and all responses herein as additional facts are ascertained, as additional documents are obtained, and as additional analysis and contentions are formulated; Defendants assume no duty, however, to supplement its responses except to the extent required by the South Carolina Rules of Civil Procedure or other applicable law.

ANSWERS TO INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

- April M. Shores (171 Church Street, Suite 330, Charleston, South Carolina 29401)
- David M. Foley (171 Church Street, Suite 330, Charleston, South Carolina 29401)
- Katie McConathy (171 Church Street, Suite 330, Charleston, South Carolina 29401)
- Brent Bullock (171 Church Street, Suite 330, Charleston, South Carolina 29401)

Ms. Shores, Mr. Foley, Ms. McConathy, and Mr. Bullock all work in Suite 330 in the Franke Building and are expected to have knowledge of the parties' use of office space in Suite 330, the payment of rents to K&T Group, LLC, as well as Kachmarsky's conduct in Suite 330.

- Julie Tillman (PO Box. 1622, Folly Beach, South Carolina 29439)
- Kristy Yelle (Address unknown)
- Diana Snider (171 Church Street, Suite 330, Charleston, South Carolina 29401)

Ms. Tillman and Ms. Yelle worked as bookkeepers for Taylor's law firm. Ms. Snyder currently works as a bookkeeper for Taylor's law firm. They are expected to have knowledge relevant to the finances of K&T Group, LLC.

- Nancy Vavra (1476 Ben Sawyer Blvd., Suite 3, Charleston, South Carolina, 29464)

Ms. Vavra was a tenant of Suite 330 in the Franke Building. She is expected to have knowledge of Kachmarsky's efforts concerning the business of K&T Group, LLC, as well as his conduct in Suite 330.

- Lewis Horton (Address unknown)

Mr. Horton previously worked in Suite 330 of the Franke Building and has maintained a professional relationship with Kachmarsky. He is expected to have knowledge of Kachmarsky's relevant business endeavors.

- Linda H. Kennedy (534 Johnnie Dodds Blvd., Mount Pleasant, South Carolina 29464)

Ms. Kennedy was Kachmarsky's contact at Ameris Bank. She is expected to have information relevant to the allegations of Paragraphs 20 through 25 of the Complaint.

- Cody Deckert (113 East Main Street, Suite 330, Rock Hill, South Carolina 29730)

Mr. Deckert worked for Kachmarsky and specifically assisted Kachmarsky in marketing Suite 330 of the Franke Building, as well as in marketing Kachmarsky's other properties. He is expected to have knowledge on Kachmarsky's fulfillment of his duties to K&T Group, LLC, as well as Kachmarsky's conduct in Suite 330.

Defendants are not aware of any written or recorded statements concerning this dispute.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER: None.

3. In cases involving personal injury set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all medical costs

involved.

ANSWER: Not applicable.

4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

ANSWER: None.

5. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

ANSWER:

- **Lost income to K&T Group, LLC as a result of Kachmarsky's breaches of the Operating Agreement, including but not limited to his diversion of business opportunities.**
- **Costs and attorney's fees expended in defending against this action and for the necessity of advancing claims to enforce the agreement.**

6. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

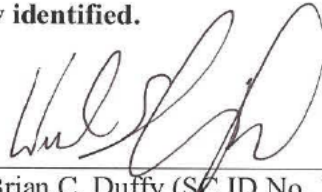
ANSWER: Defendants have not yet identified any expert witness whom they intend to use at trial of this case but reserve the right to do so. Defendants will supplement this response to the extent required by Rule 26(e) of the South Carolina Rules of Civil Procedure.

7. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See Defendants' response to Interrogatory No. 1.

8. If the defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information.

ANSWER: Defendants are properly identified.



Brian C. Duffy (SC ID No. 16247)
Wilson Daniel (SC ID No. 104317)
DUFFY & YOUNG, LLC
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(843) 720-2044 (phone)
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bduffy@duffyandyoung.com
wdaniel@duffyandyoung.com
Attorneys for Defendants

November 9, 2022
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2022-CP-10-02589

John Kachmarsky, Individually, as
Manager of K&T Group, LLC, and as
Trustee of the Revocable Trust of John
Kachmarsky dated November 30, 2007, as
Member of K&T Group, LLC,

Plaintiffs,

v.

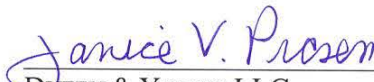
David G. Taylor, Individually and as
Manager of K&T Group, LLC; Taylor
Capital, LLC, as Member of K&T Group,
LLC; and K&T Group, LLC,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANTS' ANSWERS TO INTERROGATORIES** have been served upon each of the parties to this action via U.S. Mail and/or electronic delivery addressed as follows:

Daniel S. Slotchiver, Esq.
Slotchiver & Slotchiver, LLP
751 Johnnie Dodds Blvd., Suite 100
Mt. Pleasant, SC 29464
dan@slotchiverlaw.com


DUFFY & YOUNG LLC

November 9, 2022
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2022-CP-10-02589

**John Kachmarsky, Individually, as
Manager of K&T Group, LLC, and as
Trustee of the Revocable Trust of John
Kachmarsky dated November 30, 2007, as
Member of K&T Group, LLC,**

Plaintiffs,

v.

**David G. Taylor, Individually and as
Manager of K&T Group, LLC; Taylor
Capital, LLC, as Member of K&T Group,
LLC; and K&T Group, LLC,**

Defendants.

**DEFENDANTS' RESPONSES TO
REQUESTS FOR PRODUCTION**

TO: DANIEL S. SLOTCHIVER, ESQ., COUNSEL FOR PLAINTIFFS

COME NOW Defendants David G. Taylor, Individually and as Manager of K&T Group, LLC; Taylor Capital, LLC, as Member of K&T Group, LLC; and K&T Group, LLC ("Defendants") by and through counsel, and respond to Plaintiffs John Kachmarsky, Individually as Manager of K&T Group, LLC, and as Trustee of the Revocable Trust of John Kachmarsky dated November 30, 2007, as Member of K&T Group, LLC ("Plaintiffs"), pursuant to Rule 34 of the South Carolina Rules of Civil Procedure. All documents to be produced pursuant to these responses will be made available for inspection and copying at a time and mutually convenient for counsel, or will be copied and sent to the requesting party's counsel at such party's request and expense.

GENERAL OBJECTIONS

1. Respondent objects to the Definitions and Instructions contained in the Requests to the extent that they attempt to impose obligations upon it that are inconsistent with or beyond those

imposed by the South Carolina Rules of Civil Procedure, the applicable law, or any orders issued by the Court.

2. Respondent construes each document request not to seek the identification or contents of legal memoranda, drafts of pleadings, attorney notes, letters, documents, or information created for this or other litigation.

3. Respondent objects to responding to any of the Requests to the extent that they call for information protected by the attorney-client privilege, work-product doctrine, or any other applicable privilege, protection, restriction or immunity from discovery.

RESPONSES TO REQUESTS FOR PRODUCTION

1. Copies of any and all statements given by the Petitioner and/or Respondents which are in the possession or control of you or your attorney, whether written, recorded, or on a tape recording, or otherwise.

RESPONSE: None.

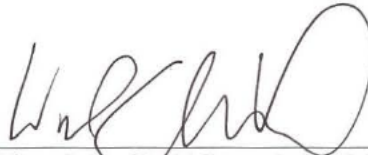
2. Copies of any and all statements given by witnesses to the matters complained of in the within case which are in the possession or control of you or your attorney, whether written, recorded, or on a tape recording, or otherwise.

RESPONSE: None.

3. Any and all documents, photographs, charts, statements, recordings, correspondence, and any and all other demonstrative evidence which you intend to use at the trial of this case.

RESPONSE: Defendants have not yet determined what exhibits they intend to use at the trial of this case. Defendants produce herewith documents which they may introduce at a trial of this case, Bates labeled DEFENDANTS 000001 - 000101. Defendants will supplement this response if and when required pursuant to the South Carolina Rules of Civil Procedure.

Signature on following page.



Brian C. Duffy (SC ID No. 16247)
Wilson Daniel (SC ID No. 104317)
DUFFY & YOUNG, LLC
96 Broad Street
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bduffy@duffyandyoung.com
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Attorneys for Defendants

November 9, 2022
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2022-CP-10-02589

John Kachmarsky, Individually, as
Manager of K&T Group, LLC, and as
Trustee of the Revocable Trust of John
Kachmarsky dated November 30, 2007, as
Member of K&T Group, LLC,

Plaintiffs,

v.

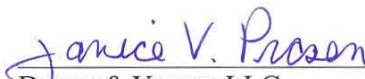
David G. Taylor, Individually and as
Manager of K&T Group, LLC; Taylor
Capital, LLC, as Member of K&T Group,
LLC; and K&T Group, LLC,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANTS' RESPONSES TO REQUESTS FOR PRODUCTION** have been served upon each of the parties to this action via U.S. Mail and/or electronic delivery addressed as follows:

Daniel S. Slotchiver, Esq.
Slotchiver & Slotchiver, LLP
751 Johnnie Dodds Blvd., Suite 100
Mt. Pleasant, SC 29464
dan@slotchiverlaw.com


DUFFY & YOUNG LLC

November 9, 2022
Charleston, South Carolina

EXHIBIT C

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

**John Kachmarsky, Individually, as
Manager of K&T Group, LLC, and as
Trustee of the Revocable Trust of John
Kachmarsky dated November 30, 2007, as
Member of K&T Group, LLC,**

Plaintiffs,

v.

**David G. Taylor, Individually and as
Manager of K&T Group, LLC; Taylor
Capital, LLC, as Member of K&T Group,
LLC; and K&T Group, LLC,**

Defendants.

**IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2022-CP-10-02589**

DEFENDANTS' PRETRIAL BRIEF

NOW COME the Defendants David G. Taylor as Manager of K&T Group, LLC and Taylor Capital, LLC as Member of K&T Group ("Defendants") by and through counsel, and submit this Pretrial Brief, pursuant to Rule 16(c) of the South Carolina Rules of Civil Procedure.

(1) A concise, non-argumentative statement of the facts of the case.

This dispute involves the interests of a limited liability company formed in 2003: K&T Group, LLC ("K&T" or the "Company"). Those interests are owned in equal halves by Plaintiff the Revocable Trust of John Kachmarsky dated November 30, 2007, and Defendant Taylor Capital, LLC. The respective principals of those member entities are John Kachmarsky (Trustee) and David Taylor, who are managers of K&T. The primary asset of the Company is a commercial office known as Suite 330 of the Franke Building at 171 Church Street.

The stated purpose of the Company is “to hold and manage Company Property.” Kachmarsky and Taylor operate different commercial entities (law firms) within Suite 330, and K&T rents additional office space to third parties. The Company is fulfilling its purpose.

K&T is a Term Company with limited rights of transfer and exit. Kachmarsky wants an exit. Rather than accept the deal he knowingly made or bargain for a business exit from the business, he presses here for the Court to force expulsion of Taylor Capital or dissolution of the Company. In so doing he dredges up stale issues, some now over ten years old and others whatever their merit are years beyond the statute of limitations. And he presses for a “nominal” payment from Defendants which Defendants in fact do not owe.

Roughly ten years ago, the parties used a trusted third party to resolve a disagreement concerning whether one law firm’s use of some additional space (when Suite 330 was not fully occupied and had even more space to rent) obligated that member or firm to pay more to occupy that otherwise non-productive space. Through that process the members agreed that additional payments would be made for sustained use. However, the members agree that less permanent use of empty space without payment is fine as long as that use does not preclude rental of the space to interested third parties.

Since the 2014 resolution, there have been a small number of disagreements regarding whether one party or a third party was occupying space in a manner that would require additional payments. The only such disagreement raised by Plaintiff to have occurred within three years before filing suit involves a summer intern for the Taylor Foley law firm whom Kachmarsky contends stayed much longer than the summer months. Without going into the facts of that situation, it is undisputed that the amount in dispute is, in Plaintiff’s words, “nominal, if anything.”

A change in personnel for Taylor Foley, a lack of information, and questions over the amounts Kachmarsky claimed were owed led to a delay in payment of amounts owed by Taylor Foley in early 2022. Following a brief exchange of emails with Taylor, Kachmarsky did not send notice of any default of obligations or duties to Taylor Capital per section 12.2 of the Operating Agreement. And he did not take advantage of the procedures available to him in the Operating Agreement to call a member meeting (§ 4.2), to call a Management Committee meeting (§ 5.5), or to make a capital call (§ 3.8). Rather, he hired counsel and threatened suit in March. In any event, in April Taylor Foley made the rental payments that were agreed upon (aside from the small amount in dispute and identified above). Kachmarsky nonetheless filed suit in June of 2022 seeking to expel Taylor Capital or dissolve K&T.

The Court will see that Plaintiff has refused the suggestion of the trusted third party to have the law firm occupants enter lease agreements and to have a third-party manager take over the administration of Suite 330. Those simple business remedies to cure what ails him, however, do not suit his goals. Rather, Plaintiff seeks to impose his will by bringing this action, and not just to allow him to exit. He threatened and brought suit to force Taylor Capital out of their common investment with claims of wrongful dissociation and the accompanying penalties under Article XI of the Operating Agreement of reducing the value of Taylor Capital's half interest by 25%, additional discounting, and costs and attorneys' fees.

Defendants asserted a counterclaim for breach of the Operating Agreement. In an effort to narrow the allegations and focus on the central dispute, Defendants moved to amend this counterclaim and target Plaintiffs' efforts to force payments that were not owed. Essentially, Defendants pursue this claim to provide an avenue for the Court to award Defendants' attorneys' fees for this action if the Court deems that relief appropriate.

(2) An objective statement of the facts in controversy.

The following are among the few facts in dispute.

- Whether Taylor Foley's summer clerk actually started using an office in January of 2021 as Kachmarsky claims such that Taylor Foley should pay for use of that office for all of 2021 and not just from August through the end of the year, which is the time period when a permanent associate was hired and occupied the office at issue and which Taylor Foley has paid for?
- Whether a summer clerk's use of an office would actually prevent that office from being shown to prospective tenants?

(3) The legal issues involved.

- Whether Taylor Capital engaged in conduct that the Court determines was both wrongful and the cause of adverse, material impact on the company's business such that expulsion from the Company is justified under S.C. Code § 33-44-601(6)(i)?
- Whether Taylor Capital committed a material breach of the operating agreement or of a duty owed and such breach was willful or persistent under S.C. Code § 33-44-601(6)(ii)?
- Whether Taylor Capital engaged in conduct related to the business of the Company that makes it not reasonably practicable for the Company to hold and manage Company Property which it has been doing since 2003, per S.C. Code § 33-44-601(6)(iii) and § 33-44-801(4)(b)?

- Whether the purpose of the Company to hold and manage Company Property which it has been doing since 2003 is likely to be unreasonably frustrated under S.C. Code § 33-44-801(4)(a)?
- Whether Taylor Capital is in control of the Company?
- If Taylor Capital is in control of the Company, whether it has acted or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the other half owner of the Company who controls the finances, per S.C. Code § 33-44-801(4)(e)?

(4) A listing of exhibits, indicating those to which there is disagreement and a listing of witnesses who may be called and, if available, their address and phone number.

EXHIBITS

Please see Defendants' separate Exhibit List submitted contemporaneously herewith.

WITNESSES

Defendants may call the following witnesses at trial.

- David Taylor
- John Kachmarsky
- April Shores
- Any witness listed by the Plaintiffs

(5) Any unusual problems relating to evidence.

Defendants anticipate that Plaintiffs will seek to rely on documents or testimony which are not relevant to this action. Such information may include documents or actions that (a) do not involve member Taylor Capital, (b) involve David Taylor but not in his role as manager of K&T Group, and (c) precede any relevant timeframe for claims in this action filed on June 8, 2022.

(6) Any unusual question or matter should be brought to the attention of the court.

Defendants can think of no such question or matter.

(7) A statement that settlement negotiations were attempted before the date of the pre-trial hearing and the status of settlement negotiations.

The parties engaged in mediation with John Massalon and were not successful. Efforts have continued through counsel to no avail.

Respectfully submitted,

s/ Brian C. Duffy
Brian C. Duffy
Wilson Daniel
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, South Carolina 29401
Telephone: (843) 720-2044
Facsimile: (843) 720-2047
bduffy@duffyandyoung.com
wdaniel@duffyandyoung.com

Attorneys for Defendants

This 16th day of September 2024, at Charleston, South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL
		CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2022-CP-10-02589
	)	
John Kachmarsky, Individually, as Manager of	)	
K&T Group, LLC and as Trustee of the	)	
Revocable Trust of John Kachmarsky dated	)	
November 30, 2007, as Member of K&T Group,	)	
LLC,	)	
	)	
	)	PLAINTIFFS' REPLY TO
	)	DEFENDANTS' RESPONSE
Plaintiffs,	)	TO PLAINTIFFS' RULE 60(b)(2)
	)	MOTION FOR RELIEF FROM
vs.	)	JUDGMENT DUE TO NEWLY
	)	DISCOVERED EVIDENCE
	)	
David G. Taylor, Individually, and as Manager of	)	
K&T Group, LLC, Taylor Capital, LLC, as	)	
Member of K&T Group, LLC and K&T Group,	)	
LLC,	)	
	)	
Defendants.	)	

Plaintiffs, through their undersigned counsel, hereby submit this brief reply to Defendants' Response to Plaintiffs' Rule 60(b)(2) Motion for Relief from Judgment Due to Newly Discovered Evidence.

It is strikingly revealing that Defendants do not make a single attempt to deny that Defendant David Taylor—a manager of K&T Group, LLC—collected and diverted hundreds of thousands of dollars in rents paid by tenant Taylor Foley, LLC for his own benefit. The reason is clear: Mr. Taylor's actions are undeniable. They are also a direct violation of Mr. Taylor's Duty of Loyalty to the Company as set forth under Section 6.2 of the K&T Group, LLC Operating Agreement, which expressly states that Managers must "hold as trustee for the Company any property, profit or benefit derived by the Manger in the conduct...of the Company's business or derived from a use by the Manager of the Company's property, including

appropriation of a Company opportunity.” Defendants make no attempt to address Mr. Taylor’s complete and utter failure to hold said property, profits, or benefits in trust for the Company. Defendants also make no attempt to defend, let alone address, Mr. Taylor’s failure to “refrain from competing with the Company in the conduct of the Company’s business before dissolution of the Company” as expressly required by Section 6.2(c) of the Operating Agreement.

Instead, Defendants seek to circumvent the consequences of Mr. Taylor’s wrongful acts by claiming that evidence of his misappropriation of Company funds could have been discovered before trial. This is a red herring. Defendants ignore that Plaintiffs’ complaint centered on claims that Defendants had failed to pay rents for space which they had occupied, not that Company funds were being misappropriated. Plaintiffs had no reason to believe that Mr. Taylor had caused rents, totaling hundreds of thousands of dollars, to be collected, diverted, and withheld from the Company in direct violation of his contractual Duty of Loyalty pursuant to the Operating Agreement. Accordingly, Plaintiffs had no reason or duty to seek evidence for claims they did not know existed.

The judgment should be set aside because the newly discovered evidence of Mr. Taylor’s misappropriation of Company funds and opportunity provide sufficient grounds for granting the *relief* sought by Plaintiffs in this action: (1) judicial expulsion pursuant to S.C. Code Ann. § 33-44-601, (2) judicial dissolution under S.C. Code Ann. § 33-44-801, and (3) partitioning of the subject property. Said differently, Plaintiff’s Motion should be granted because, here, “the newly discovered evidence will probably *change the result* if a new trial is granted.” *Southeastern Hous. Found. v. Smith*, 380 S.C. 621, 638, 670 S.E.2d 680, 689 (Ct. App. 2008), emphasis added. Accordingly, Plaintiffs respectfully request that this Honorable Court

grant their Rule 60(b)(2) Motion for Relief from Judgment and grant them a new trial in this case. Defendants should not be rewarded for their misdeeds.

Respectfully submitted,

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez

Jesse Sanchez (SC BAR #101906)
751 Johnnie Dodds Boulevard, Suite 200
Mount Pleasant, SC 29464
(843) 814-8181 (Phone)
(843) 284-3953 (Fax)
jesse@jessesanchezlaw.com

and

SLOTCHIVER & SLOTCHIVER LLP

s/Daniel S. Slotchiver

Daniel S. Slotchiver (SC Bar # 15129)
751 Johnnie Dodds Boulevard, Suite 100
Mount Pleasant, SC 29464
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dan@slotchiverlaw.com

ATTORNEY FOR PLAINTIFFS

January 27, 2025
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL
	)	CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2022-CP-10-02589
	)	
John Kachmarsky, Individually, as Manager of	)	
K&T Group, LLC, and as Trustee of the	)	PLAINTIFF'S MEMORANDUM IN
Revocable Trust of John Kachmarsky dated	)	SUPPORT OF RULE 60(b)
November 30, 2007 as Member of K&T Group,	)	RELIEF FROM JUDGMENT
LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
David G. Taylor, Individually, as Manager of K&T	)	
Group, LLC; and Taylor Capital, LLC, as a Member	)	
of K&T Group, LLC,	)	
	)	
Defendant.	)	
	)	

TO: THE HONORABLE MIKELL R. SCARBOROUGH:

Plaintiff John Kachmarsky ("Plaintiff"), by and through his undersigned counsel, hereby respectfully submits this Memorandum in Support of his Motion for Relief from Judgment pursuant to Rule 60(b), SCRCP. Sufficient grounds exist to grant Plaintiff relief from the November 26, 2024 court order, specifically newly discovered evidence that Defendant David Taylor surreptitiously diverted substantial rental payments from K&T Group, LLC to his personal entity, Taylor Tax Law, LLC, in direct violation of his fiduciary duties.

RELEVANT FACTS

K&T Group, LLC ("K&T" or "Company") is a South Carolina, term, manager-managed limited liability company formed in 2003, with two equal members: John Kachmarsky, Trustee of the Revocable Trust of John Kachmarsky dated November 30,

2007 and Taylor Capital, LLC. Each member holds a fifty percent (50%) membership interest in K&T. David G. Taylor and John Kachmarsky serve as the two managers of K&T.

K&T owns a 5,106 square foot commercial office suite in the Franke Building located at 171 Church Street, Suite 330, Charleston, SC 29401 comprised of TMS Number 458-05-03-120 with 1,186 square feet and TMS Number 458-05-03-121 with 3,920 square feet. (“Company Property”).

According to the Operating Agreement, K&T’s business purpose is specifically defined in Section 1.10 as “to hold and manage the Company Property, including but not limited to servicing, managing, improving, operating, leasing, mortgaging, refinancing, pledging, selling or otherwise dealing with the Company Property and engaging in such other activities as the Management Committee deems necessary or appropriate to the foregoing purposes.” (Operating Agreement, Exh. A). Said differently, the Company is in the business of renting out its commercial office space to tenants.

RELEVANT PROCEDURAL HISTORY

A. The Lawsuit

On June 15, 2022, Plaintiff filed a lawsuit against Defendants David G. Taylor (individually and as Manager of K&T Group, LLC) and Taylor Capital, LLC (as Member of K&T Group, LLC). (Complaint, Exh. B). The Complaint asserted causes of action for breach of contract based on: (1) Taylor’s failure to pay rent for office space occupied within the Company Property, (2) his persistent refusal to contribute proportionately to Company expenses, and (3) his violations of banking covenants with Ameris Bank that jeopardized the Company’s financial stability.

The Complaint sought judicial expulsion of Taylor Capital, LLC as a Member of K&T Group, LLC, judicial dissolution of the Company, and partition of Company Property based on the specific causes of action and supporting allegations contained therein. The Complaint contained no allegations regarding David Taylor's diversion of rental proceeds from tenant Taylor Foley, LLC, discussed below, as this separate and distinct breach of fiduciary duty was unknown to Plaintiff (and even Taylor's own law partners at Taylor Foley) at the time of trial.

On August 19, 2022, Defendants filed their Answer and Counterclaim, contending that Plaintiff had, *inter alia*, violated the K&T Operating Agreement by staying at the office overnight, refusing to provide Taylor with working login credentials to access certain financial records on QuickBooks, and allegedly "divert[ing] opportunities from K&T to other entities owned by Kachmarsky." (Original Answer and Counterclaim, Exh. C, pp. 5-7). Notably, Defendants alleged that "Kachmarsky prioritized placing tenants in the office suites he owned over the office suites owned by K&T," and that that Kachmarsky's alleged diversion of business opportunities from K&T "constitutes a breach of the K&T Operating Agreement." (Exh. C, p. 6).¹

The Answer and Counterclaim expressly acknowledged that, "Section 6.2 of the K&T Operating Agreement imposes upon all managers a duty of loyalty," that "Section 6.3 of the K&T Operating Agreement imposes upon all managers a duty of care," and that "Section 6.4 of the K&T Operating Agreement requires each manager to discharge his

¹ As set forth below, all of the counterclaims contained in Defendants' original Answer and Counterclaim would later be abandoned by Defendant on the eve of trial.

duties ‘consistently with the obligations of good faith and fair dealing.’ (Exh. C, pp. 5-7) (Emphasis added).

By consent order filed July 18, 2023, the case was assigned to the Master in Equity.

B. Relevant Pre-Trial Motions

On August 23, 2023, Plaintiff filed a Motion for Summary Judgment as to Defendants’ Counterclaim, later supported by a December 28, 2023 memorandum. Plaintiff highlighted that during David Taylor’s July 7, 2023 deposition, Taylor testified in ways that demonstrated Defendants suffered no damages from the breaches alleged in their Counterclaim. Specifically, Taylor testified that he didn’t know if they lost tenants, couldn’t quantify monetary damages, found it “hard to say” if there was lost revenue, and confirmed no one refused to move in because of Kachmarsky’s supposed conduct. Plaintiff asserted that without demonstrable damages, Defendants’ counterclaim failed to meet an essential element of their breach of contract claim, entitling Plaintiff to summary judgment as a matter of law.

On January 4, 2024, the Court denied Plaintiff’s Motion for Summary Judgment without prejudice, preserving Plaintiff’s right to raise the issue at trial.

However, on September 16, 2024—the day before trial was scheduled to begin—Defendants moved to withdraw all of their original counterclaims and assert entirely new counterclaims against Plaintiff. Significantly, the proposed Amended Counterclaim abandoned Defendants’ initial allegations entirely, substituting fundamentally different claims. The new counterclaim focused exclusively on Kachmarsky’s supposed conduct regarding a disputed \$8,750 payment from early 2022. Defendants alleged that Kachmarsky filed suit based on “stale and minor disputes” as pretext to force Taylor Capital out of their

investment. Defendants now—two years and three months after the filing of the instant lawsuit and on the afternoon before trial—claimed Kachmarsky’s filing of the instant lawsuit breached Kachmarsky’s fiduciary duties and sought attorney’s fees as damages.

On September 17, 2024, the first day of trial, Plaintiff objected to Defendants’ pre-trial motion to amend, arguing that allowing the amendment would be prejudicial as Plaintiff would have no opportunity to conduct discovery on the new allegations, develop appropriate defenses, or otherwise prepare to defend against these new counterclaims. (Trial Transcript, Exh. D). After hearing arguments from counsel, the Court granted Defendants’ motion to amend over Plaintiff’s objection.¹

C. The Trial

Thereafter, the Court held a one-day non-jury trial regarding Plaintiff’s claims for Breach of Contract, judicial expulsion of Taylor Capital, LLC pursuant to S.C. Code Ann. §33-44-601, judicial dissolution of the Company under S.C. Code Ann. § 33-44-801, and partition of the Company Property, as well as Defendants’ newly-raised counterclaim. Following the presentation of evidence and testimony, the Court asked counsel for the parties to prepare proposed orders for the Court’s consideration, and the matter was taken under advisement.

D. Current Order Under Reconsideration and Review

On November 26, 2024, the Court entered an Order dismissing all of Plaintiff’s claims with prejudice and entering judgment on Defendants’ newly-raised counterclaim in

¹ Although Defendants’ Motion to Amend was granted, Defendants’ Amended Answer and Counterclaim was not formally filed with the Court until after the trial on October 10, 2024.

favor of Defendants against John Kachmarsky individually. (Order, Exh. E). The Court's Order awarded Defendants costs and attorneys' fees for the defense of claims, to be determined at a subsequent hearing after submission of supporting affidavits.¹ Of note, this Order, which was prepared by Defendants' counsel and adopted by this Court, expressly identified Taylor Foley, LLC as the Tenant of K&T Group, LLC, stating: "The party that rents space *from the Company*, and which temporarily used and ultimately rented the specific office at issue, *is the law firm Taylor Foley*." (Exh. E, p. 5). (Emphasis added)

E. Post-Trial Motions

On December 6, 2024, Plaintiff timely filed a Motion for Reconsideration pursuant to Rules 52(b), 59(e), and 60 of the South Carolina Rules of Civil Procedure. In this motion, Plaintiff requested that the Court alter or amend its judgment, asserting that the Court had misunderstood, mistook, failed to fully consider, and/or rule upon arguments or issues raised in Plaintiff's Complaint, at trial, and in the record. Specifically, Plaintiff argued that the Court disregarded substantial evidence presented at trial, made findings inconsistent with the evidence and testimony, and failed to rule on certain arguments and factual issues properly presented to the Court, including the issue of whether partition was appropriate.

Subsequently, on January 17, 2025, Plaintiff filed a Rule 60(b)(2) Motion for Relief from Judgment Due to Newly Discovered Evidence. In this motion, Plaintiff presented evidence that Defendant David Taylor, a Manager of K&T Group, LLC, had surreptitiously collected and diverted substantial rental payments owed to K&T Group, LLC from tenant Taylor Foley, LLC for his own benefit. Specifically, Plaintiff provided an affidavit from

¹ On December 11, 2024, Defendants' counsel filed an Affidavit of Costs and Attorney's fees, asserting Defendants had incurred \$96,291.45, which based on its language, includes pursuing several counterclaims, which were ultimately abandoned on the eve of trial.

April M. Shore of Taylor Foley, LLC, attesting that from October 1, 2015, through January 2025, Taylor Foley, LLC had paid \$982,300.00 in rent for use of office space held by K&T Group, LLC, but at Defendant Taylor's direction, these payments were made to Taylor Tax Law, LLC, an entity owned and controlled by David Taylor, rather than directly to K&T Group, LLC. Plaintiff asserted that Taylor only submitted \$587,061.00 of the sums received to K&T Group, LLC, withholding approximately \$395,239.00 in undisclosed rental proceeds from the Company in violation of Taylor's express Duty of Loyalty.

Defendants filed a Response to Plaintiff's Rule 60(b)(2) Motion on January 24, 2025, and Plaintiff filed a Reply on January 27, 2025, noting that Defendants made no attempt to deny that Defendant Taylor had collected and diverted rental payments for his own benefit in violation of his express duties under the Operating Agreement.

On January 27, 2025, the Court heard arguments on Plaintiff's Rule 60(b)(2) motion to reopen the judgment. At the end of that hearing, the Court stated that an evidentiary hearing would be needed to determine if Plaintiff could establish a basis for relief from judgment under the requirements of Rule 60(b), SCRCP. (Hearing Transcript, Exh. F). Specifically, the Court was interested in finding out whether Plaintiff could establish Defendants had engaged in extrinsic fraud, which as discussed below, is a requirement for obtaining relief from judgment pursuant to Rule 60(b)(3), SCRCP, but not a requirement for obtaining relief pursuant to Rule 60(b)(2), SCRCP. Defendants did not object to a hearing on the issues.

F. The Evidentiary Hearing

On March 10, 2025, the Court held an evidentiary hearing to establish whether Plaintiff met the requirements for obtaining relief from the judgment pursuant to Rule

60(b). During this hearing, testimony was taken from several witnesses, including David Taylor, Brent Bullock, April Shores, and John Kachmarsky, regarding the disputed rental arrangements and payments between Taylor Foley, LLC, Taylor Tax Law, and K&T Group, LLC. (Hearing Transcript, Exh. G). The evidence presented focused, *inter alia*, on (1) whether David Taylor had directed tenant payments to entities under his control rather than to K&T Group, LLC, (2) whether these actions constituted violations of his fiduciary duties as Manager under the Operating Agreement, (3) whether Plaintiff had reason to pursue discovery related to claims that were not asserted in his complaint or known to him at the time of trial, and (4) whether Defendants had engaged in extrinsic fraud.

From October 1, 2015 through January 2025, tenant Taylor Foley, LLC paid \$982,300.00 in rent for use of office space held by K&T Group, LLC. At Defendant David Taylor's direction, however, Taylor Foley, LLC did not make these rent payments directly to K&T Group, LLC, but rather to Taylor Tax Law, LLC, an entity *owned and controlled* by David Taylor. Defendant David Taylor did not submit and/or report the entirety of the rental payments received from Taylor Foley, LLC to K&T Group, LLC. Instead, Defendant David Taylor only submitted \$587,061.00 of the sums received from tenant Taylor Foley, LLC to K&T Group, LLC, causing \$395,239.00 in undisclosed rental proceeds to be withheld from the Company.

Following the evidentiary hearing, the Court requested that the parties submit additional briefing on the Rule 60(b) Motion, resulting in this Memorandum in Support of Plaintiff's Motion for Relief from Judgment.

LEGAL STANDARD

Relief from Judgment Pursuant to Rule 60(b)(2), SCRCP.

Under Rule 60(b)(2), SCRCP, a court may relieve a party from a final judgment, order, or proceeding based on “newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b).” Rule 60(b)(2), SCRCP. For relief under Rule 60(b)(2), the moving party must establish that the newly discovered evidence: (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial through due diligence; (4) is material to the issue; and (5) is not merely cumulative or impeaching. See *Southeastern Housing Foundation v. Smith*, 380 S.C. 621, 638, 670 S.E.2d 680, 689 (2008), citing *Lanier v. Lanier*, 364 S.C. 211, 218, 612 S.E.2d 456, 459 (Ct. App. 2005).

Relief from Judgment Pursuant to Rule 60(b)(3), SCRCP.

Under Rule 60(b)(3), SCRCP, relief from judgment may be granted for “fraud, misrepresentation, or other misconduct of an adverse party.” Rule 60(b)(3), SCRCP. “In South Carolina, in order for a party to be entitled to relief based on fraud, the moving party must demonstrate extrinsic fraud.” *Jamison v. Ford Motor Co.*, 373 S.C. 248, 644 S.E.2d 755 (Ct. App. 2007). (Emphasis added). “Extrinsic fraud is ‘fraud that induces a person not to present a case or deprives a person of the opportunity to be heard.’” *Chewning v. Ford Motor Co.*, 354 S.C. 72, 81, 579 S.E.2d 605 (2003) (quoting *Hilton Head Ctr. of South Carolina v. Public Serv. Comm’n*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)). By contrast, intrinsic fraud is fraud that “misleads a court in determining issues and induces the court to find for the party perpetrating the fraud.” *Id.*

ARGUMENTS

I. Defendant David Taylor Orchestrated a Deliberate Scheme to Misappropriate Company Assets While Concealing His Actions.

The evidentiary hearing revealed that David Taylor, as manager of K&T Group, established an undisclosed arrangement whereby Taylor Foley LLC paid approximately \$10,500 per month in rent, but only \$5,750 was remitted to K&T Group through Taylor Tax Law. Taylor retained the difference of approximately \$4,750 per month for years via Taylor Taylor Tax Law, an entity, which he owned and controlled, resulting in nearly \$395,239 in diverted funds.¹

The evidence demonstrates that Taylor created and maintained this arrangement through a series of calculated steps:

First, Taylor unilaterally created this arrangement, positioning Taylor Tax Law (an entity under Taylor's control) as a middleman between K&T Group and Taylor Foley, LLC. During the evidentiary hearing, Taylor admitted this purported sublease arrangement was his creation alone:

Q. You unilaterally made the decision to create a sublease and lease it to Taylor Foley; is that correct?

A. Who else could have made that decision? Yes. I'm the one that made that decision." (Tr. p. 60, lines 12-17).

Second, Taylor expressly admitted at the evidentiary hearing that he never disclosed this arrangement to John Kachmarsky, his co-manager. When directly asked, "So the

¹ In addition to serving as a Manager of K&T with express written duties to the Company and its members, David Taylor also controlled Taylor Tax Law, LLC, and was a name partner at Taylor Foley, LLC. As demonstrated by the testimony at the evidentiary hearing, Mr. Taylor's "wearing of many hats" led to clear conflicts of interest, which could have been entirely avoided had he simply informed both John Kachmarsky and his law partners at Taylor Foley about his intended financial arrangements before unilaterally implementing them.

answer to the question is at no point did you ever tell John Kachmarsky that you were receiving \$10,500 a month for rent but you were going to pocket the \$5,000?" Taylor responded with a clear admission: "That's right. It had nothing to do with--" (Tr. p. 33, lines 5-11). Taylor then attempted to justify his actions rather than denying them.

Third, the arrangement was unknown to Taylor's own law partners at Taylor Foley, LLC. Brent Bullock, a partner at Taylor Foley, testified he was "surprised" to learn about this arrangement (Tr. p. 68, lines 10-14), and April Shores, Taylor's long-time office manager, testified she didn't know about the diversion of funds (Tr. p. 95, lines 23-25). Neither John Kachmarsky nor Taylor's partners at Taylor Foley discovered that Taylor was collecting more rents from Taylor Foley than he was remitting to K&T until December of 2024.

Most significantly, the existence of the alleged "sublease" arrangement was never disclosed during the original trial. Taylor made no mention of a sublease at the underlying trial, nor did Taylor refer to Taylor Foley, LLC as a subtenant. To the contrary, Defendants' proposed order, which this Court adopted, states the exact opposite: "The party that rents space from the Company, and which temporarily used and ultimately rented the specific office at issue, is the law firm Taylor Foley." (Order, p. 5).

Significantly, when asked as to why he did not refer to the existence of a purported sublease during trial or in the Court order drafted by his counsel, Taylor responded, "I don't think it was relevant to what we were talking about at that hearing." (Tr., p. 33:23-34:2). By his own admission, Taylor acknowledged that the undisclosed sublease arrangement he devised and unilaterally implemented was not relevant to the trial and, by implication, Plaintiff's claims against him.

When further questioned about his inconsistent positions at the evidentiary hearing, Taylor could not provide a coherent response. When asked directly, “Let’s first agree that it was never referenced in court or the order. Do you agree with that?” Taylor attempted to evade the question before acknowledging, “I don’t really know.” (Tr., p. 33:23-34:6). When asked, “What precluded you from saying, John, I’m going to start charging \$5,000 more in rent for my office from the tenants that we have,” Taylor had no coherent answer and merely responded, “I’m sorry. What’s the question?” (Tr. p. 30, lines 16-21).

John Kachmarsky had no reason to suspect Taylor was diverting rental payments, as this arrangement was concealed even from Taylor’s own law partners. When asked directly at the evidentiary hearing if he had “any belief in [his] wildest imagination that David was charging more than he was collecting,” Kachmarsky unequivocally responded, “No. It was a surprise to me.” (Tr. p. 113:24-114:3).

Taylor’s position that a supposedly legitimate undisclosed lease existed is further undermined by a glaring inconsistency in his own business practices. Throughout the evidentiary hearing, Taylor repeatedly criticized Kachmarsky for not wanting written lease agreements for K&T Group. Taylor testified that he “would prefer to have paid fair market value” (Tr. p. 36, lines 11-13) and claimed he wanted to have leases. He attempted to portray Kachmarsky as being negligent in his management duties because Kachmarsky supposedly refused to do it.

Yet remarkably, despite Taylor’s professed preference for formal written agreements, he failed to create a written sublease agreement for the very arrangement he now claims justified his diversion of funds. When asked about the existence of a written sublease agreement, Taylor’s own law partner Brent Bullock testified that “There is no

written lease” (Tr. p. 79, line 20). If Taylor truly believed a sublease arrangement was proper and legitimate, why did he not follow his own purported business advice by creating a written agreement? This contradiction demonstrates that Taylor either (1) deliberately avoided formalizing the arrangement precisely because he knew it would expose his improper diversion of funds from K&T Group and breach of fiduciary duty, or (2) there was never an actual sublease, and Taylor simply fabricated the existence of an undisclosed, unilaterally-exercised sublease as a post-hoc justification for misappropriating the Company’s rental income and business opportunity. Either way, Taylor actively concealed this arrangement from Plaintiff as well as his own law partners at Taylor Foley.

What makes this inconsistency even more troubling is that Section 5.2(a) of the K&T Group Operating Agreement specifically requires unanimous approval of the members for “[a]ny amendment to this Agreement or the Articles of Organization” (Operating Agreement, p. 12). A sublease arrangement that fundamentally altered how rental payments were handled would have required such an amendment, particularly given the Operating Agreement’s detailed provisions regarding manager duties in Article VI. The fact that Taylor never sought such approval—despite his claimed preference for formal documentation—further demonstrates the improper nature of his actions.

Had the firm of Taylor Foley never broken up and approached Kachmarsky via counsel about renting office space under new firm name, Kachmarsky would have never learned that Taylor was charging his partners at Taylor Foley more rent than he was remitting to the Company. In turn, Taylor’s former law partners at Taylor Foley would have never learned that Taylor was charging them nearly twice as much as what K&T had been receiving rent.

II. Taylor's Conduct Constitutes a Clear Breach of His Duty of Loyalty to the Company and its Members.

Taylor's actions represent a textbook violation of the Duty of Loyalty imposed by Section 6.2 of the Operating Agreement.¹

Section 6.2(a) of the Operating Agreement explicitly requires managers "to account to the Company and to hold as trustee for the Company any property, profits, or benefits derived by the Manager in the conduct of [...] the Company's business or derived from the use by the Manager of the Company's Property including the appropriation of a Company Opportunity" (Operating Agreement, p. 15). Taylor deliberately violated this duty by diverting rental income generated by Company Property from the Company to an entity under his control. This conduct directly contradicts the obligation to hold profits derived from Company business or property as trustee for the Company. Moreover, transferring rental income generated by Company Property to an outside entity—even under the pretense of a surreptitiously arranged sublease—clearly constitutes appropriation of Company opportunity.

Section 6.2(b) further requires Managers "to refrain from dealing with the Company in the conduct [...] of the Company's business as or on behalf of a party having an interest adverse to the Company" (Operating Agreement, p. 15). Taylor clearly violated this duty by conducting the Company's business (renting commercial office space) in a manner that redirected rental income from the Company to Taylor Tax Law, LLC—an entity he owns and controls.

¹ The subject duties expressed in K&T's Operating Agreement are identical to those duties imposed on Managers by S.C. Code § 33-44-409 (b)(1)-(3) and (h)(2)-(3).

Additionally, Section 6.2(c) requires Managers “to refrain from competing with the Company in the conduct of the Company’s business before dissolution of the Company” (Operating Agreement, p. 15). By using Company Property to generate rental income for his separate entity rather than the Company itself, Taylor unequivocally engaged in direct competition with the Company’s business.

Taylor’s own legal filings in this matter provide compelling evidence that he fully understood the duties imposed by Section 6.2 of the Operating Agreement. In his original Answer and Counterclaim filed on August 19, 2022, Taylor explicitly acknowledged that “Section 6.2 of the K&T Operating Agreement imposes upon all managers a duty of loyalty.” (Exh. C, pp. 5-7) (Emphasis added). This acknowledgment is significant because it demonstrates Taylor’s clear awareness of the very obligations he violated.

More notably, Taylor’s counterclaim against Kachmarsky—which he later completely abandoned on the eve of trial—specifically alleged that Kachmarsky violated the Operating Agreement by supposedly “divert[ing] opportunities from K&T to other entities owned by Kachmarsky” and “prioritiz[ing] placing tenants in the office suites he owned over the office suites owned by K&T.” (Exh. C, pp. 5-7). Taylor’s own filings characterized these alleged actions as a “breach of the K&T Operating Agreement.

When confronted with these duties during the evidentiary hearing, Taylor admitted he understood these obligations yet maintained he hadn’t breached them despite the overwhelming evidence to the contrary. However, this position taken by Taylor in his own legal filings is fundamentally inconsistent with his current defense. Taylor cannot credibly maintain that diverting rental income from Company Property to his own entity (Taylor Tax Law, LLC) is permissible when he previously argued that diverting business opportunities

from K&T constitutes a breach of the very same express duty contained in the K&T Operating Agreement. By his own legal standard articulated in his previously-filed counterclaim, Taylor's conduct in redirecting rental income away from the Company to his personal benefit represents a clear violation of Section 6.2 of Operating Agreement.

III. Relief from Judgment is Clearly Warranted Under Rule 60(b)(2), SCRC.

A. The Newly Discovered Evidence Could Not Have Been Discovered Through Due Diligence Before Trial.

As demonstrated by the facts and procedural history in this case, Plaintiff exercised reasonable diligence throughout discovery but could not have uncovered Taylor's scheme for several compelling reasons:

First, Plaintiff's complaint specifically focused on Taylor's occupation of additional office space without proper payment, his failure to honor banking commitments, and other operational issues. The complaint makes no reference whatsoever to any rental diversion scheme because Plaintiff had absolutely no knowledge or reason to suspect such a scheme existed. Discovery in the original action was necessarily tailored to the claims actually presented in the complaint, which dealt with entirely different issues.

Second, the very nature of Taylor's concealment made discovery impossible through normal channels. Taylor deliberately created a financial arrangement that was unknown even to his own law partners. As Brent Bullock testified, even Taylor's partners at Taylor Foley were unaware of this arrangement until the firm began dissolving in late 2024 (Tr. p. 71:14-72:8). Mr. Bullock expressly contradicted Taylor's testimony that there was sublease in place between Taylor Foley and Taylor Tax Law.

Q: To your understanding, was this a lease or a sublease?

A: It was a lease.

Q: And the lease was between Taylor Foley and K&T?

A: Correct.

(Tr. p. 68, lines 18-23)

Bullock testified was “surprised” to learn that Taylor Foley was paying more money to rent the Company Property than what was being remitted to K&T:

Q. And when did you first become aware that only 5,750 was being remitted to the K&T Group?

A. It was late 2024, December.

Q. Is that when the firm was breaking up?

A. Yes.

Q. Were you surprised?

A. Surprised at what?

Q. To learn that you were paying ten-five in rent but only fifty-seven-fifty was being remitted?

A. Yes.

(Tr. p. 68, lines 5-14)

April Shores, Taylor’s long-time office managers, testified that she had only learned about the purported sublease arrangement recently:

Q: Had you ever heard the arrangement between Taylor Foley and K&T referred to as a sublease prior to the last 90 days?

A: No.

(Tr. p. 68, lines 22-25)

Third, Taylor never disclosed this arrangement during the litigation despite his continuing fiduciary duty of full disclosure. When asked during the evidentiary hearing if he had ever told John Kachmarsky about this arrangement, Taylor admitted he had not (Tr. pp. 32-33). This admission is particularly significant because it establishes that Taylor deliberately withheld this information, not just from Plaintiff generally, but specifically during the litigation process when he had both legal and fiduciary obligations to disclose this information.

Fourth, the concept of a “sublease” was never referenced in court or in the order from the original trial. This was confirmed during the evidentiary hearing (Tr. p. 33-34). Discovery cannot reasonably be expected to uncover claims that were actively concealed and that Plaintiff had no reason to suspect existed.

The scope of discovery under Rule 26(b)(1), SCRCP, is limited to matters “relevant to the subject matter involved in the pending action.” As a review of the original complaint clearly demonstrates, the subject matter of the pending action involved Taylor’s occupation of specific offices without paying rent, his breach of banking commitments, and similar operational issues. The complaint contains no allegations whatsoever about Taylor’s secret diversion of rental payments because Plaintiff had no knowledge of this scheme. Even Taylor admitted that the purported sublease arrangement was not relevant to the trial. (Tr., p. 33:23-34:2). When asked as to why he did not refer to the existence of a purported sublease during trial or in the Court order drafted by his counsel, Taylor responded, “I don’t think it was relevant to what we were talking about at that hearing.” (Tr., p. 33:23-34:2).

The “due diligence” requirement in Rule 60(b)(2) cannot reasonably be interpreted to require a plaintiff to seek discovery on claims they had no knowledge existed. John Kachmarsky had no reason to suspect that David Taylor was collecting \$10,500 in rent while only remitting \$5,750 to K&T Group. As established at the evidentiary hearing, Taylor admitted he never disclosed this arrangement to Kachmarsky, testifying “That’s right. It had nothing to do with--” when directly asked about his failure to disclose. (Tr. p. 33).

Kachmarsky had no reason to conduct discovery on an arrangement he had no knowledge of, especially when Taylor’s own filings and court submissions expressly

contradicted the existence of such an arrangement. As our Supreme Court noted in *Oncology and Hematology Assoc. v. DHEC*, “discovery requests must be ‘reasonably tailored’ to include only relevant matters.” 692 S.E.2d 920, 387 S.C. 380 (2010), quoting, *In re CSX Corp.*, 124 S.W.3d 149 (2003). Accordingly, discovery obligations must be logically limited to what a litigant can reasonably anticipate. A plaintiff cannot use discovery to pursue claims he did not assert or even know existed.

The sublease and diversion of rental payments constitute the type of separate and distinct breach of fiduciary duty that was unknown to Plaintiff and clearly outside the scope of the original claims for which discovery was conducted. Accordingly, reasonable due diligence would could not and would not have resulted in discovery of the newly-discovered evidence before trial.

B. Relief from Judgment is Warranted Under Each the Other Factors Set Forth Under Rule 60(b)(2).

1. The Newly Discovered Evidence Will Probably Change the Result if a New Trial is Granted.

Had this evidence been available at trial, it would have decisively changed the outcome. Although Taylor’s undisclosed actions fell outside of the scope of Plaintiff’s Complaint, the systematic diversion of approximately \$395,239 in rental payments represents exactly the type of misconduct that would have affected *the outcome* in this case.

Here, Plaintiff sought judicial expulsion of Taylor Capital, LLC as a Member of K&T Group, LLC, judicial dissolution of the Company, and partition of Company property based on the specific causes of action in the Complaint. Although outside the scope of the Complaint, Taylor’s scheme to divert company assets for personal gain through a deliberately undisclosed financial arrangement is precisely the type of misconduct that

justifies judicial expulsion under S.C. Code Ann. § 33-44-601 and judicial dissolution under S.C. Code Ann. § 33-44-801. It also provides grounds for equitable partitioning of the Company Property.

South Carolina law permits judicial dissociation of a member when that member “engaged in conduct relating to the company’s business which makes it not reasonably practicable to carry on the business with the member.” S.C. Code Ann. § 33-44-601(6)(iii). As established in *Boathouse at Breach Inlet v. Stoney*, courts consider factors including “the nature of the [limited liability company] member’s conduct relating to the [limited liability company’s] business” and “whether, with the [limited liability company] member remaining a member, the entity may be managed so as to promote the purposes for which it was formed.” 442 S.C. 633, 652 (Ct. App. 2024).

The evidence of Taylor’s conduct directly relates to the Company’s business and demonstrates actions fundamentally at odds with the Company’s purpose. Taylor diverted nearly \$400,000 from the Company. This is precisely the type of conduct that makes it “not reasonably practicable” to carry on the Company’s business with Taylor Capital remaining as a member. Unlike the insufficient grounds for dissociation rejected in *Boathouse* (which involved merely alleged negative statements and purchasing competing property), Taylor’s newly discovered financial misconduct directly affects the Company’s operations and financial stability.

Here, Plaintiff sought judicial expulsion of Taylor Capital, LLC as a Member of K&T Group, LLC, judicial dissolution of the Company, and partition of Company property based on the specific causes of action in the Complaint. Although outside the scope of the Complaint, Taylor’s scheme to divert company assets for personal gain through a

deliberately undisclosed financial arrangement is precisely the type of misconduct that justifies judicial expulsion under S.C. Code Ann. § 33-44-601 and judicial dissolution under S.C. Code Ann. § 33-44-801.

2. The Newly Discovered Evidence Has Been Discovered Since Trial.

The newly discovered evidence regarding Taylor's diversion of rental income clearly meets this requirement. As established by the procedural history, the trial in this matter concluded on September 17, 2024, and the Court issued its order on November 26, 2024. The evidence concerning Taylor's scheme to divert rental payments from Taylor Foley, LLC was not discovered until December 2024, when the Taylor Foley law firm began dissolving.

This timing is corroborated by the testimony of Brent Bullock, a partner at Taylor Foley, who testified at the evidentiary hearing: "It was late 2024, December" when he first became aware of the rental payment discrepancy (Tr. p. 68, lines 5-9). Similarly, April Shores testified that she had not heard of any "sublease" arrangement prior to "the last 90 days" before the evidentiary hearing (Tr. p. 94, lines 23-25).

John Kachmarsky testified that he first learned about the discrepancy between what Taylor Foley was paying and what K&T Group was receiving in "mid December" through communications with Jamie Khan (Tr. p. 109, lines 17-25; p. 110, lines 1-3). Mr. Kachmarsky further testified that it was only when "Ms. Shores did the affidavit" that "it became clear that there was a discrepancy, a rather large one, in what he was charging his law firm and paying to K&T Group" (Tr. p. 110, lines 19-23).

The evidence clearly shows that Taylor's concealment of the arrangement ensured that this evidence was not and could not have been discovered until after the trial had concluded and judgment had been entered.

3. The Newly Discovered Evidence is Material to the Issue.

The newly discovered evidence is undeniably material, not because it directly relates to the specific claims asserted in Plaintiff's original Complaint, but because it would fundamentally change the outcome of the case. The materiality test under Rule 60(b)(2) focuses on whether the evidence would likely alter the result if a new trial were granted, not whether it relates to the original claims.

This evidence of Taylor's breach of fiduciary duty through diversion of approximately \$395,239 in rental payments provides substantial new grounds for the very remedies sought in Plaintiff's Complaint: judicial expulsion, judicial dissolution, and partition. As Plaintiff's counsel argued during the hearing, the relevance of this evidence "has nothing to do with whether or not it supports the original claims. It has to do with does it change the outcome" (Tr. p. 149, lines 16-19).

The systematic diversion of funds by Taylor represents exactly the type of misconduct that justifies judicial expulsion under S.C. Code Ann. § 33-44-601 and judicial dissolution under S.C. Code Ann. § 33-44-801. This is particularly significant because Section 10.3(b) of the Operating Agreement specifically addresses "Events of Wrongful Dissociation," including situations where a member "willfully or persistently committed a material breach of this Agreement or of a duty owed to the Company or the other Members under Section 33-44-409 of the Act" (Tr. p. 21, lines 1-5).

John Kachmarsky testified that had he known about this breach, he “would have moved to amend [his] lawsuit and put it in” because he believes it “would be violative of the operating agreement” and “could lead to or alter or change the decision of the Court” (Tr. p. 115, lines 21-25; p. 116, lines 1-3). This assessment is well-founded, as Taylor’s actions directly contravene the duties established in Section 6.2 of the Operating Agreement, which Taylor himself acknowledged during the hearing (Tr. p. 19, lines 19-25; p. 20, lines 1-6).

The materiality of this evidence is further underscored by its significance to the equitable remedies being sought. As Mr. Kachmarsky testified, “this company has one purpose... we rent out office space, and we split the profits” (Tr. p. 151, lines 1-3). Taylor’s diversion of rental income fundamentally undermined that purpose, making it “no longer practical for these people to be in business together” (Tr. p. 149, lines 22-24).

4. The Newly Discovered Evidence is not Merely Cumulative or Impeaching.

The newly discovered evidence regarding Taylor’s diversion of rental payments is not merely cumulative or impeaching but constitutes substantive evidence of a distinct and significant breach of fiduciary duty that was entirely absent from the original proceedings. This evidence is not cumulative because it does not merely add to or strengthen evidence that was previously presented at trial. Rather, it presents an entirely separate and distinct breach of fiduciary duty—Taylor’s systematic diversion of rental payments—that was wholly unknown and unaddressed during the original proceedings. As Taylor himself admitted at the evidentiary hearing, he never mentioned the alleged “sublease” arrangement at trial because he didn’t “think it was relevant to what we were talking about in that hearing.” (Tr. p. 33, lines 23-24).

The evidence is not merely impeaching because it does not simply contradict or diminish Taylor's credibility as a witness. Instead, it establishes an independent, substantive violation of the Operating Agreement and Taylor's fiduciary duties as Manager. This evidence provides a substantive basis for the relief sought in Plaintiff's original complaint—judicial expulsion, dissolution, and partition—regardless of Taylor's credibility as a witness.

Furthermore, this evidence reveals a deliberate financial arrangement whereby Taylor Foley, LLC paid \$10,500 per month in rent while only \$5,750 was remitted to K&T Group through Taylor Tax Law. As Brent Bullock testified, the difference between what Taylor Foley was paying and what K&T Group was receiving was "almost double" (Tr. p. 114, lines 5-7). This constitutes substantive evidence of a systematic diversion of funds that continued for years, resulting in approximately \$395,239 in diverted funds—evidence that stands on its own rather than merely supporting or impeaching other evidence.

John Kachmarsky's testimony further emphasizes the non-cumulative nature of this evidence. When asked if he "had any belief in [his] wildest imagination that David was charging more than he was collecting," Kachmarsky unequivocally responded, "No. It was a surprise to me" (Tr. p. 113, lines 24-25; p. 114, lines 1-3). He later testified that had he known about this conduct, he would have amended his lawsuit to include these allegations as they "could lead to or alter or change the decision of the Court" (Tr. p. 116, lines 1-3). This evidence reveals a breach of Taylor's duty of loyalty to K&T Group that is entirely distinct from the issues addressed at trial and directly relevant to the legal and equitable remedies requested, rather than merely impeaching testimony previously given.

IV. Because Taylor's Actions Constituted Extrinsic Fraud, Relief From Judgment Should Be Granted Pursuant to Rule 60(b)(3), SCRCP.

A. Legal Standard for Extrinsic Fraud Under Rule 60(b)(3)

Under Rule 60(b)(3), SCRCP, relief from judgment may be granted for “fraud, misrepresentation, or other misconduct of an adverse party.” As established in South Carolina law, to be entitled to relief based on fraud, the moving party must demonstrate extrinsic fraud. See *Jamison v. Ford Motor Co.*, 373 S.C. 248, 644 S.E.2d 755 (Ct. App. 2007). Extrinsic fraud is defined as “fraud that induces a person not to present a case or deprives a person of the opportunity to be heard.” *Chewning v. Ford Motor Co.*, 354 S.C. 72, 81, 579 S.E.2d 605 (2003). By contrast, intrinsic fraud is fraud that “misleads a court in determining issues and induces the court to find for the party perpetrating the fraud.” *Id.*

B. Taylor's Actions Constitute Extrinsic Fraud

Taylor's deliberate scheme to divert rental payments from Taylor Foley, LLC while concealing this arrangement from both Plaintiff and K&T Group meets the definition of extrinsic fraud. His actions did not merely mislead the Court about facts presented at trial (which would constitute intrinsic fraud), but rather prevented Plaintiff from even having the opportunity to present this claim at trial.

1. Taylor Actively Concealed Material Financial Information

Taylor's concealment of his sublease arrangement and diversion of approximately \$395,239 in rental proceeds was not merely a failure to disclose during discovery or trial. Rather, it was an affirmative, calculated scheme designed to prevent Plaintiff from discovering relevant facts that would have substantially altered the nature of the case.

As evidenced by the testimony at the evidentiary hearing, Taylor deliberately created a financial arrangement that was unknown even to his own law partners. Most

importantly, Taylor admitted at the evidentiary hearing that he never disclosed this arrangement to John Kachmarsky. When asked directly, “So the answer to the question is at no point did you ever tell John Kachmarsky that you were receiving \$10,500 a month for rent but you were going to pocket the \$5,000?” Taylor responded with a clear admission: “That’s right. It had nothing to do with--” (Tr. p. 33, lines 5-11).

2. The Concealed Information Could Not Have Been Discovered Through Litigation

A critical distinction between extrinsic and intrinsic fraud is whether the aggrieved party could have discovered the fraud through normal litigation processes. In this case, Plaintiff had no reasonable way to discover Taylor’s scheme through the normal discovery process because:

First, Plaintiff had no reason to suspect the existence of such an arrangement. As John Kachmarsky testified, when asked if he had “any belief in [his] wildest imagination that David was charging more than he was collecting,” he unequivocally responded, “No. It was a surprise to me” (Tr. p. 113, lines 24-25; p. 114, lines 1-3). This lack of knowledge is further corroborated by the fact that April Shores, who had direct access to Taylor Foley’s records, testified she “didn’t know” about the diversion of funds (Tr. p. 95, lines 23-25).

Second, the concealment was so complete that even Taylor’s own law partners were unaware of the arrangement. As Brent Bullock testified, he only learned about the discrepancy in “late 2024, December” when the firm was breaking up (Tr. p. 68, lines 5-8). If Taylor’s own law partners, who had direct access to the firm’s financial records, were unaware of this arrangement, Plaintiff could not reasonably have been expected to discover it through normal discovery.

Third, when questioned about the nature of the rental arrangements at trial, Taylor never disclosed the existence of a sublease or the fact that he was collecting substantially more rent than was being remitted to K&T Group. As Taylor himself acknowledged at the evidentiary hearing, he never mentioned the alleged “sublease” arrangement at trial because he “didn’t think it was relevant to what we were talking about at that hearing” (Tr. p. 33, lines 23-24).

3. Taylor’s Conduct Deprived Plaintiff of the Opportunity to Be Heard

The essence of extrinsic fraud is that it deprives a party of the opportunity to be heard on an issue. In this case, Taylor’s concealment of his rental diversion scheme deprived Plaintiff of the opportunity to present claims related to this significant breach of fiduciary duty.

As John Kachmarsky testified, had he known about Taylor’s scheme, he “would have moved to amend [his] lawsuit and put it in” because he believes it “would be violative of the operating agreement” and “could lead to or alter or change the decision of the Court” (Tr. p. 115, lines 21-25; p. 116, lines 1-3). By deliberately concealing this information, Taylor effectively prevented Plaintiff from presenting these claims to the Court.

This is precisely the type of conduct that Rule 60(b)(3) is designed to address. As Plaintiff’s counsel argued during the evidentiary hearing, “the concealment is the real issue” (Tr. p. 148, line 25). Taylor’s scheme was “effectively concealed” and “but for a little bit of luck that happened after the trial was over...we never would have known” (Tr. p. 136, lines 4-7).

C. Relief is Warranted Under Rule 60(b)(3)

When extrinsic fraud is established, relief from judgment under Rule 60(b)(3) is appropriate. The evidence presented at the evidentiary hearing clearly demonstrates that Taylor engaged in a deliberate scheme to divert rental income that should have been paid to K&T Group, in direct violation of his fiduciary duties under the Operating Agreement. This is not a case where Plaintiff simply failed to discover evidence that was available through normal discovery channels. Rather, it is a case where Taylor deliberately concealed material information that would have fundamentally altered the nature of the case had it been known. This concealment deprived Plaintiff of the opportunity to present his full case to the Court, which is the very definition of extrinsic fraud.

The Court should therefore grant relief from judgment pursuant to Rule 60(b)(3), SCRCF, and allow Plaintiff to present his full case, including the newly discovered evidence of Taylor's breach of fiduciary duty through the diversion of rental income.

V. The Well-Settled Doctrine of Judicial Estoppel Precludes Taylor from Adopting a Position Regarding the Existence of a Purported Sublease Than the One He Took at Trial.

The doctrine of judicial estoppel provides an additional basis for relief in this case, as it prevents Defendant Taylor from now asserting the existence of a purported "sublease" arrangement—a position directly contrary to the one he advanced at trial. Under South Carolina law, judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding. See *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 489 S.E.2d 472 (1997). The Supreme Court has recognized this doctrine's importance in protecting "the integrity of the judicial process." *Id.*

In *Cothran v. Brown*, 357 S.C. 210, 592 S.E.2d 629 (2004), the Supreme Court established five elements necessary for the application of judicial estoppel: (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent. All five elements are present in this case.

First, Taylor has taken two inconsistent positions regarding the rental arrangement between K&T Group and Taylor Foley. At trial, Taylor never mentioned a sublease arrangement, and in fact, the Court's Order, drafted by Taylor's counsel, explicitly identifies "Taylor Foley" as "the party that rents space from the Company" (Exh. E, p. 5). Now, after judgment, Taylor claims for the first time that a sublease arrangement existed between Taylor Tax Law and Taylor Foley, with Taylor Tax Law allegedly serving as an intermediary that legitimately retained nearly half of the rental payments.

Second, these inconsistent positions were taken in the same proceeding—the original trial and subsequent post-judgment proceedings in this case.

Third, Taylor was successful in the original position he took at trial. The Court accepted his characterization of the rental arrangement, with the Order explicitly stating that Taylor Foley "rents space from the Company" (Exh. E, p. 5), and ultimately ruled in Taylor's favor, dismissing all of Plaintiff's claims.

Fourth, Taylor's inconsistency was part of an intentional effort to mislead the Court. When directly asked at the evidentiary hearing why he never mentioned the purported

sublease during the trial, Taylor admitted, “I don’t think it was relevant to what we were talking about in that hearing” (Tr. p. 33, lines 23-24). This admission reveals Taylor’s calculated decision to withhold information that he now claims justified his diversion of nearly \$400,000 in rental proceeds from K&T Group. Taylor’s own testimony confirms this was not an oversight but a deliberate choice to present one version of facts at trial when that version suited his interests, only to adopt a contradictory position post-judgment when the original version no longer served him.

Fifth, Taylor’s positions are totally inconsistent. His representation at trial that Taylor Foley was a direct tenant of K&T Group cannot be reconciled with his current claim that a sublease arrangement existed whereby Taylor Tax Law collected the full rental payment and legitimately retained a substantial portion for Taylor’s personal benefit. These are not merely different characterizations of the same arrangement but fundamentally contradictory legal relationships with significant financial consequences for K&T Group.

The significance of this inconsistency is further underscored by the testimony of his own law partners and office manager, who directly contradicted Taylor’s testimony regarding the existence of a purported sublease. The absence of any reference to a sublease in the testimony or court order from the original trial, combined with these admissions, demonstrates that Taylor’s current position represents a complete reversal from his earlier one.

As the Supreme Court explained in *Hayne*, the purpose of judicial estoppel is to “protect the integrity of the judicial process or the integrity of the courts.” 327 S.C. at 251, 489 S.E.2d at 477. Here, Taylor’s attempt to adopt a position diametrically opposed to the one he advanced at trial strikes at the heart of this integrity. Having successfully convinced

the Court that Taylor Foley was a direct tenant of K&T Group, Taylor cannot now claim that a sublease existed to justify his diversion of rental proceeds.

In *Cothran*, the Supreme Court refused to apply judicial estoppel where a party had consistently maintained the same factual position throughout the proceedings. 357 S.C. at 216, 592 S.E.2d at 632. The opposite is true here. Taylor has completely reversed his position regarding the relationship between K&T Group and Taylor Foley. His belated claim of a sublease arrangement serves only as a post-hoc justification for his conduct.

Under these circumstances, the doctrine of judicial estoppel squarely applies to preclude Taylor from asserting the existence of a sublease arrangement that was never mentioned during trial and directly contradicts the position he successfully advanced in obtaining judgment. The Court should therefore grant relief from judgment and prevent Taylor from benefiting from his inconsistent positions.

VI. The Defense's Cited Cases Are Distinguishable

The cases cited by defense counsel - *Bowman v. Bowman*, 357 S.C. 146, 591 S.E.2d 654 (Ct. App. 2004) and *Raby Construction v. Orr*, 358 S.C. 10, 594 S.E.2d 478 (2004) - are readily distinguishable from the present case and do not support Defendants' position that Plaintiff could have discovered Mr. Taylor's rent diversion scheme through reasonable discovery efforts.

Fundamental Factual Differences

In *Bowman v. Bowman*, the plaintiff was aware of the pension plan at issue and had notice of a potential claim, as evidenced by the Court's finding that the husband was aware of the plan and had even noticed a deposition of somebody who might have relevant information but elected not to pursue discovery further. *Bowman*, 357 S.C. at 151, 591

S.E.2d at 657. Unlike the plaintiff in *Bowman*, Mr. Kachmarsky had no reason to suspect the existence of a hidden sublease arrangement or rental diversion scheme. He had no notice whatsoever that would prompt specific discovery requests about such an arrangement.

Similarly, in *Raby Construction v. Orr*, the Court found that “Bailey was identified in respondent’s answers to interrogatories as a witness who could testify as to the accounting” relevant to the dispute, but the plaintiff did not depose this key witness. *Raby Const.*, 358 S.C. at 22, 594 S.E.2d at 484. In our case, while Ms. Shores and Mr. Bullock may have been identified as potential witnesses, their knowledge of the sublease arrangement was itself limited - Ms. Shores testified she didn’t know about the diversion of funds, and Mr. Bullock testified he was surprised to learn about it. Deposing these witnesses would not have revealed the scheme because they themselves were unaware of it until December 2024.

The Concealment Factor

A critical distinction between our case and the cited authorities is the element of active concealment. In both *Bowman* and *Raby*, the courts found no evidence that the opposing parties took affirmative steps to hide relevant information. The information was simply available but not pursued.

In stark contrast, Mr. Taylor took deliberate steps to ensure his scheme remained undiscovered:

1. Taylor admitted at the evidentiary hearing that he never disclosed the arrangement to John Kachmarsky.

2. Taylor concealed the arrangement even from his own law partners at Taylor Foley. As Mr. Bullock testified, he only learned about the discrepancy in late December of 2024 when the firm was breaking up.
3. Taylor deliberately omitted any reference to a sublease during trial testimony. When asked why, he admitted, “I don’t think it was relevant to what we were talking about at that hearing.”
4. The Court’s Order, drafted by Taylor’s counsel, explicitly identified “Taylor Foley” as “the party that rents space from the Company” - a direct contradiction to Taylor’s current claim that a sublease existed.

These factors demonstrate that we are not dealing with merely available information that Plaintiff failed to discover; we are confronting an intentionally concealed scheme that even those closest to Taylor (his law partners) were unaware existed.

The Due Diligence Standard

The “due diligence” standard applied in Raby requires only reasonable efforts, not extraordinary ones. A plaintiff should not be expected to conduct discovery on unknown claims, especially when evidence of those claims is deliberately concealed by the opposing party.

The Bowman and Raby decisions stand for the proposition that readily available information must be pursued through normal discovery channels. They do not, however, impose an obligation to discover deliberately concealed information for which a party has no reasonable basis to suspect exists.

Unlike the plaintiffs in those cases, Mr. Kachmarsky had no knowledge or reason to suspect Taylor’s diversion scheme, particularly when Taylor’s own law partners - who

had direct access to the firm's financial records - were themselves unaware of the arrangement. The scheme was discovered only because of the fortuitous circumstance of the Taylor Foley firm dissolution in December 2024, months after trial had concluded.

To accept Defendants' argument would be to impose an impossible standard of omniscience on litigants, requiring them to discover hidden schemes they have no reason to believe exist. Such a standard would reward, rather than sanction, deliberate concealment and undermine the very purpose of Rule 60(b).

VII. Procedural Unfairness from Defendants' Last-Minute Counterclaim Merits Relief from the Order.

In addition to the substantive grounds for relief, the Court should reconsider the significant procedural unfairness that resulted from allowing Defendant Taylor to assert a counterclaim on the eve of trial through an amended answer. As evidenced by Defendants' September 16, 2024 Motion to Amend Answer and Counterclaim--filed on the night before trial--Taylor sought to introduce new legal theories that Plaintiff had no reasonable opportunity to address.

This late amendment severely prejudiced Plaintiff by:

1. Depriving Plaintiff of any opportunity to conduct discovery on these new allegations, as explicitly noted during Plaintiff's objections to the amendment on September 17, 2024;
2. Forcing Plaintiff to defend against entirely new claims without adequate preparation time, as the original counterclaims were completely abandoned and replaced with fundamentally different allegations;
3. Creating a situation where Plaintiff could not develop appropriate defenses against claims that focused exclusively on a disputed \$8,750 payment from early 2022, which was unrelated to the original counterclaims;

4. Giving Defendant a tactical advantage by allowing him to shift his legal strategy at the last possible moment after Plaintiff had already prepared to defend against the original counterclaims;
5. Resulting in Defendants' Amended Answer and Counterclaim not being formally filed with the Court until October 10, 2024, nearly a month after the trial was held, further highlighting the procedural irregularity.

This prejudice is particularly substantial in light of the fact that Plaintiff was not required to conduct discovery on claims it did not know existed.

The Court's decision to allow this eleventh-hour amendment over Plaintiff's objection created an inherently unfair trial environment that violated fundamental principles of due process and fair notice. The prejudice is further evidenced by the fact that the Court ultimately based its judgment on this very counterclaim, resulting in an award of attorneys' fees and costs against Plaintiff without providing adequate opportunity to prepare a defense.

CONCLUSION

The evidence presented supports granting relief from the November 26, 2024 judgment. The newly discovered information regarding David Taylor's diversion of rental proceeds from K&T Group, LLC meets the legal standards for relief under Rule 60(b)(2) and Rule 60(b)(3).

The evidence satisfies the requirements of being material, undiscoverable through reasonable diligence, and unknown until the dissolution of the Taylor Foley law firm. Taylor's actions also constitute extrinsic fraud, as he concealed a financial arrangement that would have materially affected the Court's understanding of the case.

The doctrine of judicial estoppel further supports relief, as Taylor has taken inconsistent positions—initially representing Taylor Foley as a direct tenant of K&T Group

at trial, and now claiming a sublease arrangement to justify the misappropriating of company funds. His conduct violates the express terms of the K&T Operating Agreement and the principles of good faith and fair dealing.

The procedural issues surrounding the last-minute counterclaim amendment and the concealment of material financial information further support reconsideration of the judgment.

Plaintiff respectfully requests that the Court grant relief from the November 26, 2024 judgment, allow for a new trial considering the full scope of the financial information, and provide the originally sought remedies: judicial expulsion of Taylor Capital, LLC, dissolution of K&T Group, and partition of the Company Property.

Alternatively, Plaintiff respectfully requests that the Court amend its Order pursuant to the outstanding Motion for Reconsideration and grant Plaintiff the relief sought in his complaint: judicial expulsion of Taylor Capital, LLC pursuant to S.C. Code Ann. §33-44-601, judicial dissolution of the Company under S.C. Code Ann. § 33-44-801, and partition of the Company Property.

[Signature on following page]

Respectfully submitted,

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez

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ATTORNEY FOR PLAINTIFF

March 24, 2025
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL
	)	CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2022-CP-10-02589
	)	
John Kachmarsky, Individually, as Manager of	)	EXHIBITS TO
K&T Group, LLC, and as Trustee of the	)	PLAINTIFF'S MEMORANDUM IN
Revocable Trust of John Kachmarsky dated	)	SUPPORT OF RULE 60(b)
November 30, 2007 as Member of K&T Group,	)	RELIEF FROM JUDGMENT
LLC,	)	
	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
David G. Taylor, Individually, as Manager of K&T	)	
Group, LLC; and Taylor Capital, LLC, as a Member	)	
of K&T Group, LLC,	)	
	)	
Defendant.	)	
	)	

EXHIBIT LIST

Exhibit A: Operating Agreement of K&T Group, LLC.

Exhibit B: Original Complaint filed by John Kachmarsky - Filed June 15, 2022

Exhibit C: Original Answer and Counterclaim filed by Defendants - Filed August 19, 2022

Exhibit D: Trial Transcript from September 17, 2024

Exhibit E: Court Order dismissing Plaintiff's claims - Dated November 26, 2024

Exhibit F: Transcript of Hearing on Plaintiff's Rule 60(b)(2) Motion - Dated January 27, 2025

Exhibit G: Transcript of Evidentiary Hearing - Dated March 10, 2025

Respectfully submitted,

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez

Jesse Sanchez (SC BAR #101906)

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ATTORNEY FOR PLAINTIFF

March 24, 2025

Mount Pleasant, South Carolina

EXHIBIT A

ELECTRONICALLY FILED - 2023 Sep 28 10:09 AM - CHARLESTON - COMMON PLEAS - CASE#2022CP1002589

**FIRST AMENDED AND RESTATED
OPERATING AGREEMENT
OF
K&T GROUP, LLC**

**TAYLOR & ASSOCIATES, PA
Attorneys & Counselors at Law
171 Church Street – Suite 330
Charleston, South Carolina 29401
Telephone 843.723.2000**

OFFICIAL COMPANY NAME: **K&T Group, LLC**

PLACE OF ORGANIZATION: **Charleston County, South Carolina**

DATE OF ORGANIZATION: **November 11, 2003**

DATE BEGIN BUSINESS: **November 11, 2003**

MEMBERS:

MEMBER'S NAME AND ADDRESS	CAPITAL CONTRIBUTION	FINANCIAL RIGHTS	VOTING RIGHTS
Taylor Capital, LLC 171 Church Street – Suite 330 Charleston, South Carolina 29401	\$_____.00	50.00%	50.00%
John Kachmarsky <i>Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007</i> 171 Church Street – Suite 330 Charleston, South Carolina 29401	\$_____.00	50.00%	50.00%
TOTALS	\$_____.00	100.00%	100.00%

ANNUAL MEETING: **Not Required**

ADDRESS: **171 Church Street, Suite 330
Charleston, South Carolina 29401**

REGISTERED AGENT: **John Kachmarsky**

MANAGEMENT COMMITTEE: **David Glenn Taylor
John Kachmarsky**

COMPANY PROPERTY: **171 Church Street, Suites 318, 320 & 330
Charleston, South Carolina 29401**

FEIN: 

Company Details for K & T Group, LLC

**FIRST AMENDED AND RESTATED
OPERATING AGREEMENT
FOR
K&T GROUP, LLC**

THIS FIRST AMENDED AND RESTATED OPERATING AGREEMENT ("Agreement") is made and entered into to be effective as of the 1st day of January, 2009, by and among Taylor Capital, LLC and John Kachmarsky as Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007 (collectively referred to as the "Members" and individually as a "Member").

WITNESSETH:

WHEREAS, the Company was originally formed on the 11th day of November, 2003, with David Glenn Taylor and John Kachmarsky each owning a Fifty (50%) percent of the Membership Interests for the Company; and

WHEREAS, pursuant to that certain Transfer and Assignment of Membership Interests dated to be effective as of the 1st day of January, 2009, David Glenn Taylor transferred One Hundred (100%) percent of his said Membership Interests in the Company to Taylor Capital, LLC; and

WHEREAS, David Glenn Taylor and John Kachmarsky each give their approval to the transfer of Membership Interests in the Company from David Glenn Taylor to Taylor Capital, LLC; and

WHEREAS, pursuant to that certain Transfer and Assignment of Membership Interests dated to be effective as of the 1st day of January, 2009, John Kachmarsky transferred One Hundred (100%) percent of his said Membership Interests in the Company to John Kachmarsky as Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007; and

WHEREAS, David Glenn Taylor and John Kachmarsky each give their approval to the transfer of Membership Interests in the Company from John Kachmarsky to John Kachmarsky as Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007.

NOW, THEREFORE, BE IT KNOWN that the parties hereto, do hereby amend the Operating Agreement for K&T Group, LLC by striking all Articles of said indenture in their entirety and restating said Articles as set forth herein. This indenture, as amended, shall be referred to and known as the First Amended and Restated Operating Agreement for K&T Group, LLC.

NOW, THEREFORE, the parties hereto have agreed and do hereby agree as follows:

ARTICLE I
Formation, Purposes and Powers

1.1 Formation. The parties to this Agreement have heretofore formed a limited liability company under the laws of the State of South Carolina, and agree to and adopt the terms and conditions set forth in this Agreement. The limited liability company ("Company") shall exist under and be governed by the provisions of the South Carolina Uniform Limited Liability Company Act of 1996, Sections 33-44-101 et. seq. of the Code of Laws of South Carolina (1976), as amended (the "Act"), except as otherwise provided or modified by this Agreement. The Company shall exist only for the purposes specified in this Agreement and shall not be deemed to create a partnership, joint venture, or any other relationship between the Members.

1.2 Name. The name of the Company shall be K&T Group, LLC.

1.3 Articles of Organization. The Company has filed Articles of Organization with the South Carolina Secretary of State, and shall remain in compliance with all applicable provisions of the Act necessary to maintain its existence as a South Carolina limited liability company.

1.4 Annual Report. The Company shall not be required to file an Annual Report with the South Carolina Secretary of State.

1.5 Designated Office. The Company shall maintain a designated office in South Carolina in accordance with Section 33-44-108(a) of the Act. The initial designated office shall be at 171 Church Street - Suite 330 - Charleston - 29401. The Management Committee may from time to time change the location of the Company's designated office.

1.6 Registered Agent and Address. The registered agent for service of process on the Company in South Carolina shall be John Kachmarsky. The street address of the registered agent for service of process on the Company in South Carolina shall be 171 Church Street - Suite 330 - Charleston - 29401. The Management Committee may change the registered agent's street address or designate a new agent for service of process by filing with the Secretary of State a Statement of Change, in compliance with Section 33-44-109 of the Act.

1.7 Term Company. The Company shall be term Company. The Company commenced on the date the Articles were filed with the Secretary of State of South Carolina for the Company and shall continue in existence for the period fixed in the Articles for the duration of the Company, or such earlier time as this Operating Agreement may specify.

1.8 Statement of Company & Fictitious Name Certificates. The Members shall execute and file in the proper offices such statement of the Company and such assumed or fictitious name certificates as may be required by law.

1.9 Income Tax Election. The Company shall be taxed as a partnership for state and federal income tax purposes, and the Management Committee shall make all elections necessary and file all documents and forms required to obtain and maintain such income tax treatment for the Company and the Members.

1.10 Purposes. The character of business and purposes of the Company shall be to hold and manage the Company Property, including but not limited to servicing, managing, improving, operating, leasing, mortgaging, refinancing, pledging, selling or otherwise dealing with the Company Property and engaging in such other activities as the Management Committee deems necessary or appropriate to the foregoing purposes. The purposes of the Company shall also be to engage in any other business or activity which is allowed by law, common, statutory or otherwise.

1.11 Powers. Subject to the provisions of this Agreement, the Company shall have the same powers as an individual to do all things necessary or convenient to carry on its business and affairs, including the power to:

- (a) Sue and be sued, and defend in its name;
- (b) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, maintain, manage, operate and otherwise deal with property of any kind, real, personal, tangible and intangible, or any legal or equitable interest in property, wherever located;
- (c) Sell, convey, mortgage, grant a security interest in, lease, exchange, and otherwise encumber or dispose of all or any part of its property;
- (d) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity;
- (e) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of its obligations by a mortgage on or a security interest in any of its property, franchises, or income;
- (f) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (g) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
- (h) Conduct its business, locate offices, and exercise the powers granted by this Agreement and the Act within or without the State of South Carolina;

(i) Appoint officers, employees, and agents of the Company, define their duties, fix their compensation, and lend them money and credit;

(j) Pay pensions and establish pension plans, pension trusts, profit sharing plans, bonus plans, option plans, and benefit or incentive plans for any or all of its current or former Members, officers, employees, and agents;

(k) Make donations for the public welfare or for charitable, scientific, or educational purposes;

(l) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business of the Company;

(m) Perform any act and execute and deliver any documents required by any governmental authority; and

(n) Perform any and all other acts or activities customary, incidental, necessary or convenient to the purposes and powers enumerated herein.

1.12 Company Accounts. The Company shall maintain such separate bank accounts as appropriate for the conduct of the Company's business, in the name of the Company, at such bank or banks as from time to time may be designated by the Management Committee.

1.13 Foreign Qualification. Prior to the Company doing any business in a state other than South Carolina, the Management Committee shall determine if the Company is required to "qualify to do business" in that state, and if so, the Management Committee shall take all steps necessary to qualify the Company in that state before conducting any business there.

1.14 Construction. If and to the extent the provisions of this Agreement conflict with the Act, this Agreement shall control. If and to the extent the provisions of this Agreement do not conflict with the Act, the Act shall control.

1.15 Minimum Insurance Requirements. Unless otherwise determined by the Management Committee, the Company shall carry and maintain in force, or cause to be carried and maintained in force, insurance insuring the Company for the fair market value of the Company Property (other than land), including without limitation, insurance for all insurable improvements owned or leased by the Company against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, and public liability insurance against claims for bodily injury, death or property damage. All such insurance shall be effected under policies issued by insurers and be in forms and for amounts approved by the Management Committee. If the Company renders professional services within the meaning of Section 33-19-103(7) of the Code of Laws of South Carolina (1976), as amended, the Company shall acquire and maintain such additional insurance or segregated funds as may be required by the applicable licensing authority.

ARTICLE II

Definitions

2.1 Definitions. Whenever used in this Agreement, or any amendment hereof, the following terms shall have the meanings set forth below:

(a) **“Act”** shall mean the South Carolina Uniform Limited Liability Company Act of 1996, Sections 33-44-101 et. seq. of the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

(b) **“Action of the Company”** and any reference to an action taken, or to be taken, by the Company shall mean any action properly approved by the Management Committee in accordance with ARTICLES V and VI.

(c) **“Agreement”** shall mean this Operating Agreement and any amendments made thereto from time to time.

(d) **“Articles of Organization”** shall mean the Articles of Organization filed with the South Carolina Secretary of State by which the Company was organized as a South Carolina limited liability company pursuant to the Act.

(e) **“Capital Account”** shall mean the account established and maintained for each Member on the books of the Company pursuant to ARTICLES VII and VIII hereof.

(f) **“Capital Contribution”** or **“Contribution to Capital”** shall mean the amount of cash and net fair market value (at the time of the contribution) of any property contributed to the Company by or on behalf of each Member.

(g) **“Code”** shall mean the Internal Revenue Code of 1986, as amended, and any corresponding provisions of future laws.

(h) **“Company”** shall mean K&T Group, LLC a South Carolina limited liability company.

(i) **“Company Liability”** shall mean any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.

(j) **“Company Property”** shall mean any and all property, real, personal, tangible and intangible, either contributed by a Member as capital, transferred to, or otherwise acquired by the Company, including, but not limited to, the property described on EXHIBIT A attached hereto.

(k) **“Disinterested”** shall mean with respect to any Member or Manager, a Member or Manager who (1) is not a party to a particular transaction or other undertaking, (2) has no material financial interest in any organization that is a party to that undertaking, and (3) is not a Family member of any person who is either a party to that undertaking or has a material financial interest in any organization that is a party to that undertaking.

(l) **“Family”** shall mean the spouse, lineal descendants and ancestors of a Member.

(m) **“Financial Rights”** shall mean the right of a Member, or any other person, to share in the Profits and Losses of the Company and the right to share in distributions. The phrase “Financial Rights” shall have the same meaning, and describe the same rights, as the phrase “Distributional Interest” as used in the Act.

(n) **“Losses”** shall mean the losses of the Company as determined under SECTION 8.3 hereof.

(o) **“Management Committee”** shall mean the Management Committee elected from time to time pursuant to ARTICLE V.

(p) **“Manager”** shall mean any Person elected to the Management Committee from time to time pursuant to ARTICLE V. The initial Managers shall be David Glenn Taylor and John Kachmarsky.

(q) **“Member”** shall mean the parties to this Agreement from time to time. For purposes of ARTICLES IX, X and XI, the term “Member” includes any Member who has withdrawn or otherwise dissociated from the Company.

(r) **“Membership Share”** shall mean all of the rights of a Member under this Agreement and under the Act, including, but not limited to, a Member’s Financial Rights and Voting Rights.

(s) **“Person”** shall mean an individual, general partnership, limited liability company, limited liability partnership, limited partnership, trust, estate, corporation, custodian, trustee, executor, personal representative, legal representative, administrator, nominee or any other entity or person, and any individual or entity acting in a representative capacity.

(t) **“Profits”** shall mean the profits of the Company as determined under SECTION 8.3 hereof.

(u) **“S.C. Code”** shall mean the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

(v) **“Voting Rights”** shall mean the right of a Member to vote on any matter as provided in this Agreement or under the Act. Any reference to a Member’s Voting Rights shall mean the percentage of Voting Rights in the Company held by the Member.

(w) **“Voting Rights in the Company”** shall mean the Voting Rights held by the Members, collectively. Unless otherwise specifically provided for herein, reference to a percentage of Voting Rights in the Company shall mean a percentage of the total Voting Rights held by all the Members, or the total Voting Rights represented at a meeting of the Members at which a quorum exists.

ARTICLE III **Membership and Capitalization**

3.1 Initial Members. Upon transfer of the property and/or cash constituting each Member's initial Capital Contribution to the Company, the Financial Rights and Voting Rights of the Members shall be in the percentages shown on EXHIBIT B attached hereto.

3.2 Admission of New Members. Except in the case of transferees of all or any part of a Membership Share, who shall be subject to SECTION 3.3, additional Members may be admitted to the Company only with the unanimous consent of all Members who own one hundred (100%) percent of the Voting Rights in the Company. Members shall indicate their consent to the admission of a new Member by executing a memorandum to be attached to this Agreement setting forth the names and addresses of all the Members, the amount of cash or fair market value of property being contributed by the new Member (if applicable), and the percentage ownership of Financial Rights and Voting Rights of all the Members as a result of the new Member's admission. In addition, no Person shall become a Member unless such Person:

(a) Agrees in writing to assume and to be bound by all the obligations and subject to all the restrictions of this Agreement and any further agreement with respect to the Company;

(b) Executes and acknowledges, as required, a certificate amending the fictitious name certificate or assumed name certificate of the Company in order to reflect the Member's admittance and to take any other action that may be required in connection therewith;

(c) Notifies the Company of his current address and provides his federal and state tax identification numbers and such other information as the Management Committee may deem appropriate.

3.3 Effect of Transfer of Membership Share - Transferee Admitted as a Member. A transferee of all or any part of a Membership Share who is not already a Member may only become a Member if (a) the Members who own the percentage of Voting Rights in the Company required by SECTION 3.2 consent to the transferee's admission (without regard to the Voting Rights of the transferor or transferee) and (b) such transferee meets all the qualification requirements for Members contained in this Agreement, including but not limited to, all requirements of SECTION 3.2. If the transferee becomes a Member, he shall be entitled to all rights and powers and subject to all restrictions and liabilities of a Member, including the transferor's obligations to make contributions to the Company.

Notwithstanding anything herein to the contrary, no creditor of a Member who obtains any portion of a Membership Share, including any Financial Rights, by charging order pursuant to Section 33-44-504 of the Act, or otherwise, or any person or entity, including any creditor, receiver, or bankruptcy estate that obtains any rights in the Company by reason of a security interest, pledge or the filing of an action for foreclosure, bankruptcy, receivership, divorce, or any similar proceeding may become a full Member in the Company without the unanimous written consent of the Members, obtained after the transfer.

3.4 Transferee not Admitted as a Member. If the transferee of all or any part of a Member's Membership Share is not admitted as a Member, he shall be entitled to receive only the distributions to which the transferor would otherwise be entitled. The transferee shall not have any Voting Rights and shall not be entitled to participate in the management of the Company or to exercise any rights of a Member. The transferee takes all Financial Rights subject to any claims or offsets the Company has against the transferor, regardless of whether those claims or offsets exist at the time of the transfer or arise afterwards. An amendment to this Agreement may change a Member's rights and consequently affect the rights of a transferee, even if the amendment is made after the transfer. A transferee who is not admitted as a Member shall not have the right to seek a judicial determination that it is equitable to dissolve and wind up the Company's business under Section 33-44-801(b)(6) of the Act. The transferor continues to be a Member, entitled to all rights of a Member, other than the rights transferred.

Notwithstanding anything herein to the contrary, a transferee who is not admitted as a Member shall not be entitled to receive any distributions from the Company until such transferee delivers to the Company written notice of the transfer, proof of the transfer deemed sufficient by the Management Committee, the transferee's federal and state tax identification numbers, current legal address and telephone number, and such other information as the Management Committee may reasonably require.

3.5 Redemption of Member's Financial Rights Subjected to Charging Order. In the event a Member's Financial Rights are subjected to a charging order under Section 33-44-504 of the Act, the Management Committee may cause the Company to redeem the Member's Financial Rights so charged, with Company Property, at any time prior to foreclosure of said Financial Rights in accordance with Section 33-44-504(c) of the Act. Nothing in this SECTION 3.5 shall be construed as affecting or limiting the rights of the judgment debtor and the other Members to redeem any Financial Rights subjected to a charging order with their own property in accordance with Section 33-44-504(c) of the Act.

3.6 Ceasing to be a Member. A Member shall cease to be a Member and shall have no power to exercise any rights of a Member if such Member:

- (a) Transfers his entire Membership Share; or
- (b) Is expelled from the Company by judicial determination under Section 33-44-601(6) of the Act.

3.7 Power of Attorney. Any Member may give another Member power of attorney to act for or to execute documents in the name of such Member and any action taken pursuant to such power of attorney shall be valid for all purposes as if done or executed by the Member giving such a power of attorney, provided the Member giving such power of attorney delivers a copy of the power of attorney to the Company. Any such power of attorney may be general or may be limited to certain acts or instruments, may contain conditions and restrictions, and may be changed or revoked at any time by the Member who gave such power giving notice of its change or revocation to the Company.

3.8 Additional Capital Contributions. The Company may make a mandatory capital call, in whatever amount it deems appropriate, by giving notice to all the Members of the amount each is required to contribute to the Company's capital. Any additional capital shall be contributed by the Members in the same ratio as each Member's Financial Rights bears to the total of all the Financial Rights in the Company. Solely for purposes of this SECTION 3.8, a Member who has transferred his Financial Rights, but whose transferee has not become a Member, shall be deemed to hold the Financial Rights so transferred.

(a) If any Member fails to make his proportionate Capital Contribution within thirty (30) days after receiving notice of a mandatory capital call ("Defaulting Member"), each Member who has made his required Capital Contribution pursuant to this SECTION 3.8 may make an additional Contribution to Capital equal to such Member's proportionate share of the Defaulting Member's required contribution. If any Member fails to make any such additional Capital Contributions within thirty (30) days after expiration of the original thirty (30) day period, the other Members may make further contributions in proportion to their Financial Rights until either the entire amount of the Defaulting Member's obligation is paid, or until no Member wishes to make any additional Capital Contributions. The Members shall have thirty (30) days to make such additional Contributions to Capital. Any Member that contributes additional capital to the Company shall have his Membership Share increased so that it is equal to a fraction, the numerator of which is the sum of all such Member's Capital Contributions to the Company and the denominator of which is the sum of all Capital Contributions to the Company made by each Member. The Financial Rights and Voting Rights of the Defaulting Member and each Member that elects not to make an additional Capital Contribution to the Company shall be reduced accordingly. To the extent a Defaulting Member's obligation to make Capital Contributions remains unsatisfied, such obligation of the Defaulting Member shall be a personal debt obligation of the Defaulting Member enforceable by the Company and the other Members as provided herein.

(b) The Defaulting Member hereby grants to the Company a security interest in his Membership Share to the extent of the Defaulting Member's unpaid obligation under this SECTION 3.8. If the Defaulting Member fails to satisfy his obligation hereunder by making Capital Contributions to the Company in the amount required within ninety (90) days after receiving notice of a mandatory capital call, the Defaulting Member shall forfeit his Membership Share, to the extent of any unpaid obligation. The other Members shall not be required to make any additional Capital Contributions by reason of the Defaulting Member's forfeiture.

ARTICLE IV **Member Meetings**

4.1 Place of Meetings. All meetings of the Members shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by those Members who own more than fifty (50%) percent of the Voting Rights in the Company.

4.2 Time of Meeting. Meetings of the Members may be called at any time by any Member by delivery to all Members of written notice at least seven (7) days in advance of the proposed meeting date. The notice shall contain the time, date and place of the meeting.

4.3 Quorum & Voting Requirement. Each Member shall be entitled to vote in proportion to his Voting Rights in the Company. More than fifty (50%) percent of the Voting Rights in the Company constitutes a quorum. Except as an action is permitted to be accomplished without a meeting as provided in SECTION 4.5, in order for any vote of the Members to be valid, a quorum must be represented at the meeting either in person or by proxy. Once a quorum is established, the affirmative and unanimous vote of those Members who own one hundred (100%) percent of the Voting Rights represented at the meeting shall constitute a valid decision of the Members, unless the matter being voted on is one which requires a different vote pursuant to the Act or this Agreement.

4.4 Proxies. Members may vote by proxy appointed by an instrument in writing.

4.5 Action without Meeting. The Members may take action without notice and a meeting if all the Members consent to such action by signing a Consent of the Members which sets forth the action to be taken and contains the signature of each Member.

4.6 Waiver of Notice. A Member may waive notice of any meeting by a signed writing. In addition, a Member who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.

4.7 Ratification. Under the quorum and voting requirements of SECTION 4.3, the Members may ratify and adopt any and all acts done on behalf of the Company.

ARTICLE V **Management and Control**

5.1 General Authority. Except as otherwise expressly provided by this Agreement or required by any nonwaivable provisions of applicable law, the business and affairs of the Company shall be managed by the Management Committee. The Management Committee shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business. Without limiting the generality of the foregoing, the Management Committee shall have the power and authority on behalf of the Company to:

- (a) Acquire property, real, personal, tangible and intangible;
- (b) Borrow money for the Company from banks, other lending institutions, and other persons on such terms as the Company deems appropriate and to hypothecate, encumber and grant security interests in the assets of the Company to secure payment of the borrowed sums;
- (c) Purchase liability and other insurance to protect the Company Property and business;
- (d) Hold and own any property, real, personal, tangible and intangible, in the name of the Company, including, but not limited to, deeds, mortgages, leasehold interests, interests in general partnerships, limited partnerships, limited liability companies, common trust funds, mutual funds, stocks, options, warrants, rights, puts, calls, contracts, futures, bonds, debentures, securities (public and private), and other debt and equity interests of any kind or nature;
- (e) Invest and reinvest any Company funds in time deposits, short-term governmental obligations, commercial paper or other investments including real estate, stocks, options, general and limited partnerships, limited liability companies, common trust funds, mutual funds, futures, rights, warrants, puts, calls, contracts, public and private bonds, debentures, securities, and other debt and equity interests and to actively trade, speculate on and manage the same;
- (f) Enter into, make, and perform contracts, agreements, and other undertakings binding on the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company and make all decisions and waivers thereunder;
- (g) Employ accountants, legal counsel, managing agents money managers, property managers, investment advisors and other advisors to perform services for the Company and to compensate them from Company funds;
- (h) Screen, interview, and examine staff and personnel to be employed by the Company;
- (i) Open and maintain bank and investment accounts and arrangements, draw checks, letters of credit, and other orders for payment of money and designate individuals with authority to sign or give instructions with respect to those accounts and arrangements;
- (j) Maintain the assets of the Company in good order;
- (k) Collect sums due the Company;
- (l) Pay debts and obligations of the Company to the extent that Company funds are available;

(m) Sell, purchase, lease, loan, borrow, rent, repair, partition, mortgage, pledge, encumber, develop, improve, subdivide, or otherwise deal with any property, including Company Property;

(n) Bring suit on the Company's behalf or defend the Company in any such action, and compromise, settle, collect, and otherwise represent, prosecute and defend the legal rights and interests of the Company;

(o) File on behalf of the Company a voluntary petition for bankruptcy, or to bring an action on behalf of the Company for receivership, insolvency or other similar relief in any court of competent jurisdiction, and to defend, answer, respond and otherwise represent the Company in any such action or proceeding;

(p) Invest and reinvest in any kind of property, real, personal, tangible and intangible, including, but not limited to, common trust funds, stocks, bonds, notes, mortgages, general or limited partnerships, limited liability companies, savings accounts and certificates of deposit, mutual funds, and real estate; and

(q) Perform all other acts as may be necessary or appropriate to the conduct of the Company's business, and to execute, acknowledge, verify and deliver any or all instruments desirable to effectuate any of the foregoing.

5.2 Members' Approval Required for Certain Major Decisions. Notwithstanding anything herein to the contrary, the following major decisions shall require approval of the Members in the percentages designated:

(a) Any amendment to this Agreement or the Articles of Organization shall require the unanimous approval of the Members of the Company who own one hundred (100%) percent of the Voting Rights in the Company.

(b) The Company shall not compromise, settle, waive or limit the obligation of any Member to make a Capital Contribution to the Company without the unanimous consent of those Disinterested Members in the Company who own one hundred (100%) percent of the Voting Rights of all Disinterested Members in the Company.

(c) The Company shall not sell, or contract to sell, or otherwise dispose of substantially all of the Company Property without the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company. For purposes of this paragraph, all or substantially all of the Company Property shall mean more than seventy-five (75%) percent of such property by value.

(d) The Company shall not enter into any merger, or any profit sharing, joint venture, or other such arrangement without the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company.

(e) The Company shall not open any additional offices or additional locations without the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company.

(f) The Company shall not close any existing office without the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company.

(g) The Company shall not hire anyone who is a member of a Member's or Manager's Family without the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company.

5.3 Liability for Certain Acts. A Manager who performs his duties in good faith and in a manner he reasonably believes to be in the best interests of the Company shall not have any liability solely by reason of being or having been a Manager of the Company. A Manager shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of such Manager's fraud, deceit, gross negligence, willful misconduct, breach of this Agreement or a knowing violation of the law.

5.4 Compensation. The Managers shall be entitled to reasonable compensation for the performance of their duties. The amount of such compensation shall be determined by the Management Committee, subject to the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company.

5.5 Management Committee Meetings - Place, Time and Notice. All meetings of the Management Committee shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by more than fifty (50%) percent of the Managers. Meetings of the Management Committee may be called at any time by any Manager of the Company, by delivery to all Managers of written notice at least seven (7) days in advance of the proposed meeting date. The notice shall contain the time, date and place of the meeting. Each Manager shall be entitled to one (1) vote. Fifty (50%) percent of the Managers constitutes a quorum. Except as provided in SECTION 5.7, in order for any vote of the Managers to be valid and constitute an action of the Management Committee, a quorum must be represented at the meeting either in person or by proxy. Once a quorum is established, the affirmative vote of more than fifty (50%) percent of the Managers represented at the meeting shall constitute a valid decision of the Management Committee. Managers may vote by proxy appointed by an instrument in writing.

5.6 Waiver of Notice. A Manager may waive notice of any meeting by a signed writing. In addition, a Manager who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.

5.7 Action without Meeting. The Management Committee may take action without notice and a meeting if all of the Managers consent to such action by signing a Consent of the Managers which sets forth the action to be taken and contains the signature of each Manager.

5.8 Managers: Number, Election, Tenure and Qualifications. The Company shall initially have two (2) Managers. The initial Managers shall be David Glenn Taylor and John Kachmarsky. The Managers need not be Members in the Company. Each Manager shall agree to be bound by the provisions of this Agreement as they relate to Managers. The number of Managers on the Management Committee may be changed from time to time by the affirmative and unanimous vote of those Members who own one hundred (100%) percent of the Voting Rights in the Company. The Managers shall be elected by the affirmative and unanimous vote of those Members who own one hundred (100%) of the Voting Rights in the Company. Following his election, each Manager will serve until (a) his removal, (b) his resignation, or (c) the election of a successor, whichever occurs first.

5.9 Removal of Managers. A Manager may be removed at any time, with or without cause, by those Members who own more than fifty (50%) percent of the Voting Rights in the Company.

5.10 Resignation of Managers. Any Manager may resign at any time by giving written notice to all Members (other than the Manager so resigning should such Manager also be a Member). The resignation shall be effective upon receipt of such written notice by the last Member receiving such notice. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal from the Company by the Member.

5.11 No Authority of Members. Except as otherwise provided in this Agreement, or as authorized by the Management Committee, no Member is an agent of the Company or has the authority to make any contracts, enter into any transactions, or make any commitments on behalf the Company.

5.12 Ratification. The Management Committee may ratify and adopt any and all acts of a Member or Manager done on behalf of the Company.

5.13 Delegation of Powers. From time to time, the Management Committee may authorize, or delegate any of its authority to a subcommittee of Persons, or a single Person, whom it shall name, to act on its behalf regarding any matter over which the Management Committee has authority.

ARTICLE VI
Fiduciary Duties, Right to Rely, Indemnification

6.1 Duties of Members. A Member who is not also a Manager owes no duties to the Company or to the Members solely by reason of being a Member; provided, however, that a Member who, pursuant to this Agreement, exercises some or all of the rights of a Manager in the management and conduct of the Company's business is held to the standards of conduct applicable to Managers under this Agreement and the Act to the extent that the Member exercises the managerial authority vested in a Manager by this Agreement or the Act.

6.2 Duty of Loyalty. A Manager's duty of loyalty to the Company and the Members is limited to the following:

(a) To account to the Company and to hold as trustee for the Company any property, profit or benefit derived by the Manager in the conduct or winding up of the Company's business or derived from a use by the Manager of the Company's property, including the appropriation of a Company opportunity;

(b) To refrain from dealing with the Company in the conduct or winding up of the Company's business as or on behalf of a party having an interest adverse to the Company; and

(c) To refrain from competing with the Company in the conduct of the Company's business before dissolution of the Company.

6.3 Duty of Care. A Manager's duty of care to the Company and the Members in the conduct of and winding up of the Company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law.

6.4 Fiduciary Duties. Each Manager shall discharge his duties and exercise any of his rights consistently with the obligation of good faith and fair dealing which he owes to the Company and the Members. A Manager does not violate a duty or obligation to the Company merely because the Manager's conduct furthers the Manager's own interest. A Manager may lend money to and transact other business with the Company. As to each loan or transaction, the rights and obligations of the Manager are the same as those of a Person who is not a Manager, subject to other applicable law.

6.5 Duty of Confidentiality. Each Manager hereby warrants, covenants and agrees that he will not furnish, divulge, communicate, use to the detriment of the Company or use for the business of any other Person, any of the Company's confidential information, including but not limited to pricing information, data, sales methods, know how, processes, licenses, trade secrets, names of customers, customer lists, names of Members, or the partners, shareholders, members or other principals of any Member, future plans, accounting, marketing, financial data, or contract information.

6.6 Right to Rely. The Managers shall not be held liable to the Company, or to the Members, for relying in good faith upon the records required to be maintained by this Agreement and upon such information, opinions, reports or statements by any of the Managers, Members, attorneys, accountants, agents, advisors or any other Person who has been selected with reasonable care by or on behalf of the Company, as to matters the Managers reasonably believe are within such other Person's professional or expert competence, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, Profits or Losses of the Company or any other facts relevant to the existence or amount of assets from which distributions to Members might properly be made.

6.7 Indemnification of Managers. To the fullest extent allowed by law, the Managers shall be indemnified and held harmless by the Company for any liability resulting from any act performed or omission made by them in good faith on behalf of the Company, except for acts or omissions of gross negligence, intentional misconduct, or knowing violation of the law.

6.8 Remedies. Each Manager acknowledges and represents that irreparable damage and harm could be done to the Company if there is a breach of the covenants contained herein, and that in the event of a breach, each Manager agrees that the Company shall be entitled to injunctive relief (both temporary and/or permanent), without posting bond, as well as monetary damages and reasonable attorney's fees for the enforcement of this Agreement. Each Manager agrees to return all documents and copies of documents upon request by the Company.

6.9 Scope of Duties. A Manager is relieved of liability imposed by law or this Agreement for violation of the standards prescribed by this ARTICLE VI to the extent of the managerial authority delegated to the Members by this Agreement.

ARTICLE VII

Capital Accounts and Accounting

7.1 Capital Accounts. The Company shall establish for each Member a Capital Account, which shall be maintained in accordance with Section 704 of the Code and the capital account rules set forth in Treasury Regulations Section 1.704-1(b).

- (a) Each Member's Capital Account shall be credited with the following:
- (1) Such Member's Capital Contributions;
 - (2) Such Member's distributive share of Profits;
 - (3) The amount of any Company Liabilities that are assumed by such Member or that are secured by any property distributed to such Member; and
 - (4) With respect to a transferee Member, a pro rata portion of the Capital Account of the transferor Member.

(b) Each Member's Capital Account shall be debited by the following:

- (1) The amount of cash and the net fair market value of any property distributed to such Member (as of the date of the distribution);
- (2) Such Member's distributive share of Losses;
- (3) The amount of any liabilities of such Member assumed by the Company or that are secured by any property contributed by such Member to the Company; and
- (4) With respect to a transferor Member, a pro rata portion of the Capital Account of the transferee Member.

7.2 Accounting Decisions. All decisions as to accounting matters, except as specifically provided to the contrary herein, shall be made by the Management Committee.

7.3 Taxable Year and Tax Accounting Methods. Unless otherwise required by the Code, Treasury Regulations or the Internal Revenue Service, the Company's taxable and fiscal years shall be the calendar year, and the books of account of the Company shall be maintained on a cash basis consistently applied and shall show all items of income and expense. Subject to SECTION 7.6 hereof, all elections required or permitted to be made by the Company under the Code shall be made by the Management Committee.

7.4 Tax Returns. Not later than the time required by law, the Management Committee shall prepare and file or cause to be prepared and filed for each fiscal year, all federal, state, and local income tax returns required of the Company.

7.5 Tax Elections.

(a) The Company shall make the following elections for federal income tax purposes:

- (1) To treat as an expense for federal income tax purposes all amounts incurred for real estate taxes, interest and other charges that may, in accordance with applicable law and regulations, be considered as an expense;
- (2) To deduct expenses incurred in organizing the Company ratably over a sixty (60) month period as provided in Section 709 of the Code; and
- (3) To elect to be excluded from the provisions of Subchapter K of the Internal Revenue Code pursuant to Treasury Regulation Section 301.7701-3(a).

(b) In the event of a distribution of Company Property to a Member or a transfer, whether during life or at death, by a Member of all or any part of his Membership Share, the Company shall determine whether to elect pursuant to Section 754 of the Code, and in accordance with applicable law and regulations, to adjust the basis of the assets of the Company pursuant to Sections 734 and 743 of the Code.

7.6 Compliance with Section 704(b) of the Code. The provisions of this Agreement as they relate to the maintenance of Capital Accounts are intended, and shall be construed, and, if necessary, modified to cause the allocations of Profits, Losses, income, gain, deductions, credit and other items pursuant to ARTICLE VIII to have substantial economic effect within the meaning of the Treasury Regulations promulgated under Section 704(b) of the Code. Notwithstanding anything herein to the contrary, this Agreement shall not be construed as creating a deficit restoration obligation.

7.7 Tax Matters Partner. John Kachmarsky is designated the tax matters partner of the Company, as defined in Section 6231(a)(7) of the Code. The Management Committee may designate a new tax matters partner from time to time.

ARTICLE VIII

Interim Distributions and Allocations

8.1 Interim Distributions. From time to time the Management Committee shall determine to what extent, if any, the Company's cash on hand ("Company Cash") exceeds the current and anticipated needs of the business, including, but not limited to, operating expenses, debt service, acquisitions, reserves, amounts owed as payments under Section 707(c) of the Code, and all amounts necessary to preserve, maintain and repair any Company Property. Company Cash shall be applied first to payment of all Company Liabilities and expenses that are due and owing, retention of all amounts necessary for the aforementioned Company Liabilities, expenses or reserves, and the Company shall retain all amounts deemed necessary for the conduct of the Company's business. Subject to SECTION 8.2, any remaining Company Cash may be distributed to the Members. All such distributions to the Members must be made simultaneously to each of the Members and must be made in proportion to the Members' Financial Rights. Such distributions may be in cash or Company Property or partly in both. Items of Company Property need not be distributed proportionately, provided the Members agree upon the value of the property being distributed and the value of the property and the cash received by each Member is proportionate to his Financial Rights with respect to the property and cash distributed to all the Members. Any Person who holds Financial Rights in the Company but who is not otherwise a Member shall be allocated distributions only if such Person has provided a current address to the Management Committee, and has given notice and proof of his Financial Rights satisfactory to the Management Committee.

8.2 Restrictions on Distributions. Notwithstanding anything herein to the contrary, no distribution to any Member may be made if after giving effect to the distribution either (a) the Company would not be able to pay its debts as they become due in the ordinary course of business, or (b) the Company's total assets would be less than the sum of its total liabilities plus the amount that would be needed if the Company were to be dissolved, wound up and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up and termination of Members whose preferential rights are superior to those receiving the distribution. The provisions of Section 33-44-406 of the Act shall apply in construing this SECTION 8.2.

8.3 Calculation of Profits and Losses. The Profits and Losses of the Company for each fiscal year or other period shall be the taxable income or loss of the Company for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be separately stated pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any Company income which is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be added to such taxable income or loss.

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) (expenditures of the Company not deductible in computing its taxable income and not properly chargeable to a capital account) or treated as such expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i) (organizational expenditures which the Company elects not to amortize under Code Section 709(b)) and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be subtracted from such taxable income or loss.

(c) Gain or loss with respect to the disposition of Company Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Code Section 704) of such property without regard to the adjusted basis.

(d) Depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss shall, for purposes of this subsection, be based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Section 704) of Company Property.

8.4 Allocation of Profits and Losses. The Profits and Losses of the Company for any fiscal year of the Company shall be allocated among the Members in accordance with their Financial Rights. Upon termination of the Company or upon liquidation of any Member's Membership Share, distributions shall be made in accordance with the positive Capital Account balances of the Members after taking into account all Capital Account adjustments for the year during which such termination or liquidation occurs.

8.5 Tax Item Allocation. Unless otherwise specially allocated herein, whenever a proportionate part of Profits or Losses is charged or credited to the Capital Account of a Member, every item of income, gain, loss, deduction, credit, allowance or tax preference entering into the computation of such Profits or Losses or applicable to the period during which such Profits or Losses were realized shall be considered credited or charged, as the case may be, to such Capital Account in the same proportion. In the event of a transfer of Financial Rights in the Company at any time other than at the end of the Company's tax year, the distributive share of Profits and Losses and any items of Company income, gain, loss, deduction, credit or tax preference attributable to the transferred Financial Rights shall be apportioned for income tax purposes between the transferor and transferee in accordance with the number of days in the taxable year of the Company that each was the owner of such Financial Rights.

8.6 Code Section 704(c). In accordance with the provisions of Code Section 704(c), income, gain, loss and deductions with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated to the Members so as to take account of any variation between the adjusted basis of such property and the fair market value at the time of contribution. In the event the Company uses the “Traditional Method with Curative Allocations” under Treasury Regulations Section 1.704-3(c) to correct for distortions caused by the “ceiling rule” (as defined therein) in making allocations pursuant to Section 704(c) of the Code, the Company may make curative allocations in any given year to offset the effects of the “ceiling rule” for prior taxable years. Any such allocations shall be made over a reasonable period of time, such as over the property’s economic life, in compliance with Treasury Regulations Section 1.704-3(c)(3)(ii). If cost recovery deductions with respect to an item of contributed property have been limited by the “ceiling rule”, the general limitation on the character of any curative allocation, contained in Treasury Regulations Section 1.704-3(c)(3)(iii)(A), shall not apply to income from disposition of the contributed property.

8.7 Nonrecourse Deductions. Notwithstanding anything herein to the contrary, beginning in the first taxable year of the Company in which there are nonrecourse deductions, all nonrecourse deductions and distributions of proceeds attributable to nonrecourse borrowing (as defined in Treasury Regulations Section 1.704-2) shall be allocated in accordance with the Members’ Financial Rights or in any other manner that is reasonably consistent with allocations that have substantial economic effect of some other significant Company item attributable to the property securing the nonrecourse liabilities. Items attributable to a particular Member’s Nonrecourse Liability (as defined in Treasury Regulations Section 1.704-2(b)(4)) shall be allocated to the Member that bears the economic risk of loss for the liability.

8.8 Minimum Gain Chargeback Requirements. Except as otherwise provided in Treasury Regulations Section 1.704-2(f), if there is a net decrease in Company Minimum Gain (as determined under Treasury Regulations Section 1.704-2(d)) for the Company’s taxable year, each Member must be allocated items of income and gain for that taxable year equal to that Member’s share of the net decrease in Company Minimum Gain. A Member’s share of the net decrease in Company Minimum Gain is the amount of the total net decrease multiplied by the Member’s percentage share of Company Minimum Gain at the end of the immediately preceding taxable year (as determined in Treasury Regulations Section 1.704-2(g)). A Member is not subject to this minimum gain chargeback requirement to the extent the Member’s share of the net decrease in Company Minimum Gain is caused by a guarantee, refinancing, or other change in the debt instrument causing it to become partially or wholly a recourse liability or a Member Nonrecourse Liability, and the Member bears the economic risk of loss (within the meaning of Treasury Regulations Section 1.752-2) for the newly guaranteed, refinanced, or otherwise changed liability.

If during a taxable year there is a net decrease in Member Nonrecourse Debt Minimum Gain (as determined under Treasury Regulations Section 1.704-2(i)(2)), any Member with a share of that Member Nonrecourse Debt Minimum Gain (as determined under Treasury Regulations Section 1.704-2(i)(5)) as of the beginning of that taxable year must be allocated

items of income and gain for that taxable year (and, if necessary, for succeeding taxable years) equal to that Member's share of the net decrease in the Member Nonrecourse Debt Minimum Gain. A Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain is determined in a manner consistent with the provisions of Treasury Regulations Section 1.704-2(g)(2). A Member is not subject to this minimum gain chargeback requirement, however, to the extent the net decrease in Member Nonrecourse Debt Minimum Gain arises because the liability ceases to be Member Nonrecourse Debt due to a conversion, refinancing, or other change in the debt instrument that causes it to become partially or wholly a nonrecourse liability. The amount that would otherwise be subject to the Member Nonrecourse Minimum Gain chargeback is added to the Member's share of Company Minimum Gain under Treasury Regulations Section 1.704-2(g)(3).

8.9 Qualified Income Offset. Unless otherwise agreed, a Member is not required to fund any deficit in the Member's Capital Account at any time. However, if a Member unexpectedly receives an adjustment, allocation, or distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6), and the unexpected adjustment, allocation, or distribution results in a deficit balance in the Capital Account for the Member (or a deficit balance in excess of any limited dollar amount the Member is obligated to restore), the Member will be allocated items of income and gain consisting of a pro rata portion of each item of Company income and gain for such year in an amount and manner sufficient to eliminate the deficit balance or the increase in the deficit balance as quickly as possible. This SECTION 8.9 will be interpreted, applied, and if necessary modified to constitute a "qualified income offset" as defined in Treasury Regulations Section 1.704-1(b)(2)(ii)(d).

8.10 Distributions Subject to Set-Off. Subject to SECTIONS 3.3 and 3.4, all distributions are subject to set-off by the Company for any past-due obligation of a Member to the Company.

ARTICLE IX

Dissolution, Winding Up, Termination

9.1 Dissolution. The Company shall dissolve, its affairs shall be wound up, and the Company shall terminate upon the first to occur of the following:

- (a) The unanimous written consent of the Members who own one hundred (100%) percent of the Voting Rights in the Company;
- (b) Any event occurs that makes it unlawful for all or substantially all of the business of the Company to be continued, but any cure of illegality within ninety (90) days after notice to the Company of the event is effective retroactively to the date of the event for purposes of this section;
- (c) On application by a Member or a dissociated Member, upon entry of a judicial decree that:

(1) The economic purpose of the Company is likely to be unreasonably frustrated;

(2) Another Member has engaged in conduct relating to the Company's business that makes it not reasonably practicable to carry on the Company's business with that Member;

(3) It is not otherwise reasonably practical to carry on the Company's business in conformity with the Articles of Organization and this Agreement;

(4) The Company failed to purchase the petitioner's Financial Rights as required by Section 33-44-701 of the Act; or

(5) The Members in control of the Company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent or unfairly prejudicial the petitioner.

(d) The filing by the Secretary of State of a certificate administratively dissolving the Company pursuant to Section 33-44-810 of the Act.

(e) The expiration of the period fixed for the duration of the Company, as set forth in the Articles of Organization, unless those Members who own one hundred percent (100%) of the Voting Rights in the Company extend the term of the Company.

9.2 Waiver of Right to Wind Up. Notwithstanding anything herein to the contrary, at any time after the dissolution of the Company and before the winding up of its business is completed, the Members, including a dissociated Member whose dissociation caused the dissolution, may unanimously waive the right to have the Company's business wound up and the Company terminated. In that case, (a) the Company shall resume carrying on its business as if dissolution had never occurred and any liability incurred by the Company or a Member after the dissolution and before the waiver is determined as if the dissolution had never occurred, and (b) the rights of a third party accruing under Section 33-44-804(a) of the Act or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver shall not be adversely affected.

9.3 Winding Up: Powers and Duties of Liquidator. Following the dissolution of the Company, if the Members do not continue the Company's business under SECTION 9.1 or SECTION 9.2, the Management Committee shall appoint one or more Members or Managers or an independent third party to serve as liquidator. The liquidator shall have full authority in winding up the Company's affairs, and may preserve the Company's business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the Company's business, dispose of and transfer the Company's property, discharge the Company's liabilities, distribute the assets of the Company pursuant to SECTION 9.6, settle disputes by mediation or arbitration, and perform other necessary acts. In winding up the Company's affairs, the liquidator shall:

(a) Deliver notice of the Company's dissolution to all of the Company's known claimants and creditors in the form and manner described in Section 33-44-807 of the Act;

(b) Publish notice of the Company's dissolution as provided in Section 33-44-808 of the Act;

(c) Make final liquidating distributions as provided in SECTION 9.6, and distribute any Company Property discovered after any such final liquidating distributions in accordance with SECTION 9.6; and

(d) After dissolution and the completion of winding up, file Articles of Termination with the South Carolina Secretary of State to terminate the legal existence of the Company in accordance with Section 33-44-805 of the Act.

9.4 Sale of Company Property. Unless otherwise determined by the Management Committee, the liquidator shall first attempt to sell all or any part of the Company's business as a going concern. If any such sale or partial sale is not consummated within six (6) months after the date of the dissolution, or such other period of time determined by the Management Committee, the liquidator shall publish notice that all unsold Company assets are for sale and solicit bids for such assets. Any Company assets which remain unsold six (6) months after the date of the first publication of such notice shall be marshaled and auctioned by the liquidator. All assets unsold after the auction shall be distributed in kind in accordance with SECTION 9.5.

9.5 Distribution In Kind. The Company may distribute assets in kind to satisfy any or all of its obligations. If the Company will distribute assets in kind, the Members shall have thirty (30) days to agree upon the fair market value of such assets. If the Members cannot agree on the fair market value of any asset, the liquidator shall hire two (2) independent appraisers to appraise the asset(s) in question. The fair market value of each asset or group of assets appraised shall be the average of the two appraisals. Any property distributed in kind shall be treated in accordance with Sections 721, 736, 737 and 751 of the Code. The liquidator shall adjust the Members' Capital Accounts to reflect any gain or loss which would have been allocated had such property been sold for its fair market value.

9.6 Final Liquidating Distributions. After the sale of all Company assets, or the determination of fair market value for distribution in kind of Company assets, the liquidator shall apply the proceeds of the sale or the Company assets as follows:

(a) Payment or adequate provision for payment shall be made to creditors including the liquidator if the liquidator is not a Member for reimbursement for out-of-pocket expenses incurred and reasonable compensation for services rendered in connection with winding up the Company, and to the extent permitted by law, Members who are creditors in satisfaction of liabilities of the Company;

(b) If the liquidator is a Member, to the liquidator for reimbursement for out-of-pocket expenses incurred and reasonable compensation for services rendered in connection with winding up the Company;

(c) All remaining cash and other assets shall be distributed to the Members in accordance with their positive Capital Account balances, determined after taking into account all Capital Account adjustments for the taxable year of the Company during which the distribution occurs, including adjustments for distributions made under this SECTION 9.6.

9.7 Deficit Capital Account Balances. Notwithstanding anything herein to the contrary, and notwithstanding any custom or rule of law to the contrary, any deficit in a Member's Capital Account upon dissolution of the Company shall not be an asset of the Company and such Member shall not be obligated to contribute any amount to the Company in excess of any limited dollar amount the Member has otherwise agreed to restore.

9.8 Final and Complete Distribution. The distributions provided for in this ARTICLE IX shall constitute a complete return of the Members' Contributions to Capital, and a final and complete distribution to the Members in satisfaction of all of their rights in the Company.

ARTICLE X **Dissociation**

10.1 Events of Proper Dissociation. If a Member dissociates in any one or more of the following ways, such shall be deemed to be a proper dissociation:

- (a) The death of the Member;
- (b) Entry of an order by a court of competent jurisdiction adjudicating the Member to be insane, the appointment of a guardian or general conservator for the Member, or a judicial determination that the Member has otherwise become incapable of performing his duties under this Agreement;
- (c) If the Member files a voluntary petition for bankruptcy, is adjudicated a bankrupt or has a bankruptcy petition filed against him which is not dismissed within ninety (90) days; and
- (d) Withdrawing, retiring or resigning from the Company with the consent of those Members who own more than seventy-five (75%) percent of the Voting Rights in the Company (without regard to the Voting Rights of the withdrawing, retiring or resigning Member).

10.2 Effect of Member's Proper Dissociation. Unless otherwise agreed between the Company and the other Members, the rights of a properly dissociating Member shall be governed by ARTICLE XI.

10.3 Events of Wrongful Dissociation. If a Member dissociates in any one or more of the following ways, such shall be deemed to be a wrongful dissociation:

(a) The voluntary withdrawal, retirement or resignation of any Member other than as permitted in SECTION 10.1; or

(b) On application by the Company or another Member, the Member's expulsion by judicial determination under Section 33-44-601(6) of the Act because the Member:

(1) Engaged in wrongful conduct that adversely and materially affected the Company's business; or

(2) Willfully or persistently committed a material breach of this Agreement or of a duty owed to the Company or the other Members under Section 33-44-409 of the Act; or

(3) Engaged in conduct relating to the Company's business which makes it not reasonably practicable to carry on the business with the Member.

10.4 Effect of Member's Wrongful Dissociation. A wrongfully dissociating Member is liable to the Company and to the other Members for all costs, expenses (including reasonable attorneys' fees) and damages caused by the wrongful dissociation, including the reasonable costs of obtaining replacement of the services the wrongfully dissociating Member was obligated to perform. The Company may offset such costs, expenses and damages against any distributions to which the wrongfully dissociating Member may be entitled in addition to pursuing any remedies provided for in this Agreement or otherwise available under applicable law. The parties to this Agreement agree that a wrongfully dissociating Member's sole entitlement upon wrongfully dissociating from the Company shall be as determined under SECTION 11.2(a). The parties to this Agreement agree that any purchase price determined and reduced under the provisions of this Agreement shall constitute fair value for the Membership Share of a wrongfully dissociating Member within the meaning of Sections 33-44-701 and 33-44-702 of the Act, and that payment of any purchase price upon the terms contained in SECTION 11.4 is permissible, authorized and in compliance with all provisions of the Act. The parties waive any right they may have to assert that the provisions of this Agreement regarding the rights of a wrongfully dissociating Member are inconsistent with, or in contravention of the Act.

10.5 Character of Payments. To the extent permitted by the Code and all applicable Treasury Regulations, all payments made to any dissociating Member (whether proper or wrongful), including those which relate to unrealized receivables and the goodwill of the Company, shall be treated as payments described in Section 736(a) of the Code.

10.6 Statement of Dissociation. A dissociated Member or the Company may file a Statement of Dissociation in accordance with Section 33-44-704 of the Act.

ARTICLE XI
Restrictions on Transfer and Buy-Sell Provisions

11.1 Restrictions on Transfer. No Member may voluntarily or involuntarily sell, transfer, gift, assign, pledge, mortgage, hypothecate, or otherwise convey or encumber any portion or all of his Membership Share to any Person without the prior unanimous written consent of those Members who own one hundred (100%) percent of the Voting Rights in the Company (without regard to the transferor Member). If such consent is obtained, no provision of this ARTICLE XI shall apply, and the provisions of ARTICLE III shall govern the rights of the transferor and transferee. With regard to all other transfers, ARTICLE XI shall control, and any attempted conveyance or encumbrance of all or a portion of a Membership Share in contravention of this ARTICLE XI shall be null, void and without effect.

11.2 Right to Buy.

(a) Wrongful Dissociation of a Member. If a Member wrongfully dissociates from the Company within the meaning of SECTION 10.3 (the "Withdrawing Member"), such Withdrawing Member shall be deemed to have immediately offered to sell to the Company all of the Withdrawing Member's Membership Share at the price determined under SECTION 11.3 and on the terms contained in SECTION 11.4, except that the purchase price shall be reduced by the amount of all costs, expenses (including reasonable attorneys' fees) and damages incurred by the Company as a result of the Withdrawing Member's wrongful dissociation from the Company. Notwithstanding anything in this Agreement or the Act to the contrary, any purchase price to be paid for a wrongfully dissociating Member's Membership Share shall equal seventy-five (75%) percent of the "Appraised Value" of such Member's Membership Share as determined pursuant to SECTION 11.3. If the Company does not accept said offer within sixty (60) days after receiving written notice of the dissociation by the Withdrawing Member and the determination of the purchase price, the Withdrawing Member's Membership Share shall be deemed to have been immediately thereon offered to the other Members (the "Remaining Members") at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4, except that the purchase price shall be reduced by the amount of all costs, expenses (including reasonable attorneys' fees) and damages incurred by the Company as a result of the Withdrawing Member's wrongful dissociation from the Company. Notwithstanding anything in this Agreement or the Act to the contrary, any purchase price to be paid for a wrongfully dissociating Member's Membership Share shall equal seventy-five (75%) percent of the "Appraised Value" of such Member's Membership Share as determined pursuant to SECTION 11.3. If any one or more of the Remaining Members accept the offer, then all of the Membership Share offered for sale must be purchased by such one or more Remaining Members. In the event more than one of the Remaining Members accept the offer, those accepting shall purchase in proportion to their Membership Shares, unless they agree otherwise.

If the Remaining Members do not purchase the Withdrawing Member's Membership Share within sixty (60) days after such deemed offer, the Company and the Remaining Members shall have no obligation to purchase the Withdrawing Member's Membership Share until the date of the expiration of the specified term of the Company that existed on the date of such wrongful dissociation if the expiration of the specific term does not result in the dissolution and winding up of the Company's business under Section 33-44-801 of the Act. The purchase price on such date, if any, shall be determined under SECTION 11.3 and on the terms contained in SECTION 11.4, except that the purchase price shall be reduced by the amount of all costs, expenses (including reasonable attorneys' fees) and damages incurred by the Company as a result of the Withdrawing Member's wrongful dissociation from the Company. Notwithstanding anything in this Agreement or the Act to the contrary, any purchase price to be paid for a wrongfully dissociating Member's Membership Share shall equal seventy-five (75%) percent of the "Appraised Value" of such Member's Membership Share as determined pursuant to SECTION 11.3.

(b) Transfers Other Than Death or Disability. If a Member attempts to transfer all or a portion of his Membership Share without obtaining the other Members' consent as required in SECTION 11.1, or if a Member properly dissociates, other than by reason of death or disability, from the Company within the meaning of ARTICLE X (the "Dissolving Member"), such Dissolving Member is deemed to have offered to the Company all of such Dissolving Member's Membership Share at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4. If the Company does not accept said offer within sixty (60) days after receiving written notice of the attempted transfer or dissociation by the Dissolving Member and the determination of the purchase price, the Dissolving Member's Membership Share shall be offered in writing to the other Members (the "Remaining Members") at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4. If any one or more of the Remaining Members accept the offer, then all of the Membership Share offered for sale must be purchased by such one or more Remaining Members. In the event more than one of the Remaining Members accept the offer, those accepting shall purchase in proportion to their Membership Shares, unless they agree otherwise.

If the Remaining Members do not purchase the Dissolving Member's Membership Share within sixty (60) days after receipt of such offer in writing, then a Dissolving Member may offer such Dissolving Member's Membership Share for sale to any other Person, provided that such Membership Share shall be sold for at least the same price and upon the same terms at which it was offered to the Company and the Remaining Members. The rights of the transferee of such Membership Share shall be determined in accordance with ARTICLE III.

In the event any sale of a Membership Share to a third person shall not be consummated within sixty (60) days after the expiration of the Remaining Members' option to purchase, the Dissolving Member shall have no right to sell said Membership Share or any portion thereof unless the same shall be offered again to the Company and the Remaining Members in the manner and in accordance with the terms provided in subsection (b) of this SECTION 11.2.

(c) **Dissociation by Death or Disability.** If a Member dissociates by reason of death or disability (meaning a Member is disabled continuously for more than twelve (12) months), such Member (the "Dissolving Member") is deemed to have offered to the Company all of such Dissolving Member's Membership Share at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4. The definition of disability shall mean totally and permanently disabled so that a Member is unable to engage in his usual duties of employment as determined by a doctor selected and paid by the Company. If the Company does not accept said offer within sixty (60) days after receiving written notice of the attempted transfer or dissociation by the Dissolving Member (or his estate) and the determination of the purchase price, the Dissolving Member's Membership Share shall be offered in writing to the other Members (the "Remaining Members") at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4. If any one or more of the Remaining Members accept the offer, then all of the Membership Share offered for sale must be purchased by such one or more Remaining Members. In the event more than one of the Remaining Members accept the offer, those accepting shall purchase in proportion to their Membership Shares, unless they agree otherwise.

If no Remaining Members purchase the Dissolving Member's Membership Share within sixty (60) days after receipt of such offer in writing, then the Company shall purchase, and the Dissolving Member, the estate of the Dissolving Member, or such Dissolving Member's successor in interest by operation of law shall sell all of the Dissolving Member's Membership Share in the Company at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4.

11.3 Purchase Price. Subject to SECTION 11.2(a), the price to be paid for a Withdrawing or Dissolving Member's Membership Share shall be the purchase price agreed upon by the Withdrawing or Dissolving Member and the Company, or the Remaining Members who have elected to buy, as the case may be. If the parties do not agree upon the purchase price of the Membership Share within thirty (30) days following the death, disability, attempted transfer or the event of dissociation, then the purchase price shall be the "Appraised Value" (as defined in the next sentence) of the Membership Share. Appraised Value shall mean the value obtained, taking into account all applicable minority, lack of marketability and other discounts, by agreement of two (2) appraisers, one appointed by the Management Committee, or a majority of the Remaining Members who wish to purchase the offered Membership Share and who have not previously agreed upon the purchase price, and one appointed by the Withdrawing or Dissolving Member. Such appointments shall be made by the respective parties within forty-five (45) days following the death, disability, attempted transfer or the event of dissociation. Both appraisers must have at least five (5) years experience valuing businesses similar to the business of the Company. Should any party fail to so appoint an qualified appraiser within such prescribed time period, such failing party shall lose any right to so appoint an appraiser. If one party fails to appoint a qualified appraiser within the prescribed time period for such appointment, the sole appointed appraiser shall determine the Appraised Value and such Appraised Value determined by such sole appointed appraiser shall be conclusive and binding upon the seller and purchaser(s), their personal representatives, legal representatives, heirs, successors, and assigns. Where both parties properly appoint appraisers and both appraisers

cannot agree on an Appraised Value within thirty (30) days after they have both been selected, such appraisers shall appoint a third appraiser within ten (10) days of the expiration of the thirty (30) day period for the two original appraisers to agree upon an Appraised Value. The third appraiser shall determine the Appraised Value within thirty (30) days after such third appraiser's appointment. Appraised Value shall then be the average of all three (3) appraisals. The seller and the purchaser(s) shall each pay the costs of the appraiser appointed by them, and one-half (2) of the cost of the third appraiser. The purchase price as determined herein shall be conclusive and binding on the parties, their personal representatives, legal representatives, heirs, successors and assigns.

11.4 Payment of Purchase Price. The closing of the purchase shall take place at the principal place of business of the Company, or at such other place as the parties may agree, and at a time and date designated by the parties, but in all events such closing shall take place within thirty (30) days after the date upon which the Appraised Value is determined under the provisions of SECTION 11.3, unless the parties otherwise mutually agree in writing. Unless the parties mutually agree otherwise, the purchase price shall be paid in twenty (20) equal and consecutive quarterly installments of principal and interest beginning ninety (90) days after the death, disability, attempted transfer or event of dissociation, and the determination of the purchase price has been made. The purchase price shall be evidenced by a promissory note made by the purchaser(s) to the order of the seller and shall bear interest compounded annually at the prime rate as published in the Wall Street Journal at the date of the sale or, if greater, the rate of interest applicable under Section 1274 of the Code. Payments may be anticipated, in whole or in part, at any time and from time to time, without penalty. The note shall provide that upon default of any payment of interest or principal, the note shall become due and payable immediately, at the option of the holder of the note. Upon payment of the purchase price, the Withdrawing or Dissolving Member's Membership Share (or any portion thereof) shall be conveyed to the purchaser(s). Until the purchase price is paid in full, the seller's Membership Share shall be held by the seller as collateral security for payment of the note, but in no case may the seller participate in the management of the Company as long as the note is not in default.

Any closing adjustments which are then usual and customary shall be made between the seller and the purchaser(s) on and as of the date of closing. The seller shall pay any transfer, gains or similar taxes arising out of or in connection with the sale and transfer of his Membership Share. Except as specifically provided in this Agreement, such sale shall be subject to all liabilities and obligations of the Company, matured and unmatured, absolute or contingent. All Members agree to execute and deliver all certificates and other instruments reasonably necessary to effectuate any transaction contemplated herein. Without limiting the foregoing, any Member transferring his Membership Share shall transfer such interest free and clear of any liens, encumbrances or any interests of any third party and shall execute or cause to be executed any and all documents required to fully transfer good and clear title to such Membership Share to the purchaser(s), including, but not limited to, any documents required to release any interest of a Member's spouse or any other party who may claim an interest in such Member's Membership Share.

ARTICLE XII
Miscellaneous Provisions

12.1 Members' Rights To Receive Information.

(a) The Company shall provide Members and their agents and attorneys access to its records, if any, at the Company's principal office. The Company shall provided former Members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were Members. The right of access provides the opportunity to inspect and copy records during ordinary business hours. The Company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

(b) The Company shall furnish to a Member, and to the legal representative of a deceased Member or Member under legal disability:

(1) Without demand, information concerning the Company's business or affairs reasonably required for the proper exercise of the Member's rights and performance of the Member's duties under this Agreement and the Act; and

(2) On demand, other information concerning the Company's business or affairs, except to the extent the demand or the information is unreasonable or otherwise improper under the circumstances.

(c) A Member has the right upon written demand given to the Company to obtain at the Company's expense a copy of this Agreement.

12.2 Notices. All notices, consents, requests, demands, offers, reports or other communications required or permitted hereunder shall be in writing and hand delivered or sent by certified or registered mail, postage prepaid, and return receipt requested, to the Managers, the Management Committee and the Company, at the Company's principal place of business, and to a Member at the address on EXHIBIT B attached hereto, or to such other address as may hereafter be designated by any amendment or addendum to this Agreement. All notices, consents or other communications shall be deemed given when actually hand delivered, or three (3) days after mailing in accordance with this Section.

12.3 Time of Essence. Time is of the essence of this Agreement.

12.4 Governing Law. This Agreement shall be governed by and construed in accordance with the South Carolina Uniform Limited Liability Company Act of 1996, as amended, any corresponding provisions of future laws, and other applicable laws of the State of South Carolina.

12.5 Consent to Jurisdiction. The parties to this Agreement hereby agree that the courts of the State of South Carolina shall have sole and exclusive jurisdiction over any matter arising from the interpretation, purpose, effect, or operation of this Agreement, and with regard to all matters associated with operation of the Company's business, regardless of the residence, now or in the future, of any party hereto. The parties consent to venue in Charleston County, South Carolina, and waive any rights they may have to assert jurisdiction or venue in any other court, administrative forum, or other adjudicative body.

12.6 Waiver. No waiver of any breach of any covenant, agreement or undertaking contained herein shall operate as a waiver of any subsequent breach of the same covenant, agreement or undertaking or as a waiver of any breach of any other covenant, agreement or undertaking. In the case of a breach by any party of any covenant, agreement or undertaking, the nonbreaching party may nevertheless accept from the other, any payment or performance without waiving its right to exercise any right or remedy provided herein or otherwise, with respect to any such breach which was in existence at the time such payment or performance was accepted by it. No failure of any party to exercise any power given herein or to insist upon strict compliance with any covenant, agreement or undertaking contained herein, or to object to any custom or practice which varies from the terms hereof, shall constitute a waiver of such party's right to demand exact compliance with the terms of this Agreement. The waiver by any party of a breach of any covenant, agreement or undertaking contained herein shall be made only by a written waiver in each case, and no such waiver shall operate or be construed as a waiver of any prior or subsequent breach.

12.7 Severability. If any provision of this Agreement shall, to any extent, be held invalid, illegal or unenforceable, in whole or in part, the validity, legality, and enforceability of the remaining part of such provision, and the validity, legality and enforceability of the other provisions hereof, shall not be affected thereby and each term, covenant or condition shall be valid and enforced to the fullest extent permitted by law. If any such invalidity shall be caused by the length of any period of time, the size of any area or the scope of activities set forth in any provision hereof, such period of time, such area or scope or all, shall be considered to be reduced to a period, area, or scope which would cure such invalidity. Any provision of this Agreement which is held invalid, illegal or unenforceable in any jurisdiction shall not be deemed invalid, illegal or unenforceable in any other jurisdiction.

12.8 Counterparts. This Agreement may be executed in more than one counterpart, each such counterpart shall be deemed an original, and all such counterparts shall constitute one and the same agreement. This Agreement shall be effective when executed by all parties, but all parties need not execute the original or the same counterpart.

12.9 Captions. The headings, titles and captions of the Articles and Sections of this Agreement are inserted only to facilitate reference. They shall not define, limit, extend or describe the scope or intent of this Agreement or any provision hereof, and they shall not constitute a part hereof or affect the meaning or interpretation of this Agreement or any part hereof.

12.10 Entire Agreement. This Agreement embodies the entire understanding and agreement among the parties pertaining to the subject matter hereof, and all prior agreements and understandings of the parties, whether written or oral, are terminated and superseded by this Agreement and shall be deemed merged herein.

12.11 Remedies Cumulative. Except as otherwise expressly provided herein, all rights, powers and privileges conferred hereunder upon any party shall be cumulative and not restrictive of those given by law. No remedy herein conferred is exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given by agreement or now or hereafter existing at law or in equity or by statute.

12.12 Binding Effect. This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by and against all the parties and their respective heirs, legal representatives, personal representatives, successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended to or shall confer upon any person other than the parties, and their respective heirs, legal representatives, personal representatives, successors and permitted assigns, any rights, remedies, obligations or liabilities.

12.13 Use of Terms. Use of the terms "herein", "hereby", "hereunder", "hereof", "hereinbefore", "hereinafter", and other equivalent words refer to this Agreement in its entirety and not solely to the particular portion of the Agreement in which such word is used. Reference to "this Article", "this Section", or a similar reference to a specific part of this Agreement shall refer to the particular Article, Section or specific part in which such reference appears. Whenever used herein, any pronoun shall be deemed to include both the singular and plural and all genders.

12.14 Further Assurances. Each of the parties will execute, deliver, acknowledge or supply such further documents, instruments and assurances as shall be reasonably necessary or appropriate to carry out the full intent and purposes of this Agreement.

12.15 Equitable Remedies. The rights and remedies of the Members, the Company and the Managers hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. The parties confirm that damages at law may be an inadequate remedy for a breach or threatened breach of this Agreement and agree that in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction (temporary and/or permanent), without posting bond, or other equitable remedy, but nothing herein contained is limited to, nor shall it limit or affect any right or rights at law or by statute or otherwise of any party aggrieved against any other party for a breach or threatened breach of any provision hereof, it being the intention of this Section to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

12.16 Memorandum of Company. If the Management Committee deems it appropriate, the Management Committee shall cause the Company to file and record either a copy of this Agreement or a Memorandum of this Agreement with the applicable government authorities.

12.17 Exhibits. The exhibits attached to this Agreement are hereby made a part hereof and incorporated herein by reference. All such exhibits read as of the date of this Agreement or, as to any of the exhibits bearing a particular date, as of any other date specified therein.

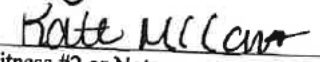
12.18 Effective Date. This Agreement shall become effective upon the later of the execution of this Agreement by all the Members or the filing of Articles of Organization with the South Carolina Secretary of State.

IN WITNESS WHEREOF, the undersigned have executed and sealed this Operating Agreement to be effective as of the day and year first above written.

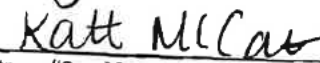
WITNESSES:

MEMBER:


Witness #1

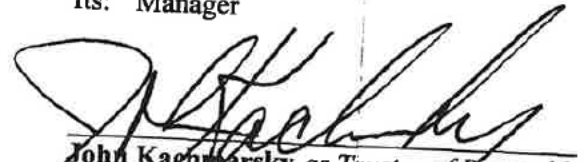

Witness #2 or Notary


Witness #1


Witness #2 or Notary



By: **David Glenn Taylor**
For: Taylor Capital, LLC
Its: Manager


John Kachmarsky as Trustee of Revocable
Trust Agreement of John Kachmarsky
originally dated November 30, 2007

ACKNOWLEDGEMENT BY MANAGER

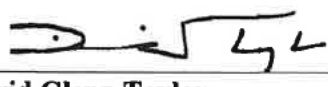
IN WITNESS WHEREOF, David Glenn Taylor hereby accepts the powers and obligations set forth herein for the capacity as Manager and has executed this Agreement in acknowledgement of same to be effective as of the day and year first above written.

WITNESSES:

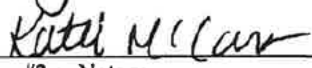
MANAGER:



Witness #1



David Glenn Taylor



Witness #2 or Notary

ACKNOWLEDGEMENT BY MANAGER

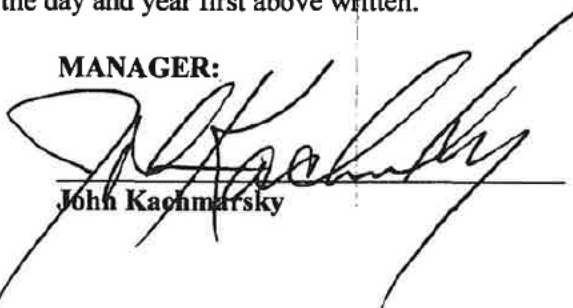
IN WITNESS WHEREOF, John Kachmarsky hereby accepts the powers and obligations set forth herein for the capacity as Manager and has executed this Agreement in acknowledgement of same to be effective as of the day and year first above written.

WITNESSES:

MANAGER:



Witness #1



John Kachmarsky



Witness #2 or Notary

EXHIBIT A

Description of Initial Company Property

- (1) _____ and No/100 United States Dollars (U.S.\$_____.00)
-- contributed by Taylor Capital, LLC.
- (2) _____ and No/100 United States Dollars (U.S.\$_____.00)
-- contributed by John Kachmarsky as Trustee of Revocable Trust Agreement of
John Kachmarsky originally dated November 30, 2007.

Exhibit A – First Amended and Restated Operating Agreement of K&T Group, LLC

EXHIBIT B

<u>MEMBER'S NAME AND ADDRESS</u>	<u>CAPITAL CONTRIBUTION</u>	<u>FINANCIAL RIGHTS</u>	<u>VOTING RIGHTS</u>
Taylor Capital, LLC 171 Church Street – Suite 330 Charleston, South Carolina 29401	\$____.00	50.00%	50.00%
John Kachmarsky <i>Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007</i> 171 Church Street – Suite 330 Charleston, South Carolina 29401	\$____.00	50.00%	50.00%
TOTALS	\$____.00	100.00%	100.00%

Exhibit B – First Amended and Restated Operating Agreement of K&T Group, LLC

Exhibit B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2022-CP-10-_____
	)	
John Kachmarsky, Individually, as Manager of	)	
K&T Group, LLC and as Trustee of the	)	
Revocable Trust of John Kachmarsky dated	)	
November 30, 2007, as Member of K&T Group,	)	
LLC,	)	
	)	
	)	COMPLAINT
Plaintiffs,	)	(Non-Jury)
	)	
vs.	)	
	)	
David G. Taylor, Individually, and as Manager of	)	
K&T Group, LLC, Taylor Capital, LLC, as	)	
Member of K&T Group, LLC and K&T Group,	)	
LLC,	)	
	)	
Defendants.	)	

Plaintiffs, Complaining of Defendants, would respectfully show unto the Court:

FIRST CAUSE OF ACTION

(Breach of Contract)

(As to Defendants' Taylor and Taylor Capital)

1. Plaintiff, John Kachmarsky, (hereinafter "Kachmarsky") is an individual who resides in Charleston County, South Carolina and is a manager of K&T Group, LLC (hereinafter "K&T") which was formed in 2003 as a South Carolina, term, manager-managed limited liability company.

2. Plaintiff, John Kachmarsky, Trustee of the Revocable Trust of John Kachmarsky Dated November 30, 2007, (hereinafter "Kachmarsky Trust") is a revocable trust and member of Defendant, K&T owning a fifty (50%) percent membership interest in K&T.

3. Defendant, David G. Taylor, (hereinafter "Taylor") is an individual who resides in Charleston County, South Carolina and is a manager of K&T.

4. Defendant, Taylor Capital, LLC (hereinafter “Taylor Capital”) is a limited liability company, organized and existing under the laws of the State of South Carolina and member of K&T owning a fifty (50%) percent membership interest in K&T.

5. K&T owns a 5,106 square foot commercial office suite in the Franke Building located at 171 Church Street, Suite 330, Charleston, SC 29401 comprised of TMS Number 458-05-03-120 with 1,186 square feet and TMS Number 458-05-03-121 with 3,920 square feet further described on Exhibit “A” attached hereto.

6. Kachmarsky practices law in the suite as John Kachmarsky, P.C., d/b/a, the Law Office of John Kachmarsky.

7. Taylor and his affiliated law firm practice law in the suite as Taylor Foley, LLC.

8. Kachmarsky and Taylor originally reached an oral agreement whereby each of them would have their own executive office, each would have one associate office and each would have 3 spaces in the common area for support staff.

9. Kachmarsky and Taylor paid equal amounts of rent to K&T to cover the expenses incurred which exceeded the other rental income.

10. Shortly after the above verbal arrangement was made, Taylor hired an additional associate and agreed to pay \$1,000.00 per month for an additional associate office.

11. Later, Taylor, unilaterally and without the permission or consent of Kachmarsky, negotiated and obtained an additional associate office from the existing tenants of space owned by K&T which was leased on a square foot basis month at a monthly rent of \$435.68 per month.

12. The tenant occupying the space rented on a square foot basis subsequently defaulted on their lease and moved out and the remaining space rented on a square foot basis could not be rented in whole because it was already partially occupied by Taylor.

13. Both additional offices occupied by Taylor could have been rented by K&T for \$1,250 per month.

14. K&T suffered financial losses due to the actions of Taylor while Kachmarsky proceeded to rent the remaining offices individually.

15. In mid-2014, Taylor vacated one of his additional associate offices and simultaneously took the position that he should not have been paying rent of \$1,000 or \$435.68 for the extra associate offices he previously rented, nor have to pay for the extra associate office he continued to occupy based on the fact that there was a vacancy in the suite.

16. After consulting with a CPA who was a friend of both Kachmarsky and Taylor, Taylor agreed to pay \$1,250 per month for the extra associate office.

17. During all times, for a period of approximately 19 years, Kachmarsky has managed the leasing of the remaining space in the suite not used by either firm without compensation or remuneration and has rented individual offices in the suite as further set forth in Exhibit "B".

18. In March 2014, K&T's loan payable to Wells Fargo came up for renewal.

19. Because of Taylor's personal financial condition and credit history, Wells Fargo declined to renew the loan.

20. Kachmarsky managed to secure additional financing for K&T through his banking relationship with Ameris Bank.

21. Because of Taylor's financial condition and credit history, Ameris charged K&T an interest rate of 4.75% instead of 4.25%, the prevailing market rate that Kachmarsky was obtaining similar financing for.

22. As part of the agreement with Ameris to provide the financing, K&T agreed to

open its operating account with Ameris, and Taylor further agreed to open his law practice operating account with Ameris.

23. Although an operating account for K&T and a law practice operating account for Taylor was opened at Ameris, Taylor, who was responsible for paying K&T's bills during this period, opened an operating account for K&T with First Reliance Bank, and used it to transact K&T's business, instead of the Ameris operating account as previously agreed.

24. In addition, Taylor failed to use his law practice operating account with Ameris as previously agreed.

25. As a result, and in order to preserve his banking relationship and honor the commitments he made individually and on behalf of K&T with Ameris, Kachmarsky, in October 2015, began directly collecting the rents of K&T, depositing them into the Ameris operating account, and paying K&T's operating expenses.

26. In January 2016, Kachmarsky vacated his associate office with the intent of renting it on behalf of K&T in the amount of \$1,250.

27. Taylor, unilaterally and against Kachmarsky's expressed objection, occupied that associate office in January 2016 and further refused to pay rent to K&T for one of the two additional associate offices he occupies.

28. As a result of Taylor refusing to pay rent, the property taxes due in mid-January 2016 were not paid and continued to not be paid from January 2016 through July 2016 as Taylor continued to refuse to pay rent for the additional office.

29. On June 27, 2016, Kachmarsky again sent an email setting forth the amounts of rent and capital call owed as a result of Taylors continuing refusal to pay rent.

30. On July 19, 2016, Taylor paid the full amount of rent and capital call outstanding

at which time the outstanding past due property taxes were paid.

31. Beginning early 2021, Taylor again began to occupy a third additional office without paying rent to K&T in the amount of \$1,250 per month and totaling \$15,000 for the calendar 2021 calendar year.

32. In early 2022, Kachmarsky opted to occupy an additional office so that beginning in 2022, Taylor would be paying the correct rent going forward if he continued paying the same rent for the additional two offices he occupied.

33. In January 2022, Kachmarsky sent several emails to Taylor requesting he pay rent for two additional offices in the amount of \$2,500.00, escrow for taxes and insurance in the amount of \$1,000.00, monthly shortage of \$1,175.00 and \$1,000.00 for a monthly total of \$5,675.00 and in addition pay rent of \$15,000.00 for use of an additional office in calendar year 2022.

34. In March 2022, Kachmarsky retained counsel who noticed Taylor of Kachmarsky's intent to file suit by forwarding Taylor a copy of this summons and complaint.

35. After noticing Taylor of Kachmarsky's intent to file suit, Taylor deposited \$28,788.71 in April 2022 into an operating account of K&T in satisfaction of the \$32,025.00 amount Kachmarsky considered due, acknowledging use of an additional office from August 5, 2022 through December 31, 2022, but further denying use of the office from the beginning of the year through August 5, 2022.

36. Taylor has failed to pay rent for the months of May and June, 2022.

37. Taylor has breached his duties of loyalty and care to K&T and has a conflict of interest with K&T, in that he has occupied office space of K&T for his benefit and failed to pay rent to K&T, or to pay fair market value rent to K&T at various times that he occupied additional

space that otherwise could have been rented to third parties.

38. Taylor breached his duties of loyalty and care to K&T and had a conflict of interest with K&T, in that he maintained other bank accounts and his own operating account at a bank where he was desiring to obtain personal financing for himself, thereby failing to honor the commitments he had made individually, and on behalf of K&T to Ameris Bank.

39. Kachmarsky Trust, as member of K&T is entitled to have Taylor Capital expelled from K&T by judicial determination under Section 33-44-601(6) of the South Carolina Uniform Limited Liability Company Act of 1996 in that Taylor and Taylor Capital have (i) engaged in wrongful conduct that adversely and materially affected the company's business; (ii) willfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under Section 33-44-409; and (iii) engaged in conduct relating to the company's business which makes it not reasonably practicable to carry on the business with the Taylor and Taylor Capital.

40. As a result of such judicial expulsion from K&T, Kachmarsky and Kachmarsky Trust respectfully request Taylor Capital's interest in K&T to be disposed of in accordance with the operating agreement of K&T attached as Exhibit "C" hereto.

SECOND CAUSE OF ACTION

(Violation of South Carolina Statute §33-44-601 (6) (i) (ii) and (iii))
(As to Defendants' Taylor and Taylor Capital)

40. Kachmarsky re-alleges and adopts as though more fully set forth herein the allegations contained in Paragraphs 1 through 39 above.

41. Kachmarsky respectfully requests the Court judicially determine that Taylor Capital be expelled from K&T pursuant to South Carolina Statute §33-44-601 (6) (i), (ii) and (iii) by virtue of the breach of duties owed by Taylor and Taylor Capital to Kachmarsky, Kachmarsky

Trust and K&T as recited above.

42. As a result of such judicial expulsion from K&T, Kachmarsky and Kachmarsky Trust respectfully request Taylor Capital's interest in K&T to be disposed of in accordance with the operating agreement of K&T attached as an exhibit hereto.

THIRD CAUSE OF ACTION

(Violation of South Carolina Statute §33-44-801 (4) (a), (b) and (e))
(As to Defendants' Taylor and Taylor Capital)

43 Kachmarsky re-alleges and adopts as though more fully set forth herein the allegations contained in Paragraphs 1 through 34 above.

44. Kachmarsky respectfully requests the Court judicially dissolve K&T pursuant to South Carolina Statute §33-44-801 (4) (a), (b) and (e) by virtue of the breach of duties owed by Taylor and Taylor Capital to Kachmarsky, Kachmarsky Trust and K&T as recited above.

WHEREFORE, Plaintiff prays as follows:

AS TO FIRST CAUSE OF ACTION

(1) That Taylor and Taylor Capital be found to have breached their fiduciary duty to Kachmarsky, Kachmarsky Trust and K&T and further be expelled from K&T by judicial determination under Section 33-44-601(6) of the South Carolina Uniform Limited Liability Company Act of 1996.

(2) That Taylor Capital's interest in K&T to be disposed of in accordance with the operating agreement of K&T.

AS TO SECOND CAUSE OF ACTION

(1) That Taylor and Taylor Capital be judicially expelled from K&T.

(2) That Taylor Capital's interest in K&T to be disposed of in accordance with the operating agreement of K&T.

AS TO THIRD CAUSE OF ACTION

- (1) That K&T be judicially dissolved.
- (2) That the real property owned by K&T be partitioned and that Taylor's Capital interest in the real property be disposed of in accordance with the operating Agreement of K&T.

Respectfully submitted,

s/Daniel S. Slotchiver

DANIEL S. SLOTCHIVER, ESQUIRE

SLOTCHIVER & SLOTCHIVER, LLP

751 Johnnie Dodds Boulevard, Suite 100

Mt. Pleasant, SC 29464

SC Bar No.: 15129

(843) 577-6531 (phone)

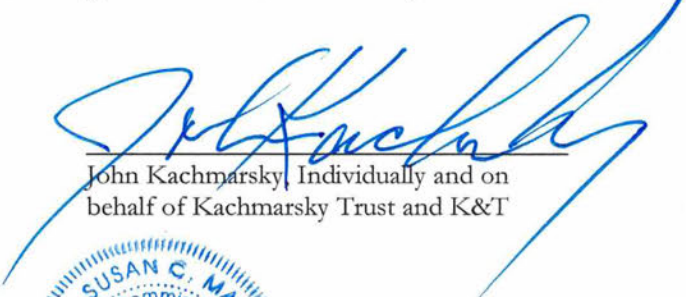
(843) 577-0261 (fax)

dan@slotchiverlaw.com

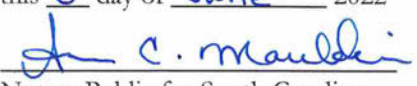
ATTORNEY FOR PLAINTIFFS

Mt. Pleasant, South Carolina
June 8, 2022

PERSONALLY appeared before me, John Kachmarsky, who, being first duly sworn, deposes and says that he is a Plaintiff and authorized representative of trust and limited liability entity Plaintiffs identified in the above referenced matter; that he has read the foregoing Summons and Complaint, knows the contents therein, and verifies all matters alleged therein are true and accurate to the best of his knowledge, save and except any matters alleged on information and belief; and to those he believes them to be true.


John Kachmarsky, Individually and on
behalf of Kachmarsky Trust and K&T

Sworn to and subscribed before me
this 3rd day of June 2022


Notary Public for South Carolina

Printed Name Susan C. Mauldin

My Commission Expires: June 23, 2024



Exhibit "A"

Suite 330



EXHIBIT "B"

ELECTRONICALLY FILED - 2025 Mar 25 12:07 AM - CHARLESTON - COMMON PLEAS - CASE#2022CP1002589
 ELECTRONICALLY FILED - 2022 Jun 08 3:38 PM - CHARLESTON - COMMON PLEAS - CASE#2022CP1002589

330 Franke Building			Loan	478,000.00	4.00%
K&T Group, LLC	5,106 SF				
Year	1	2	3	4	5
Rental Income	8,800.00	8,800.00	8,800.00	8,800.00	8,800.00
Regime Fee	2,772.50	2,772.50	2,772.50	2,772.50	2,772.50
Taxes	1,565.47	1,565.47	1,565.47	1,565.47	1,565.47
Insurance	225.00	225.00	225.00	225.00	225.00
Cleaning	430.00	430.00	430.00	430.00	430.00
Electric	450.00	450.00	450.00	450.00	450.00
Miscellaneous	100.00	100.00	100.00	100.00	100.00
Shredding	69.00	69.00	69.00	69.00	69.00
Payment @ 4.00%	6,641.43	6,641.43	6,641.43	6,641.43	6,641.43
Total Expenses	12,253.40	12,253.40	12,253.40	12,253.40	12,253.40
Net Rental Income	-3,453.40	-3,453.40	-3,453.40	-3,453.40	-3,453.40
	-41,440.80	-41,440.80	-41,440.80	-41,440.80	-41,440.80

Rent Roll

Linck Investments, LLC	600.00
Taylor & Foley	1,250.00
Taylor & Foley	1,250.00
Glenn Wolfe & Associates, Inc	1,150.00
Glenn Wolfe & Associates, Inc	1,150.00
Law Office of David Savage	1,250.00
Pacific Precious Metals, LP	1,250.00
Markham Law Firm	200.00
Church Street Financial Management	700.00
	8,800.00

EXHIBIT "C"

ELECTRONICALLY FILED - 2025 Mar 25 12:07 AM - CHARLESTON - COMMON PLEAS - CASE#2022CP1002589
ELECTRONICALLY FILED - 2022 Jun 08 3:38 PM - CHARLESTON - COMMON PLEAS - CASE#2022CP1002589

**FIRST AMENDED AND RESTATED
OPERATING AGREEMENT
OF
K&T GROUP, LLC**

TAYLOR & ASSOCIATES, PA
Attorneys & Counselors at Law
171 Church Street – Suite 330
Charleston, South Carolina 29401
Telephone 843.723.2000

OFFICIAL COMPANY NAME: **K&T Group, LLC**
 PLACE OF ORGANIZATION: **Charleston County, South Carolina**
 DATE OF ORGANIZATION: **November 11, 2003**
 DATE BEGIN BUSINESS: **November 11, 2003**
 MEMBERS:

MEMBER'S NAME AND ADDRESS	CAPITAL CONTRIBUTION	FINANCIAL RIGHTS	VOTING RIGHTS
Taylor Capital, LLC 171 Church Street – Suite 330 Charleston, South Carolina 29401	\$_____.00	50.00%	50.00%
John Kachmarsky <i>Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007</i> 171 Church Street – Suite 330 Charleston, South Carolina 29401	\$_____.00	50.00%	50.00%
TOTALS	\$_____.00	100.00%	100.00%

ANNUAL MEETING: **Not Required**
 ADDRESS: **171 Church Street, Suite 330
Charleston, South Carolina 29401**
 REGISTERED AGENT: **John Kachmarsky**
 MANAGEMENT COMMITTEE: **David Glenn Taylor
John Kachmarsky**
 COMPANY PROPERTY: **171 Church Street, Suites 318, 320 & 330
Charleston, South Carolina 29401**
 FEIN: 

Company Details for K & T Group, LLC

**FIRST AMENDED AND RESTATED
OPERATING AGREEMENT
FOR
K&T GROUP, LLC**

THIS FIRST AMENDED AND RESTATED OPERATING AGREEMENT ("Agreement") is made and entered into to be effective as of the 1st day of January, 2009, by and among Taylor Capital, LLC and John Kachmarsky as Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007 (collectively referred to as the "Members" and individually as a "Member").

WITNESSETH:

WHEREAS, the Company was originally formed on the 11th day of November, 2003, with David Glenn Taylor and John Kachmarsky each owning a Fifty (50%) percent of the Membership Interests for the Company; and

WHEREAS, pursuant to that certain Transfer and Assignment of Membership Interests dated to be effective as of the 1st day of January, 2009, David Glenn Taylor transferred One Hundred (100%) percent of his said Membership Interests in the Company to Taylor Capital, LLC; and

WHEREAS, David Glenn Taylor and John Kachmarsky each give their approval to the transfer of Membership Interests in the Company from David Glenn Taylor to Taylor Capital, LLC; and

WHEREAS, pursuant to that certain Transfer and Assignment of Membership Interests dated to be effective as of the 1st day of January, 2009, John Kachmarsky transferred One Hundred (100%) percent of his said Membership Interests in the Company to John Kachmarsky as Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007; and

WHEREAS, David Glenn Taylor and John Kachmarsky each give their approval to the transfer of Membership Interests in the Company from John Kachmarsky to John Kachmarsky as Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007.

NOW, THEREFORE, BE IT KNOWN that the parties hereto, do hereby amend the Operating Agreement for K&T Group, LLC by striking all Articles of said indenture in their entirety and restating said Articles as set forth herein. This indenture, as amended, shall be referred to and known as the First Amended and Restated Operating Agreement for K&T Group, LLC.

NOW, THEREFORE, the parties hereto have agreed and do hereby agree as follows:

ARTICLE I

Formation, Purposes and Powers

1.1 Formation. The parties to this Agreement have heretofore formed a limited liability company under the laws of the State of South Carolina, and agree to and adopt the terms and conditions set forth in this Agreement. The limited liability company ("Company") shall exist under and be governed by the provisions of the South Carolina Uniform Limited Liability Company Act of 1996, Sections 33-44-101 *et. seq.* of the Code of Laws of South Carolina (1976), as amended (the "Act"), except as otherwise provided or modified by this Agreement. The Company shall exist only for the purposes specified in this Agreement and shall not be deemed to create a partnership, joint venture, or any other relationship between the Members.

1.2 Name. The name of the Company shall be K&T Group, LLC.

1.3 Articles of Organization. The Company has filed Articles of Organization with the South Carolina Secretary of State, and shall remain in compliance with all applicable provisions of the Act necessary to maintain its existence as a South Carolina limited liability company.

1.4 Annual Report. The Company shall not be required to file an Annual Report with the South Carolina Secretary of State.

1.5 Designated Office. The Company shall maintain a designated office in South Carolina in accordance with Section 33-44-108(a) of the Act. The initial designated office shall be at 171 Church Street - Suite 330 - Charleston - 29401. The Management Committee may from time to time change the location of the Company's designated office.

1.6 Registered Agent and Address. The registered agent for service of process on the Company in South Carolina shall be John Kachmarsky. The street address of the registered agent for service of process on the Company in South Carolina shall be 171 Church Street - Suite 330 - Charleston - 29401. The Management Committee may change the registered agent's street address or designate a new agent for service of process by filing with the Secretary of State a Statement of Change, in compliance with Section 33-44-109 of the Act.

1.7 Term Company. The Company shall be term Company. The Company commenced on the date the Articles were filed with the Secretary of State of South Carolina for the Company and shall continue in existence for the period fixed in the Articles for the duration of the Company, or such earlier time as this Operating Agreement may specify.

1.8 Statement of Company & Fictitious Name Certificates. The Members shall execute and file in the proper offices such statement of the Company and such assumed or fictitious name certificates as may be required by law.

1.9 Income Tax Election. The Company shall be taxed as a partnership for state and federal income tax purposes, and the Management Committee shall make all elections necessary and file all documents and forms required to obtain and maintain such income tax treatment for the Company and the Members.

1.10 Purposes. The character of business and purposes of the Company shall be to hold and manage the Company Property, including but not limited to servicing, managing, improving, operating, leasing, mortgaging, refinancing, pledging, selling or otherwise dealing with the Company Property and engaging in such other activities as the Management Committee deems necessary or appropriate to the foregoing purposes. The purposes of the Company shall also be to engage in any other business or activity which is allowed by law, common, statutory or otherwise.

1.11 Powers. Subject to the provisions of this Agreement, the Company shall have the same powers as an individual to do all things necessary or convenient to carry on its business and affairs, including the power to:

- (a) Sue and be sued, and defend in its name;
- (b) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, maintain, manage, operate and otherwise deal with property of any kind, real, personal, tangible and intangible, or any legal or equitable interest in property, wherever located;
- (c) Sell, convey, mortgage, grant a security interest in, lease, exchange, and otherwise encumber or dispose of all or any part of its property;
- (d) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity;
- (e) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of its obligations by a mortgage on or a security interest in any of its property, franchises, or income;
- (f) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (g) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
- (h) Conduct its business, locate offices, and exercise the powers granted by this Agreement and the Act within or without the State of South Carolina;

(i) Appoint officers, employees, and agents of the Company, define their duties, fix their compensation, and lend them money and credit;

(j) Pay pensions and establish pension plans, pension trusts, profit sharing plans, bonus plans, option plans, and benefit or incentive plans for any or all of its current or former Members, officers, employees, and agents;

(k) Make donations for the public welfare or for charitable, scientific, or educational purposes;

(l) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business of the Company;

(m) Perform any act and execute and deliver any documents required by any governmental authority; and

(n) Perform any and all other acts or activities customary, incidental, necessary or convenient to the purposes and powers enumerated herein.

1.12 Company Accounts. The Company shall maintain such separate bank accounts as appropriate for the conduct of the Company's business, in the name of the Company, at such bank or banks as from time to time may be designated by the Management Committee.

1.13 Foreign Qualification. Prior to the Company doing any business in a state other than South Carolina, the Management Committee shall determine if the Company is required to "qualify to do business" in that state, and if so, the Management Committee shall take all steps necessary to qualify the Company in that state before conducting any business there.

1.14 Construction. If and to the extent the provisions of this Agreement conflict with the Act, this Agreement shall control. If and to the extent the provisions of this Agreement do not conflict with the Act, the Act shall control.

1.15 Minimum Insurance Requirements. Unless otherwise determined by the Management Committee, the Company shall carry and maintain in force, or cause to be carried and maintained in force, insurance insuring the Company for the fair market value of the Company Property (other than land), including without limitation, insurance for all insurable improvements owned or leased by the Company against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, and public liability insurance against claims for bodily injury, death or property damage. All such insurance shall be effected under policies issued by insurers and be in forms and for amounts approved by the Management Committee. If the Company renders professional services within the meaning of Section 33-19-103(7) of the Code of Laws of South Carolina (1976), as amended, the Company shall acquire and maintain such additional insurance or segregated funds as may be required by the applicable licensing authority.

ARTICLE II Definitions

2.1 Definitions. Whenever used in this Agreement, or any amendment hereof, the following terms shall have the meanings set forth below:

(a) **“Act”** shall mean the South Carolina Uniform Limited Liability Company Act of 1996, Sections 33-44-101 et. seq. of the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

(b) **“Action of the Company”** and any reference to an action taken, or to be taken, by the Company shall mean any action properly approved by the Management Committee in accordance with ARTICLES V and VI.

(c) **“Agreement”** shall mean this Operating Agreement and any amendments made thereto from time to time.

(d) **“Articles of Organization”** shall mean the Articles of Organization filed with the South Carolina Secretary of State by which the Company was organized as a South Carolina limited liability company pursuant to the Act.

(e) **“Capital Account”** shall mean the account established and maintained for each Member on the books of the Company pursuant to ARTICLES VII and VIII hereof.

(f) **“Capital Contribution”** or **“Contribution to Capital”** shall mean the amount of cash and net fair market value (at the time of the contribution) of any property contributed to the Company by or on behalf of each Member.

(g) **“Code”** shall mean the Internal Revenue Code of 1986, as amended, and any corresponding provisions of future laws.

(h) **“Company”** shall mean K&T Group, LLC a South Carolina limited liability company.

(i) **“Company Liability”** shall mean any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.

(j) **“Company Property”** shall mean any and all property, real, personal, tangible and intangible, either contributed by a Member as capital, transferred to, or otherwise acquired by the Company, including, but not limited to, the property described on EXHIBIT A attached hereto.

(k) **“Disinterested”** shall mean with respect to any Member or Manager, a Member or Manager who (1) is not a party to a particular transaction or other undertaking, (2) has no material financial interest in any organization that is a party to that undertaking, and (3) is not a Family member of any person who is either a party to that undertaking or has a material financial interest in any organization that is a party to that undertaking.

(l) **“Family”** shall mean the spouse, lineal descendants and ancestors of a Member.

(m) **“Financial Rights”** shall mean the right of a Member, or any other person, to share in the Profits and Losses of the Company and the right to share in distributions. The phrase “Financial Rights” shall have the same meaning, and describe the same rights, as the phrase “Distributional Interest” as used in the Act.

(n) **“Losses”** shall mean the losses of the Company as determined under SECTION 8.3 hereof.

(o) **“Management Committee”** shall mean the Management Committee elected from time to time pursuant to ARTICLE V.

(p) **“Manager”** shall mean any Person elected to the Management Committee from time to time pursuant to ARTICLE V. The initial Managers shall be David Glenn Taylor and John Kachmarsky.

(q) **“Member”** shall mean the parties to this Agreement from time to time. For purposes of ARTICLES IX, X and XI, the term “Member” includes any Member who has withdrawn or otherwise dissociated from the Company.

(r) **“Membership Share”** shall mean all of the rights of a Member under this Agreement and under the Act, including, but not limited to, a Member’s Financial Rights and Voting Rights.

(s) **“Person”** shall mean an individual, general partnership, limited liability company, limited liability partnership, limited partnership, trust, estate, corporation, custodian, trustee, executor, personal representative, legal representative, administrator, nominee or any other entity or person, and any individual or entity acting in a representative capacity.

(t) **“Profits”** shall mean the profits of the Company as determined under SECTION 8.3 hereof.

(u) **“S.C. Code”** shall mean the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

(v) **“Voting Rights”** shall mean the right of a Member to vote on any matter as provided in this Agreement or under the Act. Any reference to a Member’s Voting Rights shall mean the percentage of Voting Rights in the Company held by the Member.

(w) **“Voting Rights in the Company”** shall mean the Voting Rights held by the Members, collectively. Unless otherwise specifically provided for herein, reference to a percentage of Voting Rights in the Company shall mean a percentage of the total Voting Rights held by all the Members, or the total Voting Rights represented at a meeting of the Members at which a quorum exists.

ARTICLE III **Membership and Capitalization**

3.1 Initial Members. Upon transfer of the property and/or cash constituting each Member’s initial Capital Contribution to the Company, the Financial Rights and Voting Rights of the Members shall be in the percentages shown on EXHIBIT B attached hereto.

3.2 Admission of New Members. Except in the case of transferees of all or any part of a Membership Share, who shall be subject to SECTION 3.3, additional Members may be admitted to the Company only with the unanimous consent of all Members who own one hundred (100%) percent of the Voting Rights in the Company. Members shall indicate their consent to the admission of a new Member by executing a memorandum to be attached to this Agreement setting forth the names and addresses of all the Members, the amount of cash or fair market value of property being contributed by the new Member (if applicable), and the percentage ownership of Financial Rights and Voting Rights of all the Members as a result of the new Member’s admission. In addition, no Person shall become a Member unless such Person:

(a) Agrees in writing to assume and to be bound by all the obligations and subject to all the restrictions of this Agreement and any further agreement with respect to the Company;

(b) Executes and acknowledges, as required, a certificate amending the fictitious name certificate or assumed name certificate of the Company in order to reflect the Member’s admittance and to take any other action that may be required in connection therewith;

(c) Notifies the Company of his current address and provides his federal and state tax identification numbers and such other information as the Management Committee may deem appropriate.

3.3 Effect of Transfer of Membership Share - Transferee Admitted as a Member. A transferee of all or any part of a Membership Share who is not already a Member may only become a Member if (a) the Members who own the percentage of Voting Rights in the Company required by SECTION 3.2 consent to the transferee’s admission (without regard to the Voting Rights of the transferor or transferee) and (b) such transferee meets all the qualification requirements for Members contained in this Agreement, including but not limited to, all requirements of SECTION 3.2. If the transferee becomes a Member, he shall be entitled to all rights and powers and subject to all restrictions and liabilities of a Member, including the transferor’s obligations to make contributions to the Company.

Notwithstanding anything herein to the contrary, no creditor of a Member who obtains any portion of a Membership Share, including any Financial Rights, by charging order pursuant to Section 33-44-504 of the Act, or otherwise, or any person or entity, including any creditor, receiver, or bankruptcy estate that obtains any rights in the Company by reason of a security interest, pledge or the filing of an action for foreclosure, bankruptcy, receivership, divorce, or any similar proceeding may become a full Member in the Company without the unanimous written consent of the Members, obtained after the transfer.

3.4 Transferee not Admitted as a Member. If the transferee of all or any part of a Member's Membership Share is not admitted as a Member, he shall be entitled to receive only the distributions to which the transferor would otherwise be entitled. The transferee shall not have any Voting Rights and shall not be entitled to participate in the management of the Company or to exercise any rights of a Member. The transferee takes all Financial Rights subject to any claims or offsets the Company has against the transferor, regardless of whether those claims or offsets exist at the time of the transfer or arise afterwards. An amendment to this Agreement may change a Member's rights and consequently affect the rights of a transferee, even if the amendment is made after the transfer. A transferee who is not admitted as a Member shall not have the right to seek a judicial determination that it is equitable to dissolve and wind up the Company's business under Section 33-44-801(b)(6) of the Act. The transferor continues to be a Member, entitled to all rights of a Member, other than the rights transferred.

Notwithstanding anything herein to the contrary, a transferee who is not admitted as a Member shall not be entitled to receive any distributions from the Company until such transferee delivers to the Company written notice of the transfer, proof of the transfer deemed sufficient by the Management Committee, the transferee's federal and state tax identification numbers, current legal address and telephone number, and such other information as the Management Committee may reasonably require.

3.5 Redemption of Member's Financial Rights Subjected to Charging Order. In the event a Member's Financial Rights are subjected to a charging order under Section 33-44-504 of the Act, the Management Committee may cause the Company to redeem the Member's Financial Rights so charged, with Company Property, at any time prior to foreclosure of said Financial Rights in accordance with Section 33-44-504(c) of the Act. Nothing in this SECTION 3.5 shall be construed as affecting or limiting the rights of the judgment debtor and the other Members to redeem any Financial Rights subjected to a charging order with their own property in accordance with Section 33-44-504(c) of the Act.

3.6 Ceasing to be a Member. A Member shall cease to be a Member and shall have no power to exercise any rights of a Member if such Member:

- (a) Transfers his entire Membership Share; or
- (b) Is expelled from the Company by judicial determination under Section 33-44-601(6) of the Act.

3.7 Power of Attorney. Any Member may give another Member power of attorney to act for or to execute documents in the name of such Member and any action taken pursuant to such power of attorney shall be valid for all purposes as if done or executed by the Member giving such a power of attorney, provided the Member giving such power of attorney delivers a copy of the power of attorney to the Company. Any such power of attorney may be general or may be limited to certain acts or instruments, may contain conditions and restrictions, and may be changed or revoked at any time by the Member who gave such power giving notice of its change or revocation to the Company.

3.8 Additional Capital Contributions. The Company may make a mandatory capital call, in whatever amount it deems appropriate, by giving notice to all the Members of the amount each is required to contribute to the Company's capital. Any additional capital shall be contributed by the Members in the same ratio as each Member's Financial Rights bears to the total of all the Financial Rights in the Company. Solely for purposes of this SECTION 3.8, a Member who has transferred his Financial Rights, but whose transferee has not become a Member, shall be deemed to hold the Financial Rights so transferred.

(a) If any Member fails to make his proportionate Capital Contribution within thirty (30) days after receiving notice of a mandatory capital call ("Defaulting Member"), each Member who has made his required Capital Contribution pursuant to this SECTION 3.8 may make an additional Contribution to Capital equal to such Member's proportionate share of the Defaulting Member's required contribution. If any Member fails to make any such additional Capital Contributions within thirty (30) days after expiration of the original thirty (30) day period, the other Members may make further contributions in proportion to their Financial Rights until either the entire amount of the Defaulting Member's obligation is paid, or until no Member wishes to make any additional Capital Contributions. The Members shall have thirty (30) days to make such additional Contributions to Capital. Any Member that contributes additional capital to the Company shall have his Membership Share increased so that it is equal to a fraction, the numerator of which is the sum of all such Member's Capital Contributions to the Company and the denominator of which is the sum of all Capital Contributions to the Company made by each Member. The Financial Rights and Voting Rights of the Defaulting Member and each Member that elects not to make an additional Capital Contribution to the Company shall be reduced accordingly. To the extent a Defaulting Member's obligation to make Capital Contributions remains unsatisfied, such obligation of the Defaulting Member shall be a personal debt obligation of the Defaulting Member enforceable by the Company and the other Members as provided herein.

(b) The Defaulting Member hereby grants to the Company a security interest in his Membership Share to the extent of the Defaulting Member's unpaid obligation under this SECTION 3.8. If the Defaulting Member fails to satisfy his obligation hereunder by making Capital Contributions to the Company in the amount required within ninety (90) days after receiving notice of a mandatory capital call, the Defaulting Member shall forfeit his Membership Share, to the extent of any unpaid obligation. The other Members shall not be required to make any additional Capital Contributions by reason of the Defaulting Member's forfeiture.

ARTICLE IV **Member Meetings**

4.1 Place of Meetings. All meetings of the Members shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by those Members who own more than fifty (50%) percent of the Voting Rights in the Company.

4.2 Time of Meeting. Meetings of the Members may be called at any time by any Member by delivery to all Members of written notice at least seven (7) days in advance of the proposed meeting date. The notice shall contain the time, date and place of the meeting.

4.3 Quorum & Voting Requirement. Each Member shall be entitled to vote in proportion to his Voting Rights in the Company. More than fifty (50%) percent of the Voting Rights in the Company constitutes a quorum. Except as an action is permitted to be accomplished without a meeting as provided in SECTION 4.5, in order for any vote of the Members to be valid, a quorum must be represented at the meeting either in person or by proxy. Once a quorum is established, the affirmative and unanimous vote of those Members who own one hundred (100%) percent of the Voting Rights represented at the meeting shall constitute a valid decision of the Members, unless the matter being voted on is one which requires a different vote pursuant to the Act or this Agreement.

4.4 Proxies. Members may vote by proxy appointed by an instrument in writing.

4.5 Action without Meeting. The Members may take action without notice and a meeting if all the Members consent to such action by signing a Consent of the Members which sets forth the action to be taken and contains the signature of each Member.

4.6 Waiver of Notice. A Member may waive notice of any meeting by a signed writing. In addition, a Member who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.

4.7 Ratification. Under the quorum and voting requirements of SECTION 4.3, the Members may ratify and adopt any and all acts done on behalf of the Company.

ARTICLE V **Management and Control**

5.1 General Authority. Except as otherwise expressly provided by this Agreement or required by any nonwaivable provisions of applicable law, the business and affairs of the Company shall be managed by the Management Committee. The Management Committee shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business. Without limiting the generality of the foregoing, the Management Committee shall have the power and authority on behalf of the Company to:

- (a) Acquire property, real, personal, tangible and intangible;
- (b) Borrow money for the Company from banks, other lending institutions, and other persons on such terms as the Company deems appropriate and to hypothecate, encumber and grant security interests in the assets of the Company to secure payment of the borrowed sums;
- (c) Purchase liability and other insurance to protect the Company Property and business;
- (d) Hold and own any property, real, personal, tangible and intangible, in the name of the Company, including, but not limited to, deeds, mortgages, leasehold interests, interests in general partnerships, limited partnerships, limited liability companies, common trust funds, mutual funds, stocks, options, warrants, rights, puts, calls, contracts, futures, bonds, debentures, securities (public and private), and other debt and equity interests of any kind or nature;
- (e) Invest and reinvest any Company funds in time deposits, short-term governmental obligations, commercial paper or other investments including real estate, stocks, options, general and limited partnerships, limited liability companies, common trust funds, mutual funds, futures, rights, warrants, puts, calls, contracts, public and private bonds, debentures, securities, and other debt and equity interests and to actively trade, speculate on and manage the same;
- (f) Enter into, make, and perform contracts, agreements, and other undertakings binding on the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company and make all decisions and waivers thereunder;
- (g) Employ accountants, legal counsel, managing agents money managers, property managers, investment advisors and other advisors to perform services for the Company and to compensate them from Company funds;
- (h) Screen, interview, and examine staff and personnel to be employed by the Company;
- (i) Open and maintain bank and investment accounts and arrangements, draw checks, letters of credit, and other orders for payment of money and designate individuals with authority to sign or give instructions with respect to those accounts and arrangements;
- (j) Maintain the assets of the Company in good order;
- (k) Collect sums due the Company;
- (l) Pay debts and obligations of the Company to the extent that Company funds are available;

(m) Sell, purchase, lease, loan, borrow, rent, repair, partition, mortgage, pledge, encumber, develop, improve, subdivide, or otherwise deal with any property, including Company Property;

(n) Bring suit on the Company's behalf or defend the Company in any such action, and compromise, settle, collect, and otherwise represent, prosecute and defend the legal rights and interests of the Company;

(o) File on behalf of the Company a voluntary petition for bankruptcy, or to bring an action on behalf of the Company for receivership, insolvency or other similar relief in any court of competent jurisdiction, and to defend, answer, respond and otherwise represent the Company in any such action or proceeding;

(p) Invest and reinvest in any kind of property, real, personal, tangible and intangible, including, but not limited to, common trust funds, stocks, bonds, notes, mortgages, general or limited partnerships, limited liability companies, savings accounts and certificates of deposit, mutual funds, and real estate; and

(q) Perform all other acts as may be necessary or appropriate to the conduct of the Company's business, and to execute, acknowledge, verify and deliver any or all instruments desirable to effectuate any of the foregoing.

5.2 Members' Approval Required for Certain Major Decisions. Notwithstanding anything herein to the contrary, the following major decisions shall require approval of the Members in the percentages designated:

(a) Any amendment to this Agreement or the Articles of Organization shall require the unanimous approval of the Members of the Company who own one hundred (100%) percent of the Voting Rights in the Company.

(b) The Company shall not compromise, settle, waive or limit the obligation of any Member to make a Capital Contribution to the Company without the unanimous consent of those Disinterested Members in the Company who own one hundred (100%) percent of the Voting Rights of all Disinterested Members in the Company.

(c) The Company shall not sell, or contract to sell, or otherwise dispose of substantially all of the Company Property without the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company. For purposes of this paragraph, all or substantially all of the Company Property shall mean more than seventy-five (75%) percent of such property by value.

(d) The Company shall not enter into any merger, or any profit sharing, joint venture, or other such arrangement without the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company.

(e) The Company shall not open any additional offices or additional locations without the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company.

(f) The Company shall not close any existing office without the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company.

(g) The Company shall not hire anyone who is a member of a Member's or Manager's Family without the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company.

5.3 Liability for Certain Acts. A Manager who performs his duties in good faith and in a manner he reasonably believes to be in the best interests of the Company shall not have any liability solely by reason of being or having been a Manager of the Company. A Manager shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of such Manager's fraud, deceit, gross negligence, willful misconduct, breach of this Agreement or a knowing violation of the law.

5.4 Compensation. The Managers shall be entitled to reasonable compensation for the performance of their duties. The amount of such compensation shall be determined by the Management Committee, subject to the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company.

5.5 Management Committee Meetings - Place, Time and Notice. All meetings of the Management Committee shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by more than fifty (50%) percent of the Managers. Meetings of the Management Committee may be called at any time by any Manager of the Company, by delivery to all Managers of written notice at least seven (7) days in advance of the proposed meeting date. The notice shall contain the time, date and place of the meeting. Each Manager shall be entitled to one (1) vote. Fifty (50%) percent of the Managers constitutes a quorum. Except as provided in SECTION 5.7, in order for any vote of the Managers to be valid and constitute an action of the Management Committee, a quorum must be represented at the meeting either in person or by proxy. Once a quorum is established, the affirmative vote of more than fifty (50%) percent of the Managers represented at the meeting shall constitute a valid decision of the Management Committee. Managers may vote by proxy appointed by an instrument in writing.

5.6 Waiver of Notice. A Manager may waive notice of any meeting by a signed writing. In addition, a Manager who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.

5.7 Action without Meeting. The Management Committee may take action without notice and a meeting if all of the Managers consent to such action by signing a Consent of the Managers which sets forth the action to be taken and contains the signature of each Manager.

5.8 Managers: Number, Election, Tenure and Qualifications. The Company shall initially have two (2) Managers. The initial Managers shall be David Glenn Taylor and John Kachmarsky. The Managers need not be Members in the Company. Each Manager shall agree to be bound by the provisions of this Agreement as they relate to Managers. The number of Managers on the Management Committee may be changed from time to time by the affirmative and unanimous vote of those Members who own one hundred (100%) percent of the Voting Rights in the Company. The Managers shall be elected by the affirmative and unanimous vote of those Members who own one hundred (100%) of the Voting Rights in the Company. Following his election, each Manager will serve until (a) his removal, (b) his resignation, or (c) the election of a successor, whichever occurs first.

5.9 Removal of Managers. A Manager may be removed at any time, with or without cause, by those Members who own more than fifty (50%) percent of the Voting Rights in the Company.

5.10 Resignation of Managers. Any Manager may resign at any time by giving written notice to all Members (other than the Manager so resigning should such Manager also be a Member). The resignation shall be effective upon receipt of such written notice by the last Member receiving such notice. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal from the Company by the Member.

5.11 No Authority of Members. Except as otherwise provided in this Agreement, or as authorized by the Management Committee, no Member is an agent of the Company or has the authority to make any contracts, enter into any transactions, or make any commitments on behalf of the Company.

5.12 Ratification. The Management Committee may ratify and adopt any and all acts of a Member or Manager done on behalf of the Company.

5.13 Delegation of Powers. From time to time, the Management Committee may authorize, or delegate any of its authority to a subcommittee of Persons, or a single Person, whom it shall name, to act on its behalf regarding any matter over which the Management Committee has authority.

ARTICLE VI
Fiduciary Duties, Right to Rely, Indemnification

6.1 Duties of Members. A Member who is not also a Manager owes no duties to the Company or to the Members solely by reason of being a Member; provided, however, that a Member who, pursuant to this Agreement, exercises some or all of the rights of a Manager in the management and conduct of the Company's business is held to the standards of conduct applicable to Managers under this Agreement and the Act to the extent that the Member exercises the managerial authority vested in a Manager by this Agreement or the Act.

6.2 Duty of Loyalty. A Manager's duty of loyalty to the Company and the Members is limited to the following:

(a) To account to the Company and to hold as trustee for the Company any property, profit or benefit derived by the Manager in the conduct or winding up of the Company's business or derived from a use by the Manager of the Company's property, including the appropriation of a Company opportunity;

(b) To refrain from dealing with the Company in the conduct or winding up of the Company's business as or on behalf of a party having an interest adverse to the Company; and

(c) To refrain from competing with the Company in the conduct of the Company's business before dissolution of the Company.

6.3 Duty of Care. A Manager's duty of care to the Company and the Members in the conduct of and winding up of the Company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law.

6.4 Fiduciary Duties. Each Manager shall discharge his duties and exercise any of his rights consistently with the obligation of good faith and fair dealing which he owes to the Company and the Members. A Manager does not violate a duty or obligation to the Company merely because the Manager's conduct furthers the Manager's own interest. A Manager may lend money to and transact other business with the Company. As to each loan or transaction, the rights and obligations of the Manager are the same as those of a Person who is not a Manager, subject to other applicable law.

6.5 Duty of Confidentiality. Each Manager hereby warrants, covenants and agrees that he will not furnish, divulge, communicate, use to the detriment of the Company or use for the business of any other Person, any of the Company's confidential information, including but not limited to pricing information, data, sales methods, know how, processes, licenses, trade secrets, names of customers, customer lists, names of Members, or the partners, shareholders, members or other principals of any Member, future plans, accounting, marketing, financial data, or contract information.

6.6 Right to Rely. The Managers shall not be held liable to the Company, or to the Members, for relying in good faith upon the records required to be maintained by this Agreement and upon such information, opinions, reports or statements by any of the Managers, Members, attorneys, accountants, agents, advisors or any other Person who has been selected with reasonable care by or on behalf of the Company, as to matters the Managers reasonably believe are within such other Person's professional or expert competence, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, Profits or Losses of the Company or any other facts relevant to the existence or amount of assets from which distributions to Members might properly be made.

6.7 Indemnification of Managers. To the fullest extent allowed by law, the Managers shall be indemnified and held harmless by the Company for any liability resulting from any act performed or omission made by them in good faith on behalf of the Company, except for acts or omissions of gross negligence, intentional misconduct, or knowing violation of the law.

6.8 Remedies. Each Manager acknowledges and represents that irreparable damage and harm could be done to the Company if there is a breach of the covenants contained herein, and that in the event of a breach, each Manager agrees that the Company shall be entitled to injunctive relief (both temporary and/or permanent), without posting bond, as well as monetary damages and reasonable attorney's fees for the enforcement of this Agreement. Each Manager agrees to return all documents and copies of documents upon request by the Company.

6.9 Scope of Duties. A Manager is relieved of liability imposed by law or this Agreement for violation of the standards prescribed by this ARTICLE VI to the extent of the managerial authority delegated to the Members by this Agreement.

ARTICLE VII

Capital Accounts and Accounting

7.1 Capital Accounts. The Company shall establish for each Member a Capital Account, which shall be maintained in accordance with Section 704 of the Code and the capital account rules set forth in Treasury Regulations Section 1.704-1(b).

- (a) Each Member's Capital Account shall be credited with the following:
- (1) Such Member's Capital Contributions;
 - (2) Such Member's distributive share of Profits;
 - (3) The amount of any Company Liabilities that are assumed by such Member or that are secured by any property distributed to such Member; and
 - (4) With respect to a transferee Member, a pro rata portion of the Capital Account of the transferor Member.

(b) Each Member's Capital Account shall be debited by the following:

(1) The amount of cash and the net fair market value of any property distributed to such Member (as of the date of the distribution);

(2) Such Member's distributive share of Losses;

(3) The amount of any liabilities of such Member assumed by the Company or that are secured by any property contributed by such Member to the Company; and

(4) With respect to a transferor Member, a pro rata portion of the Capital Account of the transferee Member.

7.2 Accounting Decisions. All decisions as to accounting matters, except as specifically provided to the contrary herein, shall be made by the Management Committee.

7.3 Taxable Year and Tax Accounting Methods. Unless otherwise required by the Code, Treasury Regulations or the Internal Revenue Service, the Company's taxable and fiscal years shall be the calendar year, and the books of account of the Company shall be maintained on a cash basis consistently applied and shall show all items of income and expense. Subject to SECTION 7.6 hereof, all elections required or permitted to be made by the Company under the Code shall be made by the Management Committee.

7.4 Tax Returns. Not later than the time required by law, the Management Committee shall prepare and file or cause to be prepared and filed for each fiscal year, all federal, state, and local income tax returns required of the Company.

7.5 Tax Elections.

(a) The Company shall make the following elections for federal income tax purposes:

(1) To treat as an expense for federal income tax purposes all amounts incurred for real estate taxes, interest and other charges that may, in accordance with applicable law and regulations, be considered as an expense;

(2) To deduct expenses incurred in organizing the Company ratably over a sixty (60) month period as provided in Section 709 of the Code; and

(3) To elect to be excluded from the provisions of Subchapter K of the Internal Revenue Code pursuant to Treasury Regulation Section 301.7701-3(a).

(b) In the event of a distribution of Company Property to a Member or a transfer, whether during life or at death, by a Member of all or any part of his Membership Share, the Company shall determine whether to elect pursuant to Section 754 of the Code, and in accordance with applicable law and regulations, to adjust the basis of the assets of the Company pursuant to Sections 734 and 743 of the Code.

7.6 Compliance with Section 704(b) of the Code. The provisions of this Agreement as they relate to the maintenance of Capital Accounts are intended, and shall be construed, and, if necessary, modified to cause the allocations of Profits, Losses, income, gain, deductions, credit and other items pursuant to ARTICLE VIII to have substantial economic effect within the meaning of the Treasury Regulations promulgated under Section 704(b) of the Code. Notwithstanding anything herein to the contrary, this Agreement shall not be construed as creating a deficit restoration obligation.

7.7 Tax Matters Partner. John Kachmarsky is designated the tax matters partner of the Company, as defined in Section 6231(a)(7) of the Code. The Management Committee may designate a new tax matters partner from time to time.

ARTICLE VIII

Interim Distributions and Allocations

8.1 Interim Distributions. From time to time the Management Committee shall determine to what extent, if any, the Company's cash on hand ("Company Cash") exceeds the current and anticipated needs of the business, including, but not limited to, operating expenses, debt service, acquisitions, reserves, amounts owed as payments under Section 707(c) of the Code, and all amounts necessary to preserve, maintain and repair any Company Property. Company Cash shall be applied first to payment of all Company Liabilities and expenses that are due and owing, retention of all amounts necessary for the aforementioned Company Liabilities, expenses or reserves, and the Company shall retain all amounts deemed necessary for the conduct of the Company's business. Subject to SECTION 8.2, any remaining Company Cash may be distributed to the Members. All such distributions to the Members must be made simultaneously to each of the Members and must be made in proportion to the Members' Financial Rights. Such distributions may be in cash or Company Property or partly in both. Items of Company Property need not be distributed proportionately, provided the Members agree upon the value of the property being distributed and the value of the property and the cash received by each Member is proportionate to his Financial Rights with respect to the property and cash distributed to all the Members. Any Person who holds Financial Rights in the Company but who is not otherwise a Member shall be allocated distributions only if such Person has provided a current address to the Management Committee, and has given notice and proof of his Financial Rights satisfactory to the Management Committee.

8.2 Restrictions on Distributions. Notwithstanding anything herein to the contrary, no distribution to any Member may be made if after giving effect to the distribution either (a) the Company would not be able to pay its debts as they become due in the ordinary course of business, or (b) the Company's total assets would be less than the sum of its total liabilities plus the amount that would be needed if the Company were to be dissolved, wound up and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up and termination of Members whose preferential rights are superior to those receiving the distribution. The provisions of Section 33-44-406 of the Act shall apply in construing this SECTION 8.2.

8.3 Calculation of Profits and Losses. The Profits and Losses of the Company for each fiscal year or other period shall be the taxable income or loss of the Company for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be separately stated pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any Company income which is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be added to such taxable income or loss.

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) (expenditures of the Company not deductible in computing its taxable income and not properly chargeable to a capital account) or treated as such expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i) (organizational expenditures which the Company elects not to amortize under Code Section 709(b)) and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be subtracted from such taxable income or loss.

(c) Gain or loss with respect to the disposition of Company Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Code Section 704) of such property without regard to the adjusted basis.

(d) Depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss shall, for purposes of this subsection, be based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Section 704) of Company Property.

8.4 Allocation of Profits and Losses. The Profits and Losses of the Company for any fiscal year of the Company shall be allocated among the Members in accordance with their Financial Rights. Upon termination of the Company or upon liquidation of any Member's Membership Share, distributions shall be made in accordance with the positive Capital Account balances of the Members after taking into account all Capital Account adjustments for the year during which such termination or liquidation occurs.

8.5 Tax Item Allocation. Unless otherwise specially allocated herein, whenever a proportionate part of Profits or Losses is charged or credited to the Capital Account of a Member, every item of income, gain, loss, deduction, credit, allowance or tax preference entering into the computation of such Profits or Losses or applicable to the period during which such Profits or Losses were realized shall be considered credited or charged, as the case may be, to such Capital Account in the same proportion. In the event of a transfer of Financial Rights in the Company at any time other than at the end of the Company's tax year, the distributive share of Profits and Losses and any items of Company income, gain, loss, deduction, credit or tax preference attributable to the transferred Financial Rights shall be apportioned for income tax purposes between the transferor and transferee in accordance with the number of days in the taxable year of the Company that each was the owner of such Financial Rights.

8.6 Code Section 704(c). In accordance with the provisions of Code Section 704(c), income, gain, loss and deductions with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated to the Members so as to take account of any variation between the adjusted basis of such property and the fair market value at the time of contribution. In the event the Company uses the “Traditional Method with Curative Allocations” under Treasury Regulations Section 1.704-3(c) to correct for distortions caused by the “ceiling rule” (as defined therein) in making allocations pursuant to Section 704(c) of the Code, the Company may make curative allocations in any given year to offset the effects of the “ceiling rule” for prior taxable years. Any such allocations shall be made over a reasonable period of time, such as over the property’s economic life, in compliance with Treasury Regulations Section 1.704-3(c)(3)(ii). If cost recovery deductions with respect to an item of contributed property have been limited by the “ceiling rule”, the general limitation on the character of any curative allocation, contained in Treasury Regulations Section 1.704-3(c)(3)(iii)(A), shall not apply to income from disposition of the contributed property.

8.7 Nonrecourse Deductions. Notwithstanding anything herein to the contrary, beginning in the first taxable year of the Company in which there are nonrecourse deductions, all nonrecourse deductions and distributions of proceeds attributable to nonrecourse borrowing (as defined in Treasury Regulations Section 1.704-2) shall be allocated in accordance with the Members’ Financial Rights or in any other manner that is reasonably consistent with allocations that have substantial economic effect of some other significant Company item attributable to the property securing the nonrecourse liabilities. Items attributable to a particular Member’s Nonrecourse Liability (as defined in Treasury Regulations Section 1.704-2(b)(4)) shall be allocated to the Member that bears the economic risk of loss for the liability.

8.8 Minimum Gain Chargeback Requirements. Except as otherwise provided in Treasury Regulations Section 1.704-2(f), if there is a net decrease in Company Minimum Gain (as determined under Treasury Regulations Section 1.704-2(d)) for the Company’s taxable year, each Member must be allocated items of income and gain for that taxable year equal to that Member’s share of the net decrease in Company Minimum Gain. A Member’s share of the net decrease in Company Minimum Gain is the amount of the total net decrease multiplied by the Member’s percentage share of Company Minimum Gain at the end of the immediately preceding taxable year (as determined in Treasury Regulations Section 1.704-2(g)). A Member is not subject to this minimum gain chargeback requirement to the extent the Member’s share of the net decrease in Company Minimum Gain is caused by a guarantee, refinancing, or other change in the debt instrument causing it to become partially or wholly a recourse liability or a Member Nonrecourse Liability, and the Member bears the economic risk of loss (within the meaning of Treasury Regulations Section 1.752-2) for the newly guaranteed, refinanced, or otherwise changed liability.

If during a taxable year there is a net decrease in Member Nonrecourse Debt Minimum Gain (as determined under Treasury Regulations Section 1.704-2(i)(2)), any Member with a share of that Member Nonrecourse Debt Minimum Gain (as determined under Treasury Regulations Section 1.704-2(i)(5)) as of the beginning of that taxable year must be allocated

items of income and gain for that taxable year (and, if necessary, for succeeding taxable years) equal to that Member's share of the net decrease in the Member Nonrecourse Debt Minimum Gain. A Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain is determined in a manner consistent with the provisions of Treasury Regulations Section 1.704-2(g)(2). A Member is not subject to this minimum gain chargeback requirement, however, to the extent the net decrease in Member Nonrecourse Debt Minimum Gain arises because the liability ceases to be Member Nonrecourse Debt due to a conversion, refinancing, or other change in the debt instrument that causes it to become partially or wholly a nonrecourse liability. The amount that would otherwise be subject to the Member Nonrecourse Minimum Gain chargeback is added to the Member's share of Company Minimum Gain under Treasury Regulations Section 1.704-2(g)(3).

8.9 Qualified Income Offset. Unless otherwise agreed, a Member is not required to fund any deficit in the Member's Capital Account at any time. However, if a Member unexpectedly receives an adjustment, allocation, or distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6), and the unexpected adjustment, allocation, or distribution results in a deficit balance in the Capital Account for the Member (or a deficit balance in excess of any limited dollar amount the Member is obligated to restore), the Member will be allocated items of income and gain consisting of a pro rata portion of each item of Company income and gain for such year in an amount and manner sufficient to eliminate the deficit balance or the increase in the deficit balance as quickly as possible. This SECTION 8.9 will be interpreted, applied, and if necessary modified to constitute a "qualified income offset" as defined in Treasury Regulations Section 1.704-1(b)(2)(ii)(d).

8.10 Distributions Subject to Set-Off. Subject to SECTIONS 3.3 and 3.4, all distributions are subject to set-off by the Company for any past-due obligation of a Member to the Company.

ARTICLE IX

Dissolution, Winding Up, Termination

9.1 Dissolution. The Company shall dissolve, its affairs shall be wound up, and the Company shall terminate upon the first to occur of the following:

(a) The unanimous written consent of the Members who own one hundred (100%) percent of the Voting Rights in the Company;

(b) Any event occurs that makes it unlawful for all or substantially all of the business of the Company to be continued, but any cure of illegality within ninety (90) days after notice to the Company of the event is effective retroactively to the date of the event for purposes of this section;

(c) On application by a Member or a dissociated Member, upon entry of a judicial decree that:

(1) The economic purpose of the Company is likely to be unreasonably frustrated;

(2) Another Member has engaged in conduct relating to the Company's business that makes it not reasonably practicable to carry on the Company's business with that Member;

(3) It is not otherwise reasonably practical to carry on the Company's business in conformity with the Articles of Organization and this Agreement;

(4) The Company failed to purchase the petitioner's Financial Rights as required by Section 33-44-701 of the Act; or

(5) The Members in control of the Company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent or unfairly prejudicial the petitioner.

(d) The filing by the Secretary of State of a certificate administratively dissolving the Company pursuant to Section 33-44-810 of the Act.

(e) The expiration of the period fixed for the duration of the Company, as set forth in the Articles of Organization, unless those Members who own one hundred percent (100%) of the Voting Rights in the Company extend the term of the Company.

9.2 Waiver of Right to Wind Up. Notwithstanding anything herein to the contrary, at any time after the dissolution of the Company and before the winding up of its business is completed, the Members, including a dissociated Member whose dissociation caused the dissolution, may unanimously waive the right to have the Company's business wound up and the Company terminated. In that case, (a) the Company shall resume carrying on its business as if dissolution had never occurred and any liability incurred by the Company or a Member after the dissolution and before the waiver is determined as if the dissolution had never occurred, and (b) the rights of a third party accruing under Section 33-44-804(a) of the Act or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver shall not be adversely affected.

9.3 Winding Up: Powers and Duties of Liquidator. Following the dissolution of the Company, if the Members do not continue the Company's business under SECTION 9.1 or SECTION 9.2, the Management Committee shall appoint one or more Members or Managers or an independent third party to serve as liquidator. The liquidator shall have full authority in winding up the Company's affairs, and may preserve the Company's business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the Company's business, dispose of and transfer the Company's property, discharge the Company's liabilities, distribute the assets of the Company pursuant to SECTION 9.6, settle disputes by mediation or arbitration, and perform other necessary acts. In winding up the Company's affairs, the liquidator shall:

(a) Deliver notice of the Company's dissolution to all of the Company's known claimants and creditors in the form and manner described in Section 33-44-807 of the Act;

(b) Publish notice of the Company's dissolution as provided in Section 33-44-808 of the Act;

(c) Make final liquidating distributions as provided in SECTION 9.6, and distribute any Company Property discovered after any such final liquidating distributions in accordance with SECTION 9.6; and

(d) After dissolution and the completion of winding up, file Articles of Termination with the South Carolina Secretary of State to terminate the legal existence of the Company in accordance with Section 33-44-805 of the Act.

9.4 Sale of Company Property. Unless otherwise determined by the Management Committee, the liquidator shall first attempt to sell all or any part of the Company's business as a going concern. If any such sale or partial sale is not consummated within six (6) months after the date of the dissolution, or such other period of time determined by the Management Committee, the liquidator shall publish notice that all unsold Company assets are for sale and solicit bids for such assets. Any Company assets which remain unsold six (6) months after the date of the first publication of such notice shall be marshaled and auctioned by the liquidator. All assets unsold after the auction shall be distributed in kind in accordance with SECTION 9.5.

9.5 Distribution In Kind. The Company may distribute assets in kind to satisfy any or all of its obligations. If the Company will distribute assets in kind, the Members shall have thirty (30) days to agree upon the fair market value of such assets. If the Members cannot agree on the fair market value of any asset, the liquidator shall hire two (2) independent appraisers to appraise the asset(s) in question. The fair market value of each asset or group of assets appraised shall be the average of the two appraisals. Any property distributed in kind shall be treated in accordance with Sections 721, 736, 737 and 751 of the Code. The liquidator shall adjust the Members' Capital Accounts to reflect any gain or loss which would have been allocated had such property been sold for its fair market value.

9.6 Final Liquidating Distributions. After the sale of all Company assets, or the determination of fair market value for distribution in kind of Company assets, the liquidator shall apply the proceeds of the sale or the Company assets as follows:

(a) Payment or adequate provision for payment shall be made to creditors including the liquidator if the liquidator is not a Member for reimbursement for out-of-pocket expenses incurred and reasonable compensation for services rendered in connection with winding up the Company, and to the extent permitted by law, Members who are creditors in satisfaction of liabilities of the Company;

(b) If the liquidator is a Member, to the liquidator for reimbursement for out-of-pocket expenses incurred and reasonable compensation for services rendered in connection with winding up the Company;

(c) All remaining cash and other assets shall be distributed to the Members in accordance with their positive Capital Account balances, determined after taking into account all Capital Account adjustments for the taxable year of the Company during which the distribution occurs, including adjustments for distributions made under this SECTION 9.6.

9.7 Deficit Capital Account Balances. Notwithstanding anything herein to the contrary, and notwithstanding any custom or rule of law to the contrary, any deficit in a Member's Capital Account upon dissolution of the Company shall not be an asset of the Company and such Member shall not be obligated to contribute any amount to the Company in excess of any limited dollar amount the Member has otherwise agreed to restore.

9.8 Final and Complete Distribution. The distributions provided for in this ARTICLE IX shall constitute a complete return of the Members' Contributions to Capital, and a final and complete distribution to the Members in satisfaction of all of their rights in the Company.

ARTICLE X **Dissociation**

10.1 Events of Proper Dissociation. If a Member dissociates in any one or more of the following ways, such shall be deemed to be a proper dissociation:

- (a) The death of the Member;
- (b) Entry of an order by a court of competent jurisdiction adjudicating the Member to be insane, the appointment of a guardian or general conservator for the Member, or a judicial determination that the Member has otherwise become incapable of performing his duties under this Agreement;
- (c) If the Member files a voluntary petition for bankruptcy, is adjudicated a bankrupt or has a bankruptcy petition filed against him which is not dismissed within ninety (90) days; and
- (d) Withdrawing, retiring or resigning from the Company with the consent of those Members who own more than seventy-five (75%) percent of the Voting Rights in the Company (without regard to the Voting Rights of the withdrawing, retiring or resigning Member).

10.2 Effect of Member's Proper Dissociation. Unless otherwise agreed between the Company and the other Members, the rights of a properly dissociating Member shall be governed by ARTICLE XI.

10.3 Events of Wrongful Dissociation. If a Member dissociates in any one or more of the following ways, such shall be deemed to be a wrongful dissociation:

(a) The voluntary withdrawal, retirement or resignation of any Member other than as permitted in SECTION 10.1; or

(b) On application by the Company or another Member, the Member's expulsion by judicial determination under Section 33-44-601(6) of the Act because the Member:

(1) Engaged in wrongful conduct that adversely and materially affected the Company's business; or

(2) Willfully or persistently committed a material breach of this Agreement or of a duty owed to the Company or the other Members under Section 33-44-409 of the Act; or

(3) Engaged in conduct relating to the Company's business which makes it not reasonably practicable to carry on the business with the Member.

10.4 Effect of Member's Wrongful Dissociation. A wrongfully dissociating Member is liable to the Company and to the other Members for all costs, expenses (including reasonable attorneys' fees) and damages caused by the wrongful dissociation, including the reasonable costs of obtaining replacement of the services the wrongfully dissociating Member was obligated to perform. The Company may offset such costs, expenses and damages against any distributions to which the wrongfully dissociating Member may be entitled in addition to pursuing any remedies provided for in this Agreement or otherwise available under applicable law. The parties to this Agreement agree that a wrongfully dissociating Member's sole entitlement upon wrongfully dissociating from the Company shall be as determined under SECTION 11.2(a). The parties to this Agreement agree that any purchase price determined and reduced under the provisions of this Agreement shall constitute fair value for the Membership Share of a wrongfully dissociating Member within the meaning of Sections 33-44-701 and 33-44-702 of the Act, and that payment of any purchase price upon the terms contained in SECTION 11.4 is permissible, authorized and in compliance with all provisions of the Act. The parties waive any right they may have to assert that the provisions of this Agreement regarding the rights of a wrongfully dissociating Member are inconsistent with, or in contravention of the Act.

10.5 Character of Payments. To the extent permitted by the Code and all applicable Treasury Regulations, all payments made to any dissociating Member (whether proper or wrongful), including those which relate to unrealized receivables and the goodwill of the Company, shall be treated as payments described in Section 736(a) of the Code.

10.6 Statement of Dissociation. A dissociated Member or the Company may file a Statement of Dissociation in accordance with Section 33-44-704 of the Act.

ARTICLE XI
Restrictions on Transfer and Buy-Sell Provisions

11.1 Restrictions on Transfer. No Member may voluntarily or involuntarily sell, transfer, gift, assign, pledge, mortgage, hypothecate, or otherwise convey or encumber any portion or all of his Membership Share to any Person without the prior unanimous written consent of those Members who own one hundred (100%) percent of the Voting Rights in the Company (without regard to the transferor Member). If such consent is obtained, no provision of this ARTICLE XI shall apply, and the provisions of ARTICLE III shall govern the rights of the transferor and transferee. With regard to all other transfers, ARTICLE XI shall control, and any attempted conveyance or encumbrance of all or a portion of a Membership Share in contravention of this ARTICLE XI shall be null, void and without effect.

11.2 Right to Buy.

(a) Wrongful Dissociation of a Member. If a Member wrongfully dissociates from the Company within the meaning of SECTION 10.3 (the "Withdrawing Member"), such Withdrawing Member shall be deemed to have immediately offered to sell to the Company all of the Withdrawing Member's Membership Share at the price determined under SECTION 11.3 and on the terms contained in SECTION 11.4, except that the purchase price shall be reduced by the amount of all costs, expenses (including reasonable attorneys' fees) and damages incurred by the Company as a result of the Withdrawing Member's wrongful dissociation from the Company. Notwithstanding anything in this Agreement or the Act to the contrary, any purchase price to be paid for a wrongfully dissociating Member's Membership Share shall equal seventy-five (75%) percent of the "Appraised Value" of such Member's Membership Share as determined pursuant to SECTION 11.3. If the Company does not accept said offer within sixty (60) days after receiving written notice of the dissociation by the Withdrawing Member and the determination of the purchase price, the Withdrawing Member's Membership Share shall be deemed to have been immediately thereon offered to the other Members (the "Remaining Members") at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4, except that the purchase price shall be reduced by the amount of all costs, expenses (including reasonable attorneys' fees) and damages incurred by the Company as a result of the Withdrawing Member's wrongful dissociation from the Company. Notwithstanding anything in this Agreement or the Act to the contrary, any purchase price to be paid for a wrongfully dissociating Member's Membership Share shall equal seventy-five (75%) percent of the "Appraised Value" of such Member's Membership Share as determined pursuant to SECTION 11.3. If any one or more of the Remaining Members accept the offer, then all of the Membership Share offered for sale must be purchased by such one or more Remaining Members. In the event more than one of the Remaining Members accept the offer, those accepting shall purchase in proportion to their Membership Shares, unless they agree otherwise.

If the Remaining Members do not purchase the Withdrawing Member's Membership Share within sixty (60) days after such deemed offer, the Company and the Remaining Members shall have no obligation to purchase the Withdrawing Member's Membership Share until the date of the expiration of the specified term of the Company that existed on the date of such wrongful dissociation if the expiration of the specific term does not result in the dissolution and winding up of the Company's business under Section 33-44-801 of the Act. The purchase price on such date, if any, shall be determined under SECTION 11.3 and on the terms contained in SECTION 11.4, except that the purchase price shall be reduced by the amount of all costs, expenses (including reasonable attorneys' fees) and damages incurred by the Company as a result of the Withdrawing Member's wrongful dissociation from the Company. Notwithstanding anything in this Agreement or the Act to the contrary, any purchase price to be paid for a wrongfully dissociating Member's Membership Share shall equal seventy-five (75%) percent of the "Appraised Value" of such Member's Membership Share as determined pursuant to SECTION 11.3.

(b) Transfers Other Than Death or Disability. If a Member attempts to transfer all or a portion of his Membership Share without obtaining the other Members' consent as required in SECTION 11.1, or if a Member properly dissociates, other than by reason of death or disability, from the Company within the meaning of ARTICLE X (the "Dissolving Member"), such Dissolving Member is deemed to have offered to the Company all of such Dissolving Member's Membership Share at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4. If the Company does not accept said offer within sixty (60) days after receiving written notice of the attempted transfer or dissociation by the Dissolving Member and the determination of the purchase price, the Dissolving Member's Membership Share shall be offered in writing to the other Members (the "Remaining Members") at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4. If any one or more of the Remaining Members accept the offer, then all of the Membership Share offered for sale must be purchased by such one or more Remaining Members. In the event more than one of the Remaining Members accept the offer, those accepting shall purchase in proportion to their Membership Shares, unless they agree otherwise.

If the Remaining Members do not purchase the Dissolving Member's Membership Share within sixty (60) days after receipt of such offer in writing, then a Dissolving Member may offer such Dissolving Member's Membership Share for sale to any other Person, provided that such Membership Share shall be sold for at least the same price and upon the same terms at which it was offered to the Company and the Remaining Members. The rights of the transferee of such Membership Share shall be determined in accordance with ARTICLE III.

In the event any sale of a Membership Share to a third person shall not be consummated within sixty (60) days after the expiration of the Remaining Members' option to purchase, the Dissolving Member shall have no right to sell said Membership Share or any portion thereof unless the same shall be offered again to the Company and the Remaining Members in the manner and in accordance with the terms provided in subsection (b) of this SECTION 11.2.

(c) **Dissociation by Death or Disability.** If a Member dissociates by reason of death or disability (meaning a Member is disabled continuously for more than twelve (12) months), such Member (the "Dissolving Member") is deemed to have offered to the Company all of such Dissolving Member's Membership Share at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4. The definition of disability shall mean totally and permanently disabled so that a Member is unable to engage in his usual duties of employment as determined by a doctor selected and paid by the Company. If the Company does not accept said offer within sixty (60) days after receiving written notice of the attempted transfer or dissociation by the Dissolving Member (or his estate) and the determination of the purchase price, the Dissolving Member's Membership Share shall be offered in writing to the other Members (the "Remaining Members") at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4. If any one or more of the Remaining Members accept the offer, then all of the Membership Share offered for sale must be purchased by such one or more Remaining Members. In the event more than one of the Remaining Members accept the offer, those accepting shall purchase in proportion to their Membership Shares, unless they agree otherwise.

If no Remaining Members purchase the Dissolving Member's Membership Share within sixty (60) days after receipt of such offer in writing, then the Company shall purchase, and the Dissolving Member, the estate of the Dissolving Member, or such Dissolving Member's successor in interest by operation of law shall sell all of the Dissolving Member's Membership Share in the Company at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4.

11.3 Purchase Price. Subject to SECTION 11.2(a), the price to be paid for a Withdrawing or Dissolving Member's Membership Share shall be the purchase price agreed upon by the Withdrawing or Dissolving Member and the Company, or the Remaining Members who have elected to buy, as the case may be. If the parties do not agree upon the purchase price of the Membership Share within thirty (30) days following the death, disability, attempted transfer or the event of dissociation, then the purchase price shall be the "Appraised Value" (as defined in the next sentence) of the Membership Share. Appraised Value shall mean the value obtained, taking into account all applicable minority, lack of marketability and other discounts, by agreement of two (2) appraisers, one appointed by the Management Committee, or a majority of the Remaining Members who wish to purchase the offered Membership Share and who have not previously agreed upon the purchase price, and one appointed by the Withdrawing or Dissolving Member. Such appointments shall be made by the respective parties within forty-five (45) days following the death, disability, attempted transfer or the event of dissociation. Both appraisers must have at least five (5) years experience valuing businesses similar to the business of the Company. Should any party fail to so appoint a qualified appraiser within such prescribed time period, such failing party shall lose any right to so appoint an appraiser. If one party fails to appoint a qualified appraiser within the prescribed time period for such appointment, the sole appointed appraiser shall determine the Appraised Value and such Appraised Value determined by such sole appointed appraiser shall be conclusive and binding upon the seller and purchaser(s), their personal representatives, legal representatives, heirs, successors, and assigns. Where both parties properly appoint appraisers and both appraisers

cannot agree on an Appraised Value within thirty (30) days after they have both been selected, such appraisers shall appoint a third appraiser within ten (10) days of the expiration of the thirty (30) day period for the two original appraisers to agree upon an Appraised Value. The third appraiser shall determine the Appraised Value within thirty (30) days after such third appraiser's appointment. Appraised Value shall then be the average of all three (3) appraisals. The seller and the purchaser(s) shall each pay the costs of the appraiser appointed by them, and one-half (2) of the cost of the third appraiser. The purchase price as determined herein shall be conclusive and binding on the parties, their personal representatives, legal representatives, heirs, successors and assigns.

11.4 Payment of Purchase Price. The closing of the purchase shall take place at the principal place of business of the Company, or at such other place as the parties may agree, and at a time and date designated by the parties, but in all events such closing shall take place within thirty (30) days after the date upon which the Appraised Value is determined under the provisions of SECTION 11.3, unless the parties otherwise mutually agree in writing. Unless the parties mutually agree otherwise, the purchase price shall be paid in twenty (20) equal and consecutive quarterly installments of principal and interest beginning ninety (90) days after the death, disability, attempted transfer or event of dissociation, and the determination of the purchase price has been made. The purchase price shall be evidenced by a promissory note made by the purchaser(s) to the order of the seller and shall bear interest compounded annually at the prime rate as published in the Wall Street Journal at the date of the sale or, if greater, the rate of interest applicable under Section 1274 of the Code. Payments may be anticipated, in whole or in part, at any time and from time to time, without penalty. The note shall provide that upon default of any payment of interest or principal, the note shall become due and payable immediately, at the option of the holder of the note. Upon payment of the purchase price, the Withdrawing or Dissolving Member's Membership Share (or any portion thereof) shall be conveyed to the purchaser(s). Until the purchase price is paid in full, the seller's Membership Share shall be held by the seller as collateral security for payment of the note, but in no case may the seller participate in the management of the Company as long as the note is not in default.

Any closing adjustments which are then usual and customary shall be made between the seller and the purchaser(s) on and as of the date of closing. The seller shall pay any transfer, gains or similar taxes arising out of or in connection with the sale and transfer of his Membership Share. Except as specifically provided in this Agreement, such sale shall be subject to all liabilities and obligations of the Company, matured and unmatured, absolute or contingent. All Members agree to execute and deliver all certificates and other instruments reasonably necessary to effectuate any transaction contemplated herein. Without limiting the foregoing, any Member transferring his Membership Share shall transfer such interest free and clear of any liens, encumbrances or any interests of any third party and shall execute or cause to be executed any and all documents required to fully transfer good and clear title to such Membership Share to the purchaser(s), including, but not limited to, any documents required to release any interest of a Member's spouse or any other party who may claim an interest in such Member's Membership Share.

ARTICLE XII
Miscellaneous Provisions

12.1 Members' Rights To Receive Information.

(a) The Company shall provide Members and their agents and attorneys access to its records, if any, at the Company's principal office. The Company shall provided former Members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were Members. The right of access provides the opportunity to inspect and copy records during ordinary business hours. The Company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

(b) The Company shall furnish to a Member, and to the legal representative of a deceased Member or Member under legal disability:

(1) Without demand, information concerning the Company's business or affairs reasonably required for the proper exercise of the Member's rights and performance of the Member's duties under this Agreement and the Act; and

(2) On demand, other information concerning the Company's business or affairs, except to the extent the demand or the information is unreasonable or otherwise improper under the circumstances.

(c) A Member has the right upon written demand given to the Company to obtain at the Company's expense a copy of this Agreement.

12.2 Notices. All notices, consents, requests, demands, offers, reports or other communications required or permitted hereunder shall be in writing and hand delivered or sent by certified or registered mail, postage prepaid, and return receipt requested, to the Managers, the Management Committee and the Company, at the Company's principal place of business, and to a Member at the address on EXHIBIT B attached hereto, or to such other address as may hereafter be designated by any amendment or addendum to this Agreement. All notices, consents or other communications shall be deemed given when actually hand delivered, or three (3) days after mailing in accordance with this Section.

12.3 Time of Essence. Time is of the essence of this Agreement.

12.4 Governing Law. This Agreement shall be governed by and construed in accordance with the South Carolina Uniform Limited Liability Company Act of 1996, as amended, any corresponding provisions of future laws, and other applicable laws of the State of South Carolina.

12.5 Consent to Jurisdiction. The parties to this Agreement hereby agree that the courts of the State of South Carolina shall have sole and exclusive jurisdiction over any matter arising from the interpretation, purpose, effect, or operation of this Agreement, and with regard to all matters associated with operation of the Company's business, regardless of the residence, now or in the future, of any party hereto. The parties consent to venue in Charleston County, South Carolina, and waive any rights they may have to assert jurisdiction or venue in any other court, administrative forum, or other adjudicative body.

12.6 Waiver. No waiver of any breach of any covenant, agreement or undertaking contained herein shall operate as a waiver of any subsequent breach of the same covenant, agreement or undertaking or as a waiver of any breach of any other covenant, agreement or undertaking. In the case of a breach by any party of any covenant, agreement or undertaking, the nonbreaching party may nevertheless accept from the other, any payment or performance without waiving its right to exercise any right or remedy provided herein or otherwise, with respect to any such breach which was in existence at the time such payment or performance was accepted by it. No failure of any party to exercise any power given herein or to insist upon strict compliance with any covenant, agreement or undertaking contained herein, or to object to any custom or practice which varies from the terms hereof, shall constitute a waiver of such party's right to demand exact compliance with the terms of this Agreement. The waiver by any party of a breach of any covenant, agreement or undertaking contained herein shall be made only by a written waiver in each case, and no such waiver shall operate or be construed as a waiver of any prior or subsequent breach.

12.7 Severability. If any provision of this Agreement shall, to any extent, be held invalid, illegal or unenforceable, in whole or in part, the validity, legality, and enforceability of the remaining part of such provision, and the validity, legality and enforceability of the other provisions hereof, shall not be affected thereby and each term, covenant or condition shall be valid and enforced to the fullest extent permitted by law. If any such invalidity shall be caused by the length of any period of time, the size of any area or the scope of activities set forth in any provision hereof, such period of time, such area or scope or all, shall be considered to be reduced to a period, area, or scope which would cure such invalidity. Any provision of this Agreement which is held invalid, illegal or unenforceable in any jurisdiction shall not be deemed invalid, illegal or unenforceable in any other jurisdiction.

12.8 Counterparts. This Agreement may be executed in more than one counterpart, each such counterpart shall be deemed an original, and all such counterparts shall constitute one and the same agreement. This Agreement shall be effective when executed by all parties, but all parties need not execute the original or the same counterpart.

12.9 Captions. The headings, titles and captions of the Articles and Sections of this Agreement are inserted only to facilitate reference. They shall not define, limit, extend or describe the scope or intent of this Agreement or any provision hereof, and they shall not constitute a part hereof or affect the meaning or interpretation of this Agreement or any part hereof.

12.10 Entire Agreement. This Agreement embodies the entire understanding and agreement among the parties pertaining to the subject matter hereof, and all prior agreements and understandings of the parties, whether written or oral, are terminated and superseded by this Agreement and shall be deemed merged herein.

12.11 Remedies Cumulative. Except as otherwise expressly provided herein, all rights, powers and privileges conferred hereunder upon any party shall be cumulative and not restrictive of those given by law. No remedy herein conferred is exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given by agreement or now or hereafter existing at law or in equity or by statute.

12.12 Binding Effect. This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by and against all the parties and their respective heirs, legal representatives, personal representatives, successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended to or shall confer upon any person other than the parties, and their respective heirs, legal representatives, personal representatives, successors and permitted assigns, any rights, remedies, obligations or liabilities.

12.13 Use of Terms. Use of the terms "herein", "hereby", "hereunder", "hereof", "hereinbefore", "hereinafter", and other equivalent words refer to this Agreement in its entirety and not solely to the particular portion of the Agreement in which such word is used. Reference to "this Article", "this Section", or a similar reference to a specific part of this Agreement shall refer to the particular Article, Section or specific part in which such reference appears. Whenever used herein, any pronoun shall be deemed to include both the singular and plural and all genders.

12.14 Further Assurances. Each of the parties will execute, deliver, acknowledge or supply such further documents, instruments and assurances as shall be reasonably necessary or appropriate to carry out the full intent and purposes of this Agreement.

12.15 Equitable Remedies. The rights and remedies of the Members, the Company and the Managers hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. The parties confirm that damages at law may be an inadequate remedy for a breach or threatened breach of this Agreement and agree that in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction (temporary and/or permanent), without posting bond, or other equitable remedy, but nothing herein contained is limited to, nor shall it limit or affect any right or rights at law or by statute or otherwise of any party aggrieved against any other party for a breach or threatened breach of any provision hereof, it being the intention of this Section to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

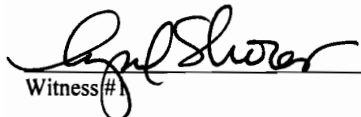
12.16 Memorandum of Company. If the Management Committee deems it appropriate, the Management Committee shall cause the Company to file and record either a copy of this Agreement or a Memorandum of this Agreement with the applicable government authorities.

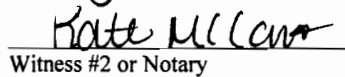
12.17 Exhibits. The exhibits attached to this Agreement are hereby made a part hereof and incorporated herein by reference. All such exhibits read as of the date of this Agreement or, as to any of the exhibits bearing a particular date, as of any other date specified therein.

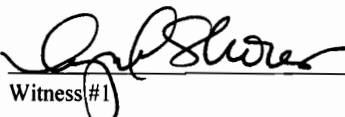
12.18 Effective Date. This Agreement shall become effective upon the later of the execution of this Agreement by all the Members or the filing of Articles of Organization with the South Carolina Secretary of State.

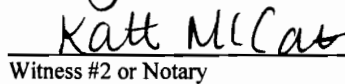
IN WITNESS WHEREOF, the undersigned have executed and sealed this Operating Agreement to be effective as of the day and year first above written.

WITNESSES:


Witness #1


Witness #2 or Notary

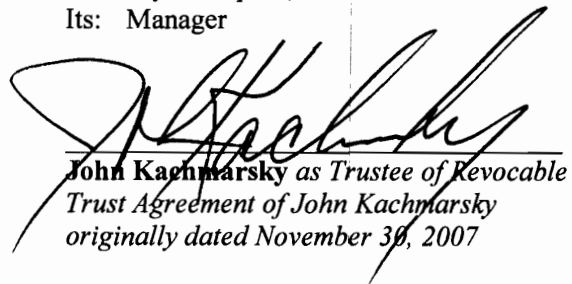

Witness #1


Witness #2 or Notary

MEMBER:



By: **David Glenn Taylor**
For: Taylor Capital, LLC
Its: Manager


**John Kachmarsky as Trustee of Revocable
Trust Agreement of John Kachmarsky
originally dated November 30, 2007**

ACKNOWLEDGEMENT BY MANAGER

IN WITNESS WHEREOF, David Glenn Taylor hereby accepts the powers and obligations set forth herein for the capacity as Manager and has executed this Agreement in acknowledgement of same to be effective as of the day and year first above written.

WITNESSES:

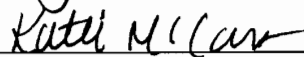
MANAGER:



Witness #1



David Glenn Taylor



Witness #2 or Notary

ACKNOWLEDGEMENT BY MANAGER

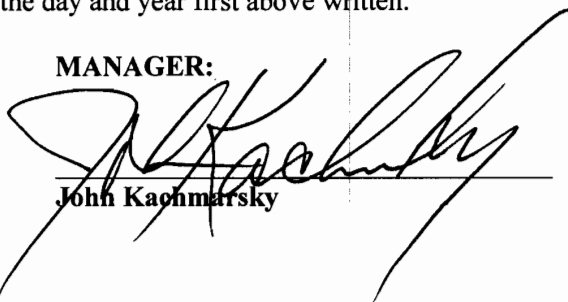
IN WITNESS WHEREOF, John Kachmarsky hereby accepts the powers and obligations set forth herein for the capacity as Manager and has executed this Agreement in acknowledgement of same to be effective as of the day and year first above written.

WITNESSES:

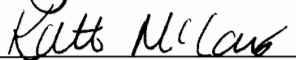
MANAGER:



Witness #1



John Kachmarsky



Witness #2 or Notary

EXHIBIT A

Description of Initial Company Property

- (1) _____ and No/100 United States Dollars (U.S.\$_____.00)
-- contributed by Taylor Capital, LLC.
- (2) _____ and No/100 United States Dollars (U.S.\$_____.00)
-- contributed by John Kachmarsky as Trustee of Revocable Trust Agreement of
John Kachmarsky originally dated November 30, 2007.

Exhibit A – First Amended and Restated Operating Agreement of K&T Group, LLC

EXHIBIT B

<u>MEMBER'S NAME AND ADDRESS</u>	<u>CAPITAL CONTRIBUTION</u>	<u>FINANCIAL RIGHTS</u>	<u>VOTING RIGHTS</u>
Taylor Capital, LLC 171 Church Street – Suite 330 Charleston, South Carolina 29401	\$_____.00	50.00%	50.00%
John Kachmarsky <i>Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007</i> 171 Church Street – Suite 330 Charleston, South Carolina 29401	\$_____.00	50.00%	50.00%
TOTALS	\$_____.00	100.00%	100.00%

Exhibit B – First Amended and Restated Operating Agreement of K&T Group, LLC

Exhibit C

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2022-CP-10-02589

**John Kachmarsky, Individually, as
Manager of K&T Group, LLC, and as
Trustee of the Revocable Trust of John
Kachmarsky dated November 30, 2007, as
Member of K&T Group, LLC,**

Plaintiffs,

v.

**David G. Taylor, Individually and as
Manager of K&T Group, LLC; Taylor
Capital, LLC, as Member of K&T Group,
LLC; and K&T Group, LLC,**

Defendants.

ANSWER TO COMPLAINT AND COUNTERCLAIM

Defendants David G. Taylor (“Taylor”), individually and as manager of K&T Group, LLC, (“K&T”) and Taylor Capital, LLC, (“Taylor Capital”) as a member of K&T (together, “Defendants”), hereby answer Plaintiff John Kachmarsky (“Kachmarsky”) and John Kachmarsky, Trustee of the Revocable Trust of John Kachmarsky Dated November 30, 2007’s (“Kachmarsky Trust”) (together, “Plaintiffs”) Complaint as follows:

GENERAL DENIAL

Defendants deny all allegations of the Complaint not specifically admitted herein.

FOR A FIRST DEFENSE AND ANSWER, AND AS TO THE FIRST CAUSE OF ACTION

1. Defendants admit the allegations of Paragraphs 1 through 4.
2. With respect to Paragraph 5, Defendants admit that K&T owns a commercial office suite in the Franke Building located at 171 Church Street, Suite 330, Charleston, SC 29401 (the

“K&T Office Suite”). Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 5 and therefore deny the same.

3. Defendants admit the allegations of Paragraphs 6 and 7.

4. With respect to Paragraph 8, Defendants admit that Kachmarsky and Taylor reached an oral agreement whereby each of them would have his own executive office. Defendants deny the remaining allegations of Paragraph 8.

5. Defendants admit that the parties paid equal amounts to cover the expenses that exceeded rental income and deny the remaining allegations of Paragraph 9.

6. With respect to Paragraph 10, Defendants admit that Taylor hired an additional associate and that Taylor paid for an additional associate office. Defendants deny the remaining allegations of Paragraph 10.

7. Defendants deny the allegations of Paragraphs 11, 12, 13, 14, and 15.

8. Defendants admit the allegations of Paragraph 16.

9. With respect to Paragraph 17, Defendants admit that Kachmarsky has managed the leasing of the spaces in the suite not used by either firm. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 17 and therefore deny the same.

10. Defendants admit the allegations of Paragraph 18.

11. Defendants deny the allegations of Paragraph 19.

12. With respect to Paragraph 20, Defendants admit that Kachmarsky obtained financing for K&T through Ameris Bank. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 20 and therefore deny the same.

13. Defendants deny the allegations of Paragraph 21.

14. Defendants are without knowledge or information sufficient to form a belief as to the allegations of Paragraph 22 and therefore deny the same.

15. With respect to Paragraph 23, Defendants admit that Taylor maintained an operating account for K&T with First Reliance Bank. Defendants deny the remaining allegations of Paragraph 23.

16. Defendants deny the allegations of Paragraph 24.

17. Defendants are without knowledge or information sufficient to form a belief as to the allegations of Paragraphs 25 and 26 and therefore deny the same.

18. Defendants deny the allegation of Paragraph 27.

19. Defendants deny the allegations of Paragraph 28.

20. Defendants are without knowledge or information sufficient to form a belief as to the allegations of Paragraph 29 and therefore deny the same.

21. With respect to Paragraph 30, Defendants admit that Taylor paid rent and a capital call in an amount determined by Kachmarsky on July 19, 2016. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 30 and therefore deny the same.

22. Defendants deny the allegations of Paragraph 31.

23. With respect to Paragraph 32, Defendants admit that in early 2022, Kachmarsky opted to occupy an additional office. Defendants deny the remaining allegations of Paragraph 32.

24. With respect to Paragraph 33, Defendants admit that Kachmarsky sent two emails to Taylor requesting that Taylor pay additional rent, escrow for taxes and insurance, and a monthly shortage. Defendants deny the remaining allegations of Paragraph 33.

25. Defendants admit the allegations of Paragraph 34.

26. With respect to Paragraph 35, Defendants admit that Taylor deposited \$28,788.71 into K&T's operating account. Defendants deny the remaining allegations of Paragraph 35.

27. To the extent that Paragraphs 36 through 40 include legal conclusion, no response is required. Defendants deny the remaining allegations of Paragraphs 36 through 40.

AS TO THE SECOND CAUSE OF ACTION

28. Answering the allegations of Paragraph 40a¹, Defendants repeat and reiterate the foregoing paragraphs as if fully stated herein.

29. Paragraphs 41 and 42 do not contain allegations and therefore require no response. Defendants oppose the relief requested in Paragraphs 41 and 42, and deny any allegations contained therein.

AS TO THE THIRD CAUSE OF ACTION

30. Answering the allegations of Paragraph 43, Defendants repeat and reiterate the foregoing paragraphs as if fully stated herein.

31. Paragraph 44 does not contain allegations and therefore require no response. Defendants oppose the relief requested in Paragraph 44 and deny any allegations contained therein.

32. Responding to the WHEREFORE Paragraph and Subparagraphs, Defendants deny that Plaintiffs is entitled to any relief in this action, including the relief prayed for in his Complaint.

FOR A SECOND DEFENSE

33. Plaintiffs' Complaint fails to state a claim upon which relief can be granted and therefore should be dismissed under South Carolina Rule of Civil Procedure 12(b)(6).

¹ The Complaint includes two paragraphs numbered 40. For clarification, Defendants refer to the latter Paragraph 40 as Paragraph 40a.

FOR A THIRD DEFENSE

34. Plaintiffs' claims are barred in whole or in part by the applicable statute of limitations and/or by the doctrine of laches.

FOR A FOURTH DEFENSE

35. Plaintiffs' claims are barred in whole or in part by the doctrine of unclean hands.

FOR A FIFTH DEFENSE

36. Defendants reserve the right to amend their Answer and assert such additional affirmative defenses as may become available or apparent to it during the course of discovery.

FOR A FIRST COUNTERCLAIM

(Breach of the Operating Agreement)

37. Defendants incorporate and reallege each preceding paragraph as if fully stated herein.

38. On January 1, 2009, Taylor, on behalf of Taylor Capital, and Kachmarsky, on behalf of the Kachmarsky Trust, entered into the K&T Operating Agreement.

39. Section 6.2 of the K&T Operating Agreement imposes upon all managers a duty of loyalty.

40. Section 6.3 of the K&T Operating Agreement imposes upon all managers a duty of care.

41. Section 6.4 of the K&T Operating Agreement requires each manager to discharge his duties "consistently with the obligation of good faith and fair dealing."

42. Section 6.8 of the K&T Operating Agreement provides for the recovery of attorney's fees in the enforcement of the Agreement.

43. As a manager of K&T, Kachmarsky owed to K&T the duties of loyalty, care, and good faith and fair dealing.

44. Shortly after the parties entered into the K&T Operating Agreement, Kachmarsky moved personal belongings into the K&T Office Suite and began consistently staying in the Office Suite overnight. Kachmarsky's occupancy of the Office Suite as his primary residence lasted years.

45. Kachmarsky's years-long residential occupancy of the K&T Office Suite caused problems for K&T's then-current tenants and negatively affected K&T's ability to place new tenants.

46. In or around 2016, Kachmarsky acquired several other office suites near the K&T Office Suite through other entities owned by him.

47. Kachmarsky simultaneously acted as the property manager for both the K&T Office Suite and the nearby office suites he owned through other entities.

48. From the time he acquired the nearby office suites, Kachmarsky prioritized placing tenants in the office suites he owned over the office suites owned by K&T. Over the course of his property management of K&T, Kachmarsky diverted opportunities from K&T to other entities owned by Kachmarsky.

49. Kachmarsky's diversion of business opportunities from K&T constitutes a breach of the K&T Operating Agreement.

50. Section 12.1 of the K&T Operating Agreement guarantees all members and their agents the right to receive company information upon demand, which includes the right to access, inspect, and copy company records.

51. As a member of K&T, Taylor Capital, is entitled to access K&T's financial records upon a demand to do so. As an agent of Taylor Capital, Taylor is entitled to access K&T's financial records upon a demand to do so.

52. In or around 2016, Kachmarsky unilaterally took control of K&T's accounts.

53. As a result, Kachmarsky currently maintains K&T's financial records and the login credentials to its QuickBooks account.

54. In January 2022, Taylor demanded access to the K&T's financial records and requested the login credentials to K&T's QuickBooks account from Kachmarsky.

55. In response, Kachmarsky provided Taylor with defective credentials.

56. Taylor thereafter demanded that Kachmarsky provide Taylor with working credentials to K&T's QuickBooks account.

57. Kachmarsky has refused to provide Taylor with the proper credentials to K&T's QuickBooks account and has failed to otherwise provide Taylor access to any of K&T's financial records.

58. Kachmarsky's refusal to provide Taylor access to K&T's financial records and accounts constitutes a breach of the K&T Operating Agreement.

59. As a direct and proximate result of Kachmarsky's breaches, K&T has suffered damages in an amount to be proven at trial. As a result of Kachmarsky's breaches, Taylor Capital, as a member of K&T, has likewise suffered damages in an amount to be proven at trial.

60. Further, Taylor is entitled to specific performance of the Operating Agreement and specifically entitled to access, inspect, and copy K&T's financial records.

61. Pursuant to the K&T Operating Agreement, Defendants are entitled to reasonable attorney's fees.

WHEREFORE, having answered Plaintiffs' Complaint, Defendants pray that the Court: (1) enter an order dismissing Plaintiffs' Complaint with prejudice, (2) tax the costs of this litigation against Plaintiffs, (3) order Kachmarsky to provide Taylor access to K&T's financial records and accounts, (4) enter a judgment in favor of Defendants and against Plaintiffs in accordance with the

above-stated counterclaim and award damages in an amount to be proven at trial, (5) award Defendants reasonable attorney's fees, and (6) provide such other and further relief as the Court deems just and proper.

s/ Wilson Daniel

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August 19, 2022
Charleston, South Carolina

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON FOR THE NINTH JUDICIAL CIRCUIT
3 CASE NO. 2022-CP-10-02589
4

5 John Kachmarsky, et al,)
6)
7 Plaintiffs,)
8)
9 vs.)
10)
11 David G. Taylor, et al,)
12)
13 Defendants.)
14
15
16

17 Trial before the Honorable Mikell R.
18 Scarborough, reported by Josie Allen Boehm, Registered
19 Professional Reporter and Notary Public, at 100 Broad
20 Street, Courtroom 2A, Charleston, South Carolina,
21 September 17th, 2024 commencing at 10:05 a.m.
22
23
24
25

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3 (DEFENDANT EXHIBIT NUMBERS 1 THROUGH 25 WERE
4 PREVIOUSLY MARKED FOR IDENTIFICATION.)

5 THE COURT: We're in the case of Kachmarsky
6 versus Taylor, 2022-CP-10-2589. The first thing I
7 want to disclose to y'all, and I don't know that I had
8 done this previously, but I don't think I knew this.

9 This involves a condominium unit in the
10 Franke Building. I have a son, Thomas, who was a
11 property manager for -- I think it's ACT. He's no
12 longer with that company, but he moved back to town
13 about two or three years ago and was a property
14 manager. And I think this is -- I noted the Franke
15 Building was one of the companies or entities. I
16 wanted to make sure I disclose that.

17 He told me he had been in and out of the
18 Franke Building. I have been in and out of the Franke
19 Building. I'm sure every lawyer in Charleston has
20 been in and out of the Franke building. I just wanted
21 to put that on the record and make sure you were okay
22 with that from the standpoint that I hear the case.

23 MR. DUFFY: We don't have any concerns.

24 MR. SLOTCHIVER: We don't either, Judge.

25 THE COURT: It just dawned on me last night.

1 I said, Thomas used to go in there and tell me he was
2 in there. I was in there recently myself. That's the
3 first thing I wanted to cover.

4 The other thing, just sort of general rules
5 of thumb, we have it scheduled for two days, so we
6 should have plenty of time I think. I hope. Some
7 motions in limine to try and limit some of the
8 testimony. We'll talk about that in a second.

9 And then I usually work until about 12:30,
10 1:00 and break for lunch for an hour, little more than
11 an hour, because I've found you can't really get lunch
12 in an hour in Charleston.

13 And then today, I've got to release my court
14 reporter by 5:00. She's got some child care issues to
15 take care of. And then we've got all day tomorrow,
16 and she tells me she's got plenty of time tomorrow. I
17 hope we're not going until 8:00 tomorrow.

18 So today we'll work until about 5:00 and then
19 tomorrow, we will start back a little earlier. I had
20 a doctor's appointment this morning that I needed to
21 get to, which is why I set y'all for 10:00 today.

22 All right. So we've got that. So then I've
23 gotten just recently -- I know we've statused it a
24 couple of times. I have received a few motions, and I
25 have received your pretrial briefs, and I appreciate

1 that.

2 I have had a chance to go through some but
3 not all of the material that you've sent me, which
4 includes the -- I have not read the depositions.
5 Y'all submitted full depositions and not transcripts,
6 so I haven't gone through the whole thing. But I did
7 receive -- let's make sure we'll take them in some
8 type of order -- the defendants' motion to amend the
9 answer to the complaint and the counterclaim.

10 I saw where the plaintiffs addressed briefly
11 in the pretrial brief. I've got also defendants'
12 motion to exclude evidence unrelated to K&T Group, LLC
13 or Taylor Capital, LLC as well as the defendants'
14 motion to exclude evidence of events happening before
15 the statutory period. And that basically boils down
16 to arguing three years prior to the filing, which I
17 think is in June of '22. June 8 of '22 as I recall.

18 All right. And then I've got your pretrial
19 briefs, which are extremely helpful, and I've been
20 doing a little research on the law to refresh my
21 memory.

22 It's statutory claims in here because Limited
23 Liability Company Act is a State statute. Are there
24 any motions from the plaintiff? Let me just make sure
25 I covered that. I didn't see any.

1 MR. SLOTCHIVER: No, Your Honor. The only
2 thing, and I brought it to Brian Duffy, was that based
3 on his motion to amend, which we're going to oppose
4 and we can talk to that in a few minutes, but if you
5 were to grant that, we would want to add one witness.

6 THE COURT: And that was Mr. Lapine?

7 MR. SLOTCHIVER: Yes. Nothing other than
8 that.

9 THE COURT: All right. Let me turn then to
10 Mr. Duffy. And, Mr. Duffy, you can take them up in
11 whatever order.

12 MR. DUFFY: Thank you, Your Honor. If it
13 pleases the Court, I will address the motion to amend
14 and then I will ask Mr. Daniel to address the motion
15 in limine.

16 So basically, Your Honor, we had alleged a
17 breach counterclaim. We had a variety of allegations
18 to support that. And as we have gone through, we've
19 just been determined in our position that a lot of
20 this is not worth fighting on some of those things.

21 But the one thing that's been central to this
22 case is this alleged disputed rent from 2021. And we
23 intend to show that Mr. Kachmarsky is wrong about that
24 and should have known he was wrong about that in his
25 pursuing another member for payment of that is a

1 breach of his duty of good faith and good dealing and
2 duties under the operating agreement.

3 And so that issue of the rent at that time
4 has been a central issue in this whole case. So I
5 don't think there's any prejudice to the point that
6 that's what we're focused on with a narrowed down
7 counterclaim.

8 THE COURT: Okay. So Rule 15(a), liberal
9 allowance of amendments of pleadings. And this is
10 something that y'all brought up in discovery that's
11 been harangued about the last two years or so?

12 MR. DUFFY: There have been lots of
13 discussion, documents, and deposition testimony about
14 what, if anything, was owed in 2021.

15 THE COURT: Okay. All right.
16 Mr. Slotchiver, what prejudice do you --

17 MR. SLOTCHIVER: So, Your Honor, it's a
18 little bit different as has been relayed. There's a
19 difference of opinions.

20 From our perspective, this case is about the
21 failure to comply with the requirements under the
22 operating agreement, and it's not just about rent. In
23 fact, it goes so much further back because that's an
24 ongoing pattern of conduct.

25 But if you recall, the only counterclaim that

1 was ever made against my client before was there was
2 an argument that he somehow rather, while managing it,
3 was using it to the advantage of himself with office
4 space that he owned separate from the office suites
5 they owned together, number one.

6 And, number two, there was damages that were
7 incurred because at a point John allegedly was living
8 in his office suite and maybe there would be a beer
9 can in the private bathroom that John had next to him,
10 and those have gone away. So we have come to court on
11 the motion for summary judgement, Your Honor, giving
12 him time to move forward and to do discovery.

13 There's been no discovery since then.
14 Nothing has taken place. And then yesterday morning
15 was the first time we learned about this new
16 counterclaim and that they're going to raise issues
17 and damages that we've never heard of before.

18 And although one of the components of our
19 claim is his failure to pay rent over a certain period
20 of time, there have never been a counterclaim for
21 that. We don't know what the damages are. We don't
22 know what the theories are. And we don't think it's
23 appropriate at this point.

24 We don't have an opportunity to understand
25 the basis of their claim, what the damages they're

1 claiming for it are. We understand it's one of the
2 issues that we're dealing with in the case. It's our
3 allegation about rent. But there's a difference in us
4 saying you violated your agreement and one of the
5 basis is not paying when you're supposed to pay and
6 not paying what you're supposed to pay, there's a
7 difference in that and saying we damaged you by it.

8 We don't know what the damages could possibly
9 be because there's an underpayment -- even in the
10 pretrial brief, they referenced that they did
11 underpay, which is almost an admission of the case to
12 begin with.

13 They said we didn't underpay as much as you
14 say we did, but we did underpay. So we don't
15 understand how that gives rise to a counterclaim. I'm
16 aware of the fact that you can move to amend before,
17 during, and after trial. I understand the rule, and I
18 have argued that myself. But I think in this
19 particular situation, it's improper because it does
20 prejudice my client because we don't know the basis of
21 what their claims are going to be other than a basic
22 issue we can defend.

23 They can defend all they want to, but we
24 don't think they should be able to make a claim
25 against us. That's why we would oppose it.

1 THE COURT: There were counterclaims before,
2 and this would still provide for counterclaims. It
3 sounds to me like they sort of maybe given up some of
4 those claims and moved on into one --

5 MR. SLOTCHIVER: They've given up both
6 different counterclaims, and now they've asserted a
7 new counterclaim for something and claiming damages,
8 and we don't understand what those could be. And
9 without understanding them, how do we defend against
10 them?

11 And I know that part of the litmus test is is
12 there a prejudice to us? And I think there is. We're
13 not opposed to them -- they're going to defend the
14 case. They're going to ask questions. These factors
15 are going to come out.

16 But I think the prejudice is not that the
17 factors come out. The prejudice is that they're going
18 to be asserting some type of damages, and we don't
19 know what they are. And without knowing what they
20 are, how do we defend against them?

21 There's a lot of witnesses that we could have
22 deposed, but we make a decision based on the
23 information before us. I don't know how it's relevant
24 at this point. I think it is prejudicial, so we would
25 oppose it.

1 THE COURT: Notwithstanding that, you've
2 added this additional name in response to this claim,
3 right?

4 MR. SLOTCHIVER: Your Honor, what we did is
5 we stated in our brief that we're only adding him if
6 the Court is inclined to grant it.

7 THE COURT: Okay.

8 MR. SLOTCHIVER: But other than that, we're
9 not planning to add that in there. We weren't
10 planning to call him. We had never listed him before.
11 He's an employee. He's been there during this time
12 period. But we didn't find it relevant to the cause
13 of issue before us. We have other evidence we plan to
14 go forward. But if the Court is inclined to grant it
15 then we wanted you to be aware that we wanted to put
16 Edward Lapine in. But if not, we don't think he's
17 relevant and we don't plan to call him.

18 THE COURT: Mr. Lapine is an employee of
19 whom?

20 MR. SLOTCHIVER: Of Kachmarsky. So he's a
21 witness to what was going on. He's a lawyer here in
22 Charleston.

23 THE COURT: Okay. Thank you. Mr. Duffy?

24 MR. DUFFY: Thank you, Your Honor. I can
25 make this real easy. But, first, I want to mention

1 there was discovery since the initial delay. We had
2 subpoenaed records. We were trying to get records of
3 the rent history, et cetera.

4 And ultimately they've been going out a long
5 time. Whatever was in three years, we're like, we're
6 not going to argue about this. We're going to move
7 on.

8 It's the same cause of action, breach of
9 contract. It is narrowed to an issue which
10 Mr. Slotchiver just agreed is going to have -- we're
11 going to have argument about the same factors being
12 presented. What he claimed is prejudice was what
13 damages are they claiming. We're only claiming we're
14 enforcing this agreement and we're entitled to our
15 legal fees. So there was no discovery, no damage, or
16 for some damages that he thinks he can otherwise
17 undertake discovery about. That's all it is.

18 You should have known that this rent is not
19 due. And there is no concession of any underpayment.
20 It's not due. He should have known it's not due. And
21 the fact that he is persisting in this and bringing
22 this action and chasing the member down to pay some
23 rent that isn't due is a breach of the agreement.

24 And we contend that the defendants are
25 entitled to legal fees for that. No other damages.

1 MR. SLOTCHIVER: And, Your Honor, two points
2 I wanted to raise. Number one, in his own brief, he
3 admits there was money due. He says it's not
4 substantial.

5 So that issue is not really before the Court.
6 You can take judicial notice there's money due. The
7 question is how much.

8 And, second, Your Honor, I want to make sure
9 I don't miss this opportunity. At this point, we're
10 not arguing over how far back we can go into evidence,
11 correct?

12 THE COURT: Right.

13 MR. SLOTCHIVER: Okay. And let me point out
14 to the particular part of it if I may real quickly.

15 MR. DUFFY: Well, this may relate to an issue
16 I was going to bring to the Court's attention in a
17 pretrial brief, which was that -- I have it turned
18 here to raise with you was a mistake on my part.

19 And, Dan, page 2, the end of the second
20 paragraph when quoting Mr. Kachmarsky as saying that
21 there was only a nominal payment from defendants, if
22 anything, his testimony about nominal payment was if
23 anything else is due beyond this particular rent,
24 which by the way, is calculated at \$8,750. That's the
25 dispute we're talking about.

1 So the nominal reference was really that he's
2 saying there's really nothing else to argue about
3 money wise, only that 8,750. Anything else would be
4 nominal, if anything. So that quote was mistakenly
5 applied to that set up.

6 THE COURT: That's the last quote, bottom of
7 page 2?

8 MR. DUFFY: Right. But what he does dispute
9 is there's \$8,750 owed, which we dispute. And to the
10 extent there's anything else, it would be nominal if
11 anything.

12 MR. SLOTCHIVER: Just for clarity, Your
13 Honor, the timeframe is important. Because what
14 happened -- I want you to have a general
15 understanding.

16 This is a history of nonpayments. And when
17 the last amendment was made, Mr. Taylor made a
18 significant payment of \$28,000 that was late again and
19 now he's claiming, well, it's only \$8,000 due. And
20 that was separate and distinct from the money owed for
21 the other office that was rented.

22 So there's other factors. But the problem
23 with taking things out of writing, as we all know, is
24 context. And we can take a sentence but it doesn't
25 necessarily relate to the context.

1 I wanted you to understand before we start
2 that we do not agree with that statement in the
3 context it was provided.

4 THE COURT: Okay. I'm with you. Okay. All
5 right.

6 I was just comparing the two counterclaims
7 because there's a clear breach of contract
8 counterclaim in the initial answer and counterclaim
9 filed August -- breach of the operating agreement,
10 August 19 of '22. The amendment that is proposed by
11 the defendants reads the same. For first count, clear
12 breach of the operating agreement. It does change
13 some of the language and omits a bunch of stuff, but
14 it goes back to that early '22 timeframe.

15 Paragraph 44, it starts out in early '22
16 change of personnel. The original -- this reason,
17 January '22, Taylor demanded access to the books.

18 I think there's sufficient notice. Y'all
19 have been in discovery for a couple of years. I'm
20 going to allow the amendment. I think it's -- I don't
21 see the prejudice. The prejudice may be damages. But
22 what I hear them saying it has to do with \$8,750 and
23 whether or not there's -- one of the issues in all
24 these cases who breached first and therefore who's
25 entitled to award of damages as a result of that, and

1 what Mr. Duffy indicates is they're seeking attorney's
2 fees for that. So I'm going to allow the amendment.

3 MR. SLOTCHIVER: We would ask we would be
4 able to call the new witness to testify.

5 THE COURT: Certainly. You may respond. And
6 I think that's the prejudice that the rule provides
7 for.

8 The one that always gets me is post trial
9 amendments or pleadings, but I guess it depends on how
10 you try the case. Sometimes they try differently from
11 time to time.

12 MR. DUFFY: Thank you, Your Honor. My only
13 point is, again, the damages -- there are no new
14 damages. We're seeking fees before, and we're seeking
15 fees now.

16 As far as the new witness, I mean, this guy
17 wasn't listed in discovery as somebody with knowledge
18 of the facts, and these facts clearly have been in
19 dispute. So, you know, I will -- I won't protest too
20 much. I'll just make that point.

21 THE COURT: Okay. You can raise that again
22 when the time comes. All right? And y'all can always
23 take his deposition at night. Be like the good old
24 federal court days. Working while we're working.

25 All right. Next to, then, Mr. Daniel.

1 You're going to argue the motions in limine. Is that
2 right?

3 MR. DANIEL: Thank you, Your Honor. I can
4 handle those separately one at a time if the Court
5 prefers that.

6 Thank you, Your Honor. I'll start with the
7 motion in limine to exclude evidence that is unrelated
8 to K&T Group. The plaintiff has asserted this action
9 as a pure LLC dispute. The only relief the plaintiff
10 seeks is to exclude the defendant Taylor Capital from
11 K&T or alternatively to dissolve K&T Group, the LLC
12 that's the subject of this matter.

13 And, yet, the plaintiff intends to introduce
14 all of this evidence of things that have nothing to do
15 with K&T Group, for example, evidence of Mr. Taylor's
16 ventures from more than a decade ago that have nothing
17 to do with K&T Group. They have nothing to do with
18 Taylor Capital, which is the entity that is a member
19 of the K&T Group, and they have nothing to do with
20 Mr. Taylor's role as a manager of K&T Group. That
21 evidence is therefore irrelevant, and we would ask
22 that the Court exclude it.

23 As I mentioned, Your Honor, the plaintiff
24 asks for two alternative remedies here, both of which
25 as Your Honor noted earlier, are statutory remedies

1 that fall under the LLC Act. And those are, first, to
2 judicially expel Taylor Capital from K&T under
3 33-44-601 and alternatively to dissolve K&T entirely
4 under 33-44-801.

5 And as the Court knows, the plaintiff has a
6 high bar to meet under the LLC Act to achieve those
7 remedies. The court of appeals very recently
8 underscored the significance of that burden, and I
9 will read a quote.

10 THE COURT: Which case are you referring to?

11 MR. DANIEL: This is *Boathouse at Breach*
12 *Inlet versus Stoney*. I'm sure a case that Your Honor
13 is familiar with.

14 THE COURT: They're making law for us.

15 MR. DANIEL: That's right. And I brought a
16 copy of that case if the Court would like it.

17 THE COURT: I burned one off before I came
18 out.

19 MR. DANIEL: Well, just for the purposes of
20 the record, then, Your Honor, the quote is this.
21 Quote, "Limited liability company members seeking to
22 expel a fellow member are required to clear a high
23 bar. In order to clear that bar, it must be
24 unfeasible despite reasonable efforts to keep the
25 limited liability company operating while the disputed

1 member remains affiliated with it."

2 So in this case, Your Honor, to meet that
3 high bar, the plaintiff intends to introduce evidence
4 that is totally unrelated to the LLC of what
5 Mr. Taylor has done in the past in his individual
6 capacity.

7 But the problem with doing that, Your Honor,
8 is that none of that stuff can serve as support for
9 the relief that the plaintiff is asking for here. The
10 Court can dissolve an LLC for wrongful conduct -- and
11 this is under the statute -- quote, "related to the
12 company's business."

13 So evidence unrelated to K&T has nothing to
14 do with the business and it cannot support a finding
15 of dissolution.

16 Similarly, Your Honor, the Court can expel a
17 member for wrongful conduct, quote, "related to the
18 company's business," or, quote, "that has adversely
19 and materially affected the company's business."

20 And that's from the statute in the LLC Act.
21 And that's not what we have here. There's no dispute
22 that the company has fulfilled its purpose for
23 decades, that it continues to fulfill its purpose
24 despite the plaintiffs' complaints. And the evidence
25 that is unrelated to K&T Group has nothing to do with

1 the LLC's purpose or the business of the LLC.

2 Instead, what we have is the plaintiff trying
3 to drum up as much perceived dirt as he can on
4 Mr. Taylor individually as a means to achieve the
5 result he wants, which is to get out of a joint
6 venture on terms that are beneficial for the plaintiff
7 and damaging to Mr. Taylor.

8 That should not be allowed, Your Honor. And
9 so we ask the Court to exclude any evidence that is
10 related to Mr. Taylor individually but not related to
11 K&T Group or to Taylor Capital, who is the member of
12 K&T Group or to Mr. Taylor's capacity as a manager of
13 K&T. Any evidence unrelated to K&T Group.

14 THE COURT: I want to make sure I'm clear.
15 The partnership, the LLC that's involved here, is the
16 K&T Group, LLC. Mr. Taylor's membership in it is
17 through Taylor Capital, LLC, his own separate LLC, and
18 I'm assuming is he the sole member of that LLC?

19 MR. DANIEL: He is the sole member -- oh, no.
20 He's not. Family trust. And Mr. Taylor individually
21 is a manager of K&T Group, so evidence of things that
22 Mr. Taylor did in his capacity as manager would be
23 admissible. But things Mr. Taylor did outside of his
24 capacity as manager of K&T that have nothing to do
25 K&T, that's what we're asking to be excluded.

1 THE COURT: Is your motion -- and I'm not
2 trying to bleed into the other one. Is your motion
3 relative to Mr. Taylor individually, or is it limited
4 in time to prior to three years from the inception of
5 this case? That's my question.

6 MR. DANIEL: You're right, Your Honor. They
7 blend a little bit. Because some of this evidence
8 meets both categories. It's just about Mr. Taylor
9 individually and it's too far back. But this motion
10 is just about evidence, excluding all evidence that
11 has just to do with Mr. Taylor individually.

12 THE COURT: Okay. Mr. Slotchiver?

13 MR. SLOTCHIVER: Thank you, Your Honor. A
14 few comments. 404(b) under the Rules talks about the
15 admissibility to prove a common scheme for a
16 plaintiff. I think that's going to come up today.

17 Secondly, Your Honor, as to Mr. Taylor,
18 there's going to be credibility issues that are going
19 to come forward. There's going to be a difference of
20 opinions. And what the evidence would show and the
21 reason I believe it's relevant is that Mr. Taylor has
22 been a habitual defaulter for over ten-plus years.

23 He's done it with multiple schemes. He's
24 done it with multiple investments. He's had multiple
25 judgements against him. He's had multiple failed

1 investments, including a recent attempt to become a
2 personal injury advertising lawyer in Myrtle Beach
3 with a bunch of investors.

4 He's got a lawsuit against Hostilo claiming
5 that Hostilo breached some agreement with him.
6 Hostilo is one of the advertising lawyers out of
7 Georgia that came over here.

8 And in every one of these things, there's an
9 excuse as to why he's not at fault. But at every one
10 of those things, we have judgements. The Court can
11 take judicial notice. We plan to go into it because
12 it goes to the credibility.

13 From a timing standpoint, it shows the
14 pattern of how things developed. It shows this is how
15 he's done things in the past. And it's relevant to
16 the exact same issues that we have here, which is
17 financial issues.

18 When financial problems beset him, it seems
19 like those are the times when payments aren't made.
20 And so this is not an isolated incident of they're
21 alleging \$8,500 or this much larger number, but this
22 is a repeated incident of failing to pay for months.

23 The evidence will show that John Kachmarsky
24 essentially had become the banker to provide for his
25 partner. So when we talk about the issues of --

1 Wilson talked about unfavorable despite reasonable
2 efforts. I think we can address reasonable efforts.
3 But how far is it reasonable and when does it get
4 beyond being reasonable? And all of this evidence
5 goes to the credibility of the testimony as to the
6 past conduct of the testimony. He said that it's not
7 about partners of the company. We think is it.

8 This comes in front of you all the time. Two
9 people go into business to open up an office suite
10 together. This is a very large office suites with
11 lots of offices despite the fact they're basically at
12 the time solo practitioners.

13 So they use the rental income from whether
14 it's the NEFA company or all the individual lawyers --
15 now, it's a lot of individual lawyers -- to pay the
16 rent and to offset the expenses. And they have to
17 make up the difference if there is a difference. And
18 that's how it works, and it happens all the time.

19 So when one person is not contributing but is
20 using space and not paying for that space, that does
21 affect the company's purpose because the purpose is
22 not to be a law firm together. The purpose is to run
23 a profitable, to an extent -- to pay off the debt of
24 the mortgages by renting out to people.

25 And when you block people from renting and

1 you have other lawyers or staff members in offices,
2 that, I believe, does go against the purpose. That's
3 why we think it's all relevant.

4 And I know Your Honor can take that all into
5 account at the end of the case in reviewing
6 everything, but certainly for purposes of putting the
7 case forward, we believe that all of this is relevant
8 and are prepared to talk about it. And although it is
9 a K&T entity, the testimony that we're going to hear
10 is going to be of Mr. Taylor.

11 THE COURT: All right. As it relates to
12 Mr. Taylor individually, I'm going to deny your
13 motion. I'm more interested in the timing issue. I
14 think that's your second motion.

15 MR. DANIEL: Thank you, Your Honor. It is.
16 And I will move to that. We just discussed a little
17 earlier the relief the plaintiff is seeking in this
18 action, which is dissolution of the company or
19 expulsion of Taylor Capital.

20 I'm going to turn to the claims that the
21 plaintiff has asserted, and there are three. Breach
22 of the operating agreement is the first, and then
23 second there is a clam for judicial expulsion
24 independently, and the third a claim for judicial
25 dissolution.

1 Of course Your Honor knows the statute of
2 limitations for the breach of contract claim is three
3 years. In the court of appeals, Your Honor has held
4 that there is the same statute of limitation three
5 years for any member's claim arising under the LLC
6 Act. And that's a case, Your Honor, that's cited in
7 our motion called *Mazloom*. And I have a copy for Your
8 Honor as well.

9 THE COURT: I am well aware.

10 MR. DANIEL: This case, as Your Honor noted,
11 was filed in June of '22. So the statutory period
12 began to run in June of 2019. So that's the timing
13 that we're talking about.

14 June of 2019 to the present would be the
15 statutory period. And the point is, Your Honor, that
16 events occurring before the statutory period cannot
17 support a claim for dissolution. They cannot support
18 a claim for breach of contract. They cannot support a
19 claim for judicial expulsion as a matter of law. The
20 Court can't dissolve a company. The Court cannot
21 expel a member of an LLC for conduct that occurred
22 more than three years prior to the filing of the suit.
23 Otherwise, it would undermine the entire purpose of
24 the statute of limitations, which is not to litigate
25 stale claims.

1 By the same coin, the plaintiff cannot use
2 events or conduct that occurred prior to June of 2019
3 for the relief that he seeks here. And if that
4 evidence cannot support the plaintiffs' claims
5 substantively, then all it can be, Your Honor, is
6 character evidence.

7 Evidence that says, hey, look at this bad
8 conduct this defendant did in the past. I'm going to
9 use that to ask you give me relief now for the claims
10 I'm asserting. And that's exactly what Rule 404 of
11 the South Carolina Rule of Evidence prohibits.

12 So I'll be brief, Your Honor. Evidence that
13 precedes the statutory period cannot support the
14 claims here. Because they cannot support the claims
15 here, it is character evidence which is inadmissible
16 and that's why we ask the Court to exclude all
17 evidence of event and conduct prior to June of 2019.

18 And I will briefly mention Rule 404(b), Your
19 Honor, which I'm sure Your Honor is very familiar
20 with. And as the Court knows, 404(b) -- you know, 404
21 the rule is that character evidence in a civil matter
22 is prohibited always.

23 404(b) is the exception to the rule, and it's
24 a very narrow exception. And it very clearly and
25 specifically enumerates the kind of evidence that can

1 come in despite being character evidence. And it's
2 evidence of a felony crime. It's evidence that
3 indicates a person is lying or untrustworthy.

4 And that's not what we have here. We have
5 evidence -- if there's evidence that Mr. Taylor made
6 an investment in 2014 that went bad and there's a
7 judgement against him, that's not indicative that --
8 that's not a crime. That's not something that means
9 he's dishonest. That's character evidence of
10 something that happened a long time ago and is not
11 relevant here, and it is just the kind of character
12 evidence that Rule 404 prohibits.

13 And so that's why we would ask that you
14 exclude all evidence of events occurring before June
15 of 2019. Thank you, Your Honor.

16 THE COURT: Mr. Slotchiver?

17 MR. SLOTCHIVER: We disagree completely. We
18 think 404(b) is dead on point. It goes to the issue
19 of trustworthiness and how he's handled things in the
20 past. Not paying for rent, staying in offices.

21 I mean, it's an interesting case as we get
22 into the facts. We're going to learn there was
23 actually a deal made and he -- you're going to hear
24 from his own mouth that there was a deal made.

25 He agreed back in 2015 that the understanding

1 would be that when John Kachmarsky and David Taylor
2 own space together, that they would each pay for the
3 office space that they occupied, and if they occupied
4 more than the other party occupied that they would pay
5 1250 per month per office.

6 That was the agreement that he's admitted to.
7 That's his understanding of the agreement.

8 THE COURT: That was an oral agreement or did
9 that get reduced to writing?

10 MR. SLOTCHIVER: I'm reading from the
11 deposition of David Taylor who agrees. This is his
12 agreement. This is what he said. "This is my
13 agreement."

14 THE COURT: What time period was that?

15 MR. SLOTCHIVER: This deposition --

16 THE COURT: No, no, no. When was the
17 agreement?

18 MR. SLOTCHIVER: 2015. And it wasn't have
19 paid, will pay. So from that point forward,
20 everything was copacetic, but you'll learn again that
21 it stopped again.

22 So when it comes to trustworthiness, you look
23 at the actions of what somebody did. When you have a
24 deal and you have an agreement and you violate that
25 deal blatantly, that goes to trustworthiness. I think

1 it squarely fits into 404(b).

2 THE COURT: My recollection from reviewing
3 the briefs was that they actually entered into the LLC
4 in like 2003; is that right?

5 MR. DUFFY: Yes, sir.

6 THE COURT: So they've got a 20-year history
7 of working together and had some issues I gathered.
8 And then sometime in 2015, they came up with some
9 understanding.

10 MR. SLOTCHIVER: I think there's been five
11 different rounds of issues throughout the whole
12 period.

13 THE COURT: I'm not interested in trying
14 those. So to the extent that -- here's my feeling,
15 and I have pulled out Rule 404. It does talk about
16 character evidence is not admissible. I don't know
17 that character is consummated in payments or
18 nonpayments.

19 404(a) is your balancing act between what's
20 prejudicial versus probative and that gives you some
21 opportunity there. 404(b) is your prior bad acts or
22 other crimes and wrongs but they're not admissible to
23 prove character or to show action. However, they may
24 be admissible to show motive, identity, existence of
25 common scheme or plan, or the absence of mistake.

1 As a general rule of thumb, I plan to try a
2 case within the three-year statutory period, but I'll
3 not exclude plaintiffs' attempts to offer evidence
4 that the Court finds relevant and probative on some of
5 the issues that are going to be tried here in the
6 case.

7 I'm not going to go far field. If it's more
8 than ten years, probably going to shut you out. I'm
9 more interested in what's happened in the last three
10 years that brought this case to the Court. Okay? I
11 hope that helps.

12 All right. Very good. All right. Any other
13 matters, then, to present before we begin?

14 MR. SLOTCHIVER: Your Honor, we've got a few
15 witnesses if we can figure out from a time
16 perspective -- and I wanted to notify them very
17 briefly. It looks like we're going to get started
18 now.

19 THE COURT: You want to take five minutes and
20 touch base and see how you do? I can take them out of
21 turn. It doesn't matter to me. I'm interested in
22 getting through the case.

23 MR. SLOTCHIVER: Sure. That would be great.

24 THE COURT: Let's come right back at the top
25 of the hour.

1 (Recess from 10:51 to 11:07 a.m.)

2 MR. SLOTCHIVER: We're going to waive opening
3 statements and go straight to it.

4 We combined this together or clipped together
5 on the exhibits that we plan to go through. We
6 premarked them. We will call John Kachmarsky to the
7 stand.

8 (JOHN KACHMARSKY having been duly sworn to
9 tell the truth, the whole truth, and nothing but the
10 truth, was examined and testified as follows:

11 THE COURT: Thank you, sir. Please have a
12 seat. And when you get comfortable, give us your full
13 name and address for the record.

14 WITNESS: John Kachmarsky,
15 K-A-C-H-M-A-R-S-K-Y.

16 MR. SLOTCHIVER: Your Honor, I'm aware of
17 your instructions related to older dated materials but
18 we want to go through the background of how this came
19 about and how the operating agreement came about. I
20 will move swiftly and try to get you to the relevant
21 part.

22 DIRECT EXAMINATION

23 BY MR. SLOTCHIVER:

24 Q. John, would you state your full name for the
25 record?

1 A. I just did.

2 Q. Okay. And just for the record, what do you
3 do for a living?

4 A. I'm a tax lawyer.

5 Q. Okay. And how long have you been practicing
6 law?

7 A. 40 years.

8 Q. And where do you practice law?

9 A. In the Franke Building, 171 Church.
10 Currently it's Suite 330.

11 Q. Okay. Do you own that suite?

12 A. With David Taylor and K&T Group.

13 Q. Okay. Do you own other suites in the Franke
14 Building?

15 A. I do.

16 Q. What other suites do you own in the Franke
17 Building?

18 A. Suite 140, Suite 150, Suite 230, Suite 340.

19 Q. Okay. And does David likewise own other
20 suites in the building?

21 A. He owns a suite on the second floor.

22 Q. Okay. Can you tell the Court how it is that
23 you became involved in a working business relationship
24 with David Taylor?

25 A. With David, when I met him, he was working

1 for a firm, Holmes and Thompson. That firm was
2 disintegrating, I guess, and a lot of the lawyers were
3 heading over to Moore and Van Allen. David was on the
4 fence about whether or not he was going to go to Moore
5 and Van Allen or start his own practice.

6 He originally went to Moore and Van Allen. He
7 was over there for less than three months and then he
8 came back. I was in Suite 140, and he ultimately
9 rented an office from me. It was a single office that
10 he rented for like \$1250. That was what I was
11 charging back then.

12 Q. Was your operational mode at that point to
13 rent executive offices?

14 A. Yes. I mean, I had my own office and there
15 were several other offices available, and I rented
16 those to individual people. I think Deborah Nelson,
17 she was a certified financial planner was in there. I
18 had a number of different people over the course of
19 time.

20 Q. Okay. And just there's no surprise, Your
21 Honor -- John, you've got in front of you a notebook
22 that has copies of the depositions -- not depositions.
23 Copies of the e-mails and copies of information you
24 believe relevant to your testimony?

25 A. Yeah. Well, I mean, I have an index of

1 everything that's in here, yes.

2 Q. All right. And you are welcome to look at
3 that if it helps you. And if Mr. Duffy wants to see
4 it, please show it to him.

5 Okay. So David came in and he rented a suite
6 from you. Tell me what happened next.

7 A. Well, we are both tax lawyers. At some
8 point, we were collaborating on cases, and we
9 eventually formed a partnership, a law partnership.

10 Our two professional corporations became the
11 partners in that. And it was really more of an
12 expense sharing arrangement. We did not share
13 revenues. We shared expenses basically. Whatever
14 revenues he made, he kept. Whatever revenues I made,
15 I kept.

16 Q. Did you own an office suite at that time
17 together?

18 A. No.

19 Q. Okay. All right. So were you still working
20 on the first floor at that time?

21 A. I was working on the first floor. David
22 wanted to buy into basically Suites 140 and 150.
23 They're 5,000 square feet combined.

24 I told him I wasn't really interested in doing
25 that, that it was a lot of work to put together a deal

1 like that. And at some point, I suggested to him that
2 if he were willing to swap his suite on the second
3 floor, I might consider that.

4 He didn't want to do that, so we never did
5 anything with 140 or 150 or the one on the second
6 floor.

7 Q. Why don't you walk us through how it is that
8 you and he came to acquire the suite on the third
9 floor that we're here talking about today?

10 A. Well, somebody was going to buy Suite 330,
11 and both David and I had a right of first refusal. I
12 knew he wanted to own Suite 140, 150, or a portion of
13 it. So I asked if he wanted to do the suite together,
14 and we did purchase it.

15 Q. And when you purchased it, what entity bought
16 the suite?

17 A. It was K&T Group.

18 Q. Okay. And was there an operating agreement
19 created for the purposes of running K&T Group?

20 A. There was.

21 Q. And is that the operating agreement that is
22 attached to the complaint as an exhibit?

23 A. It is not. It was amended around 2011 I
24 think.

25 Q. Okay. And I believe I've marked a copy of

1 the operating agreement as an exhibit. It's Number 3.

2 Number 3 if you'd like a copy, Your Honor.

3 MR. DUFFY: Is that amended?

4 MR. SLOTCHIVER: This is the amended.

5 MR. DUFFY: No objection.

6 THE COURT: Okay. Thank you.

7 Q. What was the purpose of -- what was the
8 purpose of owning the suite together? What was the
9 business purpose under the operating agreement?

10 A. Well, I mean, we actually occupied half of
11 the suite and then the other half, we -- it was to
12 basically own real property and to rent and manage it.
13 And like I said, we occupied half of it and the other
14 half we rented out.

15 Q. And that was around 2005 that you purchased
16 this?

17 A. We moved into the suite -- I think it was
18 2005.

19 Q. And so you and David and your perspective
20 staffing operated half of the -- basically half of the
21 building and the other half was rented out?

22 A. Correct.

23 Q. Okay. And how did you and he decide what the
24 payments were going to be for purposes of your own
25 offices and your own staffing?

1 A. Well, we, at that time, had an equal number
2 of offices. We had one what I would call partner
3 office each, and then we each had two what I would
4 call associate offices.

5 And so it was equal, and we collected the rent
6 from whoever was on the other side. We had three or
7 four different tenants over there, and then we split
8 the rest equally.

9 Q. Okay. And then you would use the revenue
10 that was generated from the rent to offset the
11 expenditures?

12 A. Correct.

13 Q. Was it ever profitable or did it just
14 generally go to pay the expenses?

15 A. I mean, we were always needing to put money
16 into the account so . . .

17 Q. So there was no access, but it would cover a
18 lot of the expenses?

19 A. It would cover a lot, yes.

20 Q. At some point, did the firm of Kachmarsky and
21 Taylor convert into another firm?

22 A. We purchased Fitz O'Connor, a tax lawyer out
23 of Columbia, South Carolina, we purchased his
24 practice. That would have been about the same time,
25 2005.

1 Q. And did the fact that you purchased his
2 practice and took on more people, staffing, whatever
3 you want to call it, did that change the arrangement
4 that you and he had with reference to how the
5 operating agreement worked for purposes of --

6 A. I don't think it really changed anything
7 because they had an office in Columbia. So we didn't
8 really have any new employees that were physically
9 located in our suite.

10 Q. Okay. Was there a time when David took on
11 more offices than you had?

12 A. Yes. There was a time when -- this is after
13 our partnership with Fitz was finished. He hired an
14 associate. He had another office. I asked him to pay
15 rent for that, and the number was \$1250. We ended up
16 kind of negotiating that, and he ended up paying a
17 thousand dollars for it.

18 And then he also -- he did this without my
19 knowledge. I found out about it. But he went into
20 the suite next door which was kind of separate and it
21 was all leased on a square foot basis to an
22 organization called NEFA.

23 His staff negotiated taking an office over there,
24 and he was renting it for \$435 a month based on a
25 square foot.

1 Q. And let me make sure I understand this. It
2 was still part of the 5,000 square foot office that
3 you have, correct?

4 A. Correct.

5 Q. There were two sides. There was the side you
6 and David were on and then there was the side you
7 leased out?

8 A. Correct.

9 Q. On the side you leased out, NEFA took that
10 entire side?

11 A. Correct.

12 Q. And David took NEFA and negotiated to take
13 back one of the offices that NEFA had?

14 MR. DUFFY: Your Honor, I object. Just to
15 note this seems like we're going down side directions
16 of a dispute from 2014.

17 THE COURT: Sounds like a long time ago.

18 MR. SLOTCHIVER: It was, but it goes exactly
19 to the pattern of conduct. And I will be brief, but
20 it does go to the pattern of conduct.

21 THE COURT: Okay. Go ahead.

22 Q. And that's an office that currently today
23 rents for the same price as every other office in that
24 suite?

25 A. \$1250.

1 Q. And so that office he negotiated and instead
2 of paying \$1250, he was paying \$435?

3 A. Correct.

4 Q. So while you were still getting the same that
5 NEFA was paying you, it was not NEFA in that office,
6 it was him in that office paying much less than
7 anybody else would have paid for that spot?

8 A. Correct. I mean, once it goes to on a per
9 office basis, the rent would be \$1250.

10 Q. Okay. So at this point, he's occupying two
11 offices for \$1450 instead of for \$2500?

12 A. Correct.

13 Q. Was that an issue with you and him?

14 A. Well, I mean, we worked through it, and I
15 accepted it at that time.

16 Q. When you say you worked through it, you
17 didn't move or file before the Court; you just
18 accepted it?

19 A. Right.

20 Q. Okay. All right. The person in that office
21 was his employee, Sallie?

22 A. Sallie Holder.

23 Q. Okay. And then did Sallie offer to leave in
24 2014?

25 A. I think it was right around 2014 when she

1 left.

2 Q. Okay. And did the employee who was using
3 that other office for a thousand dollars also leave?

4 A. Well, Sallie left first. And that's kind of
5 what started another round of this thing. When Sallie
6 left, David e-mailed me and said that -- we had a
7 long-term understanding that he wouldn't pay rent if
8 there were offices open.

9 And there was -- I don't know if it was just
10 Sallie's office that was open or if it was that whole
11 side opened up, but he didn't want to pay. He wanted
12 his money back from what I could tell, the \$1435 he
13 had been paying for about three years.

14 Q. So for three years, he was paying the money
15 without objecting to it or remembering those
16 conversation or at least voicing to you he had a
17 conversation where he agreed he could have unfettered
18 access as long as nobody was in there, and at this
19 point, he decided to raise the issue?

20 A. It was okay to throw like a file or something
21 in a office that was sitting there empty, but I never
22 had intended for anybody or myself to use an office
23 and to take I guess exclusive possession of it and not
24 pay for it.

25 Q. So was that contradictory to the purpose of

1 the business arrangement?

2 A. Yes.

3 Q. Okay.

4 A. And we ultimately decided -- we were both
5 friends with Dan Legare. He's a CPA and we had done a
6 lot of work with him. We each kind of told our story
7 to Dan, and we asked him to sort of mediate the case.

8 He came back and basically says that David ought
9 to be paying \$1250 for the office that he had.

10 Q. Let's back it up just a moment. Would you
11 look at Plaintiff's Exhibit 3 *[sic]*? And by 3, I
12 mean -- it's all marked. But it's the third one in
13 the plaintiffs' packet.

14 A. Okay.

15 Q. What does this represent?

16 A. This represents him having two offices at
17 \$1435 that were worth basically \$2500.

18 MR. DUFFY: Can I see what you're referring
19 to as Exhibit 3? Is it the labeled 3?

20 MR. SLOTCHIVER: Label 3, yes. It's under
21 Exhibit 1, but it's number 3.

22 THE COURT: Page 3 I've got looks like an
23 itemized expense sheet. Is that what we're talking
24 about?

25 MR. SLOTCHIVER: Yes, sir.

1 A. So on the bottom, you see 435. That's from
2 David, due from David. A thousand due from David.
3 And then the 641 is the split. And you can see that
4 he gets -- that's the half after the rent is paid.
5 641 to me and 641 to David.

6 Q. And then if you look at page number 9, it
7 says: I have taken off the adjustment of \$1,000 for
8 Sallie's office. Let me know if I need to make
9 further adjustments.

10 That's signed by Julie Tilman who was a CPA for
11 Taylor's office?

12 A. She was his bookkeeper.

13 Q. What was the purpose of this?

14 A. I think she was confused because it wasn't
15 Sallie's office that was the 1000. It was his
16 associate's office.

17 But this is when he's taken the position that he
18 should not be paying rent for the extra office going
19 forward.

20 Q. And is that when he sent you the e-mail more
21 or less on number 11?

22 A. Yes.

23 Q. And is that the first time you have heard of
24 this agreement, this long standing agreement, that if
25 you had empty space available in the office that

1 neither of us would pay extra for using the space
2 unequally?

3 A. I have never had any kind of agreement like
4 that.

5 Q. Once again, the purpose of the office
6 arrangement was in order to -- if they were filled, to
7 make money to go towards the debt?

8 A. Correct.

9 Q. It says: Somehow our agreement has been
10 overlooked.

11 But I guess that's by the fact he's been paying
12 for three years, he had overlooked it?

13 A. I don't know. I don't remember exactly when
14 an office became available, but that was always the
15 position is that if we had an office open, that he
16 should not have to pay rent for anything that he's
17 using.

18 And when we're talking about using, I'm talking
19 about in excess of. So if we've got five offices that
20 somebody is using and somebody else is using three,
21 the only thing on the table really is the two offices
22 that they ought to be paying rent for, and everything
23 else would be split equally.

24 Q. What does page 14 show us?

25 A. Well, this is something David wanted to --

1 Q. 14 through 16?

2 A. He was wanting to look at how much rent he
3 had paid and how much rent I had paid.

4 Q. Is the reason he paid more rent than you is
5 because he was using more offices than you?

6 A. Two more offices.

7 Q. And those are the offices he's paying less
8 than market value for?

9 A. Correct.

10 Q. Same thing with number 19?

11 A. So I rented the individual offices, and these
12 were the tenants that were in.

13 Q. On page 31, you wrote him a letter. What was
14 the purpose of that letter?

15 A. Well, I thought that he was basically seeking
16 a refund of five or six years worth of rent he had
17 paid or something, and I just took the time to
18 basically clarify where I stood on a number of issues
19 with him.

20 You want me to just kind of go through it?

21 Q. Yeah, please.

22 MR. DUFFY: Which number, Dan?

23 MR. SLOTCHIVER: 31.

24 A. I talked about, you know, first regarding
25 discrepancies in rent. I wasn't going to go do a

1 bunch of work to figure out what he thought was a
2 discrepancy, so I was not going to do that.

3 I said other than the \$1,000 per month and the
4 435 per month, you paid for the extra offices. I am
5 certain that I have paid the same amount as you.
6 There were certain instances where taxes and insurance
7 were paid at different times or something like that.
8 But basically, you know, the only difference was the
9 difference in the rent.

10 Q. John, just for clarity for the Court, during
11 the duration of this partnership, other than a period
12 of about two years, who has been the person who has
13 managed everything?

14 A. I have. I mean, I have done all the leasing,
15 kept the books.

16 Q. You did all the leases?

17 A. Yes.

18 Q. All the advertising for the leasing?

19 A. Yes.

20 Q. All of the bills? You have done everything,
21 correct?

22 A. There was one period of time where I think
23 David had April -- they tried to find another broker
24 or something for leasing. I think they did lease it,
25 actually, but that was it. We never got any leads or

1 any new tenants.

2 Q. And when it's come time to refinance with the
3 banks and doing all those negotiations, who's the one
4 that did all of that?

5 A. I did.

6 Q. Did you have a time when you had a bank
7 decline to renew your loan?

8 A. I think the loan originally came due
9 somewhere around 2009, and I don't know where we
10 originated that loan, but it ended up at Wells Fargo.
11 And in 2009, I mean, there was -- I mean, you couldn't
12 borrow money commercially. And our loan came due, and
13 Wells Fargo, we were on a LIBOR project, and we were
14 paying two and a quarter percent. And Wells Fargo
15 just rubber stamped it for another five years.

16 Q. What happened at the end of the five years?

17 A. At the end of the five years, basically they
18 wouldn't renew the loan. And they cited essentially
19 David's credit as the reason that they wouldn't renew
20 it.

21 Q. So what did you do to get a loan?

22 MR. DUFFY: Object to the form, Your Honor.
23 I just want to make a point. We're still in 2014 or
24 2015.

25 MR. SLOTCHIVER: We're moving right into why

1 it's relevant, Your Honor. And what you'll hear in a
2 moment is that because of this, he had to go to a
3 different bank and they made terms with the bank which
4 David signed off on and failed to comply with.

5 THE COURT: Go ahead.

6 Q. So as a result of the bank loan not being
7 accepted, is that when you went to -- who did you go
8 to?

9 A. I went to Ameris Bank. Linda Kennedy was
10 with them at that time.

11 Q. Okay. And what arrangement was made with
12 Linda?

13 A. They made the loan. I had just refinanced
14 Suite 140 and 150 downstairs. I think my interest
15 rate on the downstairs unit was like four and a
16 quarter. And this one ended up being four and three
17 quarters.

18 Q. Okay. And what type of arrangements did
19 you -- and let me show you a copy of a document, a
20 letter from Ameris Bank.

21 A. Okay. This is I guess a commitment letter.

22 MR. SLOTCHIVER: Why don't we mark that as
23 Exhibit 4.

24 MR. DUFFY: Your Honor, same objection. This
25 is 2014. They got a loan. There's no pattern of loan

1 issues. We're going to be a while.

2 MR. SLOTCHIVER: It's not about the loan,
3 Your Honor. It's about the commitment and the
4 promises made that were ignored.

5 MR. DUFFY: In 2014?

6 MR. SLOTCHIVER: In 2014. It's a pattern of
7 conduct. They were ignored, and it goes to his
8 credibility and it goes to what he's done. And it's
9 not a disputed fact they were ignored is what you will
10 learn.

11 THE COURT: Let me ask. Do you intend to put
12 the document into evidence, or are you going to
13 testify about it?

14 MR. SLOTCHIVER: I would like to mark it into
15 evidence.

16 THE COURT: You can mark it for ID purposes.
17 Objection is to the document or just going further
18 field than we need to?

19 MR. DUFFY: The document prompted it because
20 I wanted to note my objection for the same reasons.

21 THE COURT: I'm going to keep the document
22 out, but you can testify about it.

23 (PLAINTIFF EXHIBIT NUMBER 4 WAS MARKED FOR
24 IDENTIFICATION.)

25 Q. What were the terms as far as what you and

1 David would have to do from a banking relationship?

2 A. Well, I guess on the top of page 2, it talks
3 about deposit accounts and says in consideration of
4 the interest rate outlined above and law practices
5 shall maintain their primary business deposit accounts
6 with Ameris Bank during the life of the loan.

7 Q. Did you maintain your primary business
8 account with Ameris Bank for the life of the loan as
9 required under the document?

10 A. Around this time, David -- I'm not sure I
11 know exactly why, but Julie was collecting the rents
12 for about two years around this time.

13 I had my law practice account with Ameris. David
14 had opened his law practice account there, and we had
15 also opened an account for K&T Group.

16 I learned from Linda that the K&T Group account
17 was not being used, so it was just sitting there.
18 David opened an account with First Reliance Bank, and
19 he was depositing all the rents over there.

20 Q. Did you comply with your obligation under the
21 agreement?

22 A. That's when I started collecting the rents
23 and depositing them in the Ameris account.

24 Q. Did you, John Kachmarsky, your law firm,
25 comply with your requirements under that agreement?

1 A. Yes.

2 Q. Okay. And then you took back over. You
3 started collecting the rents in order to make sure the
4 firm was also in compliance?

5 A. Correct.

6 Q. Because the firm wasn't in compliance until
7 you did it?

8 A. That's correct.

9 Q. Okay.

10 THE COURT: Let me stop you there. And prior
11 to that, Mr. Taylor was collecting the rent?

12 WITNESS: His office collected the rents for
13 a period of about two years.

14 THE COURT: Okay. This is in the 2014 time
15 period?

16 WITNESS: Yes, sir.

17 THE COURT: And since that time, you have
18 been in charge of that?

19 WITNESS: Yes.

20 Q. And then on the last page of the document,
21 was there a signature spot for you to sign and for
22 David to sign?

23 A. Yes.

24 Q. Okay. Did you both sign on the document?

25 A. We did.

1 Q. Okay. Look at document 20 and tell me
2 what -- this looks to be about the same timeframe.
3 Tell me what this references.

4 A. We are arguing about him paying rent again.

5 THE COURT: Which page are we on? I'm sorry.

6 MR. SLOTCHIVER: 20.

7 THE COURT: All right.

8 Q. Is that when David has an office that he's
9 not paying for?

10 A. That would be correct.

11 Q. If you look at page 35 --

12 A. So basically -- I mean, just for an example,
13 if there was \$10,000 that needed to be paid into the
14 account in a given month and David had two extra
15 offices, then I would calculate that as he needs to
16 pay the 2500. And then the other 7500, we would split
17 equally and that's what would go into the account.

18 David was taking the position that he wasn't
19 going to pay rent and he was just splitting the 5,000.
20 He put his 5,000 in, but he didn't put the rest in.

21 Q. And that's what made you short?

22 A. Yes. And I put what I was supposed to put in
23 which was half after the rents.

24 Q. Because even more in, you're getting deeper
25 into the hole?

1 A. Right.

2 Q. So on page 35 when he says, he writes: My
3 position is that there will be no adjustment for an
4 extra office as long as there is comparable --

5 COURT REPORTER: Can you slow down, please?

6 Q. Page 35, he writes Julie and says: My
7 position is that there will be no adjustment for an
8 extra office as long as there is a comparable space
9 vacant in our suite. So even 50/50 is what the split
10 should be.

11 So what he's saying to you is I'm not going to
12 contribute the amount for the offices that I'm taking
13 because it's extra and you have to pay half of the
14 full amount?

15 A. Right. Basically he was forcing me to either
16 put money into the account or not pay some bills. And
17 some bills didn't get paid, including a mortgage
18 payment that we had just gotten on a new loan.

19 Q. Okay. So all of this is building up to the
20 Dan Legare meeting, correct?

21 A. Correct.

22 Q. And then at that point is when you told him
23 that you're going to take the rent from one of the
24 other tenants directly in order to offset the
25 expenditure?

1 A. Well, I told him, you know, I could go about
2 it a couple of different ways. It all would come out
3 the same way. If he was going to take an office and
4 not pay rent on it then I would take an office and I
5 would rent it out to somebody and be even. Just
6 saying I could get there different ways.

7 Q. At the end of the day, you're just trying to
8 get back to the point that you and David have equal
9 use of the office?

10 A. I just wanted him to pay, yes, either equal
11 use of the office or he pays rent on the extra offices
12 he has.

13 Q. Okay. Tell me about how it is that you got
14 to meet with Dan Legare and what came of that.

15 A. Well, we both basically told him our story.
16 I said he's got an extra office. I think he ought to
17 pay for it. Dan says he's got an extra office, and I
18 think he ought to pay for it. And then he did.

19 Q. So from that point forward, did David pay
20 back the money he owed and also pay for the extra
21 office?

22 A. Yes.

23 Q. And that was in 2014?

24 A. Yes.

25 Q. So you thought everything was done and

1 copacetic?

2 A. I thought he understood, you know, if you use
3 something, you're supposed to pay for it.

4 Q. What happened in 2015? You call this round
5 three. Or let me back up one second. I wanted to go
6 over one more document first.

7 When you met with Dan Legare, was his
8 recommendation put into writing?

9 A. Yes.

10 Q. Was that on page 54?

11 A. Yes.

12 Q. Did you agree with all of his
13 recommendations?

14 A. No, I didn't agree with I guess what would be
15 the second paragraph, and it wasn't -- not that I
16 thought he was wrong.

17 Q. Second or third paragraph? Beginning with
18 what word?

19 A. Well, it's the second paragraph. Because
20 he's basically saying we ought to be putting money --
21 paying rent for --

22 Q. What's the first word of this paragraph?

23 A. "Next."

24 Q. All right. That's the third paragraph on the
25 page.

1 A. Okay. And we had just -- and I'm not saying
2 that was wrong. I mean, it's typically what you would
3 do. But I was in a situation where I was being
4 essentially forced to put money into an account, and
5 he was taking the position that he shouldn't be paying
6 rent.

7 I wasn't going to put my money into an account
8 that could be used to pay bills because he wouldn't
9 put the money into the account. So I just maintained
10 the rent the same way I always did. If you have an
11 extra office, you pay for it and we split the
12 difference and we put that amount in every month and
13 everything got paid.

14 Q. And that's commiserate with the understanding
15 that David represented in his deposition, correct?

16 A. That's correct. He understood that he should
17 be paying \$1250 for an extra office if he possessed
18 it.

19 Q. But then paragraph 4 provided a different
20 alternative?

21 A. I was also trying to get -- I was asking Dan
22 to find a permanent solution as well. I wanted to get
23 out of this thing. I have been sort of wanting to get
24 out of it since the first round.

25 Q. Is that because of all the different issues

1 you were dealing with and you're the banker?

2 A. We keep fighting over the same thing, and we
3 can't keep ending up in the same place.

4 Q. Okay. So what about the alternative he
5 proposed in paragraph 4?

6 A. Well, as far as I know, David didn't want to
7 do that. That would require him taking half the
8 offices and doing his own marketing. I mean, we never
9 really discussed it any further.

10 Q. Okay. So then we go into 2015. Let's talk
11 about what happened.

12 A. Okay. In 2015, I think that is when I had
13 two offices, two associate offices, and David had two.
14 And I was going to vacate one of mine, and I told him
15 I was going to put it on the market and rent it, and I
16 was asking him to pay an extra 1250 for the extra
17 office he had.

18 Q. Okay.

19 A. And I think I got that office rented pretty
20 quickly. And as I recall, he still didn't want to pay
21 the rent after the -- he still didn't want to pay rent
22 after the office was full.

23 Q. And is this time period referenced by pages
24 58 and 59 and 60?

25 A. Yes. And here, he said he's not in agreement

1 with paying extra rent. He said I could rent the
2 other office and retain the proceeds outside of K&T
3 Group.

4 He says that here, but then he said I couldn't do
5 it. I think because I suggested to him that I could
6 take rent from Nancy's office and he could keep the
7 office for free. Again, I'm just trying to find
8 different ways to get to the same place.

9 Q. So on page 58, he says you can rent the other
10 office and retain the proceeds outside of the K&T
11 Group?

12 A. Right.

13 Q. And then on page 62, he said: I do not agree
14 with you keeping any rent.

15 A. That's correct.

16 Q. Okay. So these are the types of
17 inconsistencies you're referring to. Okay. And is
18 that why you wrote on page 63 that it appears that
19 your office has taken possession of my office despite
20 my telling you that I intended to keep it?

21 A. Yeah. It was the office right outside of
22 mine, I'm pretty sure it was, or two from mine.

23 Q. So the Court understands, the way that -- the
24 area that you and David practice in, you've got kind
25 of a bull pen in the middle where staff is

1 theoretically and then you have each of your own large
2 offices on the corners and then you have offices next
3 to the bull pen.

4 A. Two additional ones before you get to the
5 brick wall.

6 Q. Before you get to the brick wall, which is
7 the one where you close the door, you would have a
8 completely different office suite?

9 A. Correct.

10 Q. Okay. And that's the type some offices have
11 done. They've put a wall in and TMS number and
12 created two suites?

13 A. David and Jimmy Streetman did it. They
14 brought a suite on the second floor from Jerry Zucker,
15 and they split it and closed that door. It's an
16 identical footprint to what Suite 330 is. It's just
17 kind of a flip flop, but it's the same identical
18 footprint.

19 Q. Okay. So backing up for a second, in round
20 three in December of '15, he had more offices than you
21 but he wasn't paying for more offices than you,
22 correct?

23 A. Correct.

24 Q. Which is inconsistent with the settlement
25 agreement and the representation that he made in his

1 testimony and in agreement with Dan Legare, correct?

2 A. Correct.

3 Q. Okay. So what did you do as a result of
4 that?

5 A. Well, I told him I wanted to split the
6 offices and go separate ways. But I got the office
7 rented. And this was -- actually, I retained you and
8 Steve Spitz. We actually drafted a complaint, pretty
9 much the complaint that's been filed with a couple of
10 additional paragraphs added to it for what occurred
11 after that.

12 Q. What did he do as a result of that?

13 A. Well, I don't think he knew -- I don't know
14 if he knew that I was getting ready to file a suit. I
15 got back to my office. Seems like it was a hot summer
16 day. And there was a check on my desk for everything
17 that had been past due, which was approximately
18 \$30,000.

19 Q. Okay. So he made that debt good?

20 A. He did.

21 Q. Okay. All right. Let's move forward to
22 January of 2021.

23 A. Okay. The last week and a half of December,
24 I always let my staff off. And David --

25 Q. Let me back up. One thing I want to do is

1 refer to page 61. Is 61 the letter that you sent that
2 precipitated him making payment in full?

3 A. I told him I was going to file suit.

4 Q. Okay. And I apologize. Go back to 2021.

5 THE COURT: I want to follow up, though.
6 This e-mail is dated December 16 of '15. You said it
7 was a hot summer day that the check came in. Is that
8 six months later or is that a hot day in December, you
9 think?

10 WITNESS: I think it was probably a cold day.

11 Q. All right. So let's go to January of 2021.

12 A. Okay. Like I was saying, I always give my
13 staff off the last week and a half, two weeks, of
14 December and just pay them as kind of like a little
15 Christmas bonus or something. And that was COVID
16 year. That was 2020.

17 And I usually am in the office during that period
18 of time, and I was that year. There was nobody in the
19 office at all. The office outside of my office had
20 been emptied for the entire year, I'm pretty sure.
21 COVID wasn't making -- you know, people were not
22 running around looking for office space.

23 When I walked in my office on the first business
24 day of 2021, it would have been January the whatever,
25 there was a girl sitting in the office next to mine.

1 She had not been there before.

2 When I walked out, April, his assistant, told me
3 that they had hired a girl on a temporary basis that
4 she was going to be in there. I mean, I didn't say
5 anything about it at that point.

6 Q. Was your agreement -- had your agreement ever
7 been changed that if you utilize an office, you pay
8 for it?

9 A. No.

10 Q. Okay. So she was utilizing the office?

11 A. She was utilizing the office and, you know,
12 when they use the word "temp," you know, maybe she'd
13 be there for a week or two weeks. Well, she never
14 left. I mean, she did leave eventually but that
15 office was occupied the entire year.

16 Q. Over that year period, who was in that office
17 besides her?

18 A. Well, I think it was -- I don't know who the
19 temp was, if that was a temp. And then there was I
20 think an intern. Her name is Gabrielle. And then
21 there was a gentleman named Spears. He was an
22 associate attorney that they hired.

23 Q. And so throughout that entire year, when you
24 walked by the office that was right next to your door
25 to your office, somebody was utilizing it for the

1 year?

2 A. Somebody was using it.

3 Q. Furniture in there, person in there, activity
4 in there?

5 A. There was kind of limited furniture in there.
6 I mean, I don't know if they had carried in a -- I
7 mean, it might have been a table. Just something that
8 somebody could use as a desk, and there was a chair.
9 And then David had some furniture that he had gotten
10 from a client of his. It's a credenza. They were in
11 there.

12 Q. Okay. And was rent paid for during that
13 entire year?

14 A. No.

15 Q. Is that part of the issue we're here about
16 today?

17 A. Yes.

18 Q. Has rent ever been paid since it was owed on
19 that office?

20 A. Rent has been paid. I told David that he
21 needed to pay rent for that year. And he goes, how
22 did you -- I said it was \$15,000. He said how do you
23 calculate that? I said 12 times 1250 is \$15,000.

24 He said I only use the office for a month or two
25 was his response.

1 Q. Was that correct?

2 A. No.

3 Q. Okay. So it's the same issue you've had
4 repeatedly over all these years?

5 A. Yes. So I went in my -- kind of just looking
6 through scrolling through trying to find some evidence
7 of when I thought they had used the office. I found a
8 e-mail from April Shores.

9 Q. Objective evidence?

10 A. Yes.

11 Q. Okay.

12 A. And I found an e-mail where he had a parking
13 card, Mr. Spears, on August the 5th of 2021. April
14 wrote me an e-mail, and she said based on what we
15 understand from your e-mails, we're paying the rent
16 from August the 5th through December 31st, and they
17 calculated an amount and paid it.

18 Q. Okay. So they acknowledged that they hadn't
19 paid the rent, which they were required to do. But
20 they, again, tried to make it good down the road but
21 they just shortened you on that one?

22 A. Right.

23 Q. I'm looking to see where that e-mail is.

24 A. D12 starts on E. And plaintiffs' 85 and 86.

25 Q. Okay. So on Exhibit 2, defendants' page 12.

1 THE COURT: Defendants' 2, page 12?

2 MR. SLOTCHIVER: Yes, Your Honor.

3 Q. And that's where you're told by David: We
4 did not use the extra office for the entire year. I
5 had it for a few months.

6 A. For a month or two.

7 THE COURT: Y'all lost me there. And that's
8 when you wrote him on 12 and told him he's arrived at
9 \$15,000, 12 times 1250. And then he asked you how was
10 it arrived at and he wanted to meet with you. That's
11 on page 13, correct?

12 A. Correct.

13 Q. And then on 14, you had more discussions
14 about this?

15 A. Yes. We had a special assessment also that
16 year so things were moving around.

17 Q. Did he pay for the special assessment in a
18 timely manner?

19 A. Well, he was behind. He had ghosted me.
20 This is in '22. He didn't -- from November to I think
21 it was March or April, he had not paid anything. I
22 asked -- I sent him an e-mail and asked him to get
23 April to write a check. And, I mean, I just never
24 heard anything from him.

25 Q. Was it your agreement that he was allowed to

1 have months at a time where he wasn't contributing?

2 A. No. I mean, it caused problems paying the
3 bills. We had bills to pay.

4 Q. Was it your agreement that you each were
5 required at the end of the month to come up with any
6 short numbers?

7 A. Well, we always came up with -- normally came
8 up with the money except we had these periods of time
9 when he didn't pay. This one was only like three
10 months. The other ones, there were two periods where
11 it was six months.

12 Q. I understand. But was your agreement with
13 him, your understanding, was that you would each make
14 up at the end of the month what you had to contribute
15 to it?

16 A. That's our practice and that's what we
17 always -- I thought that's what we were supposed to do
18 and that's what I expected him to do.

19 Q. Did that frustrate the purpose of the
20 business when you had to come out of pocket to make up
21 the difference?

22 MR. DUFFY: Objection, leading.

23 A. Well, I mean, the mortgage didn't get paid.
24 You know, regime fees didn't get paid. I'm getting
25 calls and e-mails from the bank and getting calls and

1 e-mails from the regime people. Yeah. Frustrated the
2 business. I mean, we weren't paying our bills.

3 Q. So when you're demanding all these payments
4 be paid, that's when he decided to ask you to see your
5 books?

6 A. He asked me on a couple of occasions to see
7 the books. Usually it was through Julie. And I
8 just --

9 Q. Page 71, if you'll look at that.

10 A. Is this plaintiffs'?

11 Q. Yes.

12 A. This is from April. So I think this is --
13 Julie is out of the picture now. And then David
14 wanted to look at them directly. So I e-mailed April
15 the same thing I e-mailed Julie in the past, which is
16 an accountant's copy of the QuickBooks file for K&T
17 Group.

18 Q. And is that referenced on page 75 or is that
19 something different? Or is 75 the one you sent and
20 received no response for?

21 A. I'm pretty sure this is one of the times I
22 didn't receive a response. That's in January. He was
23 not responding at that time. He wasn't responding
24 between like November and I would say -- when I say
25 responding, he responded with a check at some point in

1 March or April. On 74 is where I was asking for a
2 check from David directly.

3 Q. What does page 85 and 86 represent?

4 A. 85 is the parking card. And this e-mail was
5 sent by April on the next page. It was sent August
6 5th, 2021.

7 Q. So that was confirmation that he had been
8 using the office?

9 A. It was confirmation that Spears had been
10 there. I don't know. This kind of turned into when
11 did Spears get there. I don't really care when he got
12 there. I cared about when the office was occupied,
13 which is at the beginning of the year. That's clear
14 to me.

15 Q. Okay. Look at Defendant Number 11 dated
16 Friday April 22 of '22.

17 A. It says -- well, this is where April says we
18 deposited 28,000 blah, blah, blah into the K&T account
19 at First Reliance.

20 Again, this is -- oh, I don't know. It said:
21 The contribution was calculated based on what we
22 understand from prior e-mails from you. This includes
23 contributions from January through April into the
24 account for the use of office by Jay Spears from
25 August 5 through December 31st.

1 So basically at this point, they're -- and I
2 don't know when Spears came. I wasn't saying that he
3 came on the 5th. I just was saying I know he was
4 there --

5 Q. Did this account for someone using the office
6 from January until August?

7 A. No.

8 Q. Okay.

9 A. I mean, they were basically taking the
10 position they weren't going to pay for the office
11 prior to August the 5th.

12 Q. And even then, the August the 5th through
13 December 31st wasn't paid until April of the next
14 year?

15 A. Correct.

16 Q. Okay. So unequivocally through this -- well,
17 strike that.

18 A. Well, they sent some additional e-mails on --
19 it was Friday? This Friday? And Sunday. And there's
20 an internal e-mail in here that I have.

21 Q. Call out the number, please.

22 A. I'm looking at 103 right now. I think this
23 is it. It says: Grant and Foley -- those are his two
24 associates -- tell me that we are hiring a new law
25 clerk that will be here full time starting in May and

1 then I know we are looking to hire a new associate.

2 So, I mean, they know on April the 20th that they
3 have certainly taken, again, possession of that office
4 permanently and they intend to keep it permanently and
5 that I know it was occupied since the beginning of the
6 year. I mean, I walked past the office every day that
7 I was working during that time.

8 Q. And, again, your position is that you are
9 supposed to make timely payments, correct?

10 A. Yes. I mean, he knew if he occupied the
11 office, he was supposed to pay for it.

12 Q. After the April payment that he made, did he
13 pay May or June?

14 A. No, he did not. I mean, he was late when we
15 filed the complaint. He had not paid those months.
16 That's why I put it in the complaint.

17 Q. When did Edward Lapine start working for you?

18 A. Sometime in February.

19 Q. So he would have been there and he would be a
20 witness to when it was that that office was occupied?

21 A. Right. He would have had to walk by that
22 office to come into my office, and he would have been
23 doing that on a regular basis. And that was February
24 of '21.

25 Q. Almost done, Your Honor. If I could just

1 have a moment.

2 It's your position today that David Taylor
3 breached his duty of loyalty and care of K&T?

4 A. That's correct.

5 Q. And that's supported by the occupied, unpaid
6 office spaces that he took advantage of and used?

7 A. On a repeated basis.

8 Q. And that he breached his duty and had a
9 conflict when he did not maintain his bank accounts or
10 his operating account at the bank that he promised to
11 do at Ameris Bank?

12 MR. DUFFY: Object to the form, Your Honor.
13 That's, first of all, legal conclusions for whatever
14 that's worth. On top of it, he's going back to a
15 breach of a 2014 agreement and keeping an account at
16 the bank.

17 THE COURT: I'll sustain that.

18 MR. SLOTCHIVER: Withdraw that one, Your
19 Honor.

20 Q. And paragraph 29, your claim states an
21 assertion that he engaged in wrongful conduct that
22 adversely and materially affected the company's
23 business.

24 Is that by not making payments?

25 A. By refusing to pay rent, yes.

1 Q. And that he willfully and persistently
2 committed a material breach of the operating agreement
3 or of a duty owed to the company or other members?
4 Same basic argument?

5 A. Yes.

6 Q. And he engaged in conduct related to the
7 company's business which makes it not reasonably
8 practical to carry on the business?

9 A. Correct.

10 Q. Is the fact that at some point down the road
11 after basically screaming and shouting and arguing and
12 writing letters that he would ultimately make
13 payments, does that alleviate the fact that he didn't
14 make them on a timely manner?

15 A. No. I mean, he ultimately would make the
16 payment. He has never really made the payment this
17 last time. I mean, he maintains this position that he
18 didn't have possession of that office for that whole
19 year when he did.

20 And I guess whatever that counterclaim is, I
21 don't think I understand it. I think it supports my
22 claim, actually.

23 Q. And then let me just make sure. I want to
24 read to you a portion of the testimony and ask you if
25 this is consistent with your understanding.

1 And this is testimony from David Taylor.

2 "Would the terms of the settlement basically be
3 that you own office space together, that you would
4 each pay for the office space that you occupied and if
5 you occupy more space than the other partner owns then
6 you will pay the 1250 per month for that office?"

7 MR. DUFFY: Object to the form, Your Honor.
8 It's testimony from another witness who has not
9 testified yet, and there's a whole lot more in that
10 deposition that we can go down.

11 Q. Is that your understanding?

12 THE COURT: Overruled. Go ahead. You can
13 answer.

14 A. That was the agreement that we came to
15 through Dan Legare, that as far as I'm concerned has
16 been our agreement ever since and just simply not been
17 adhered to.

18 Q. Was it also your agreement beforehand? Was
19 that always your understanding even before then?

20 A. Well, yes. But, I mean, we did have the
21 offices full. I mean, he actually created the need
22 for me to be able to rent those offices individually.
23 And once I started doing that, that kind of changed
24 everything, and we went to the 1250 per month.

25 Q. How did he create the need for you to do

1 that?

2 A. We had the whole side rented, including
3 there's an office behind the reception area and that
4 office has a door on each side so it can go sort of
5 with the right side or it can go kind of with the left
6 side.

7 We had it rented to NEFA. And when they moved
8 out, I asked Leslie Fellabom (ph) to, you know, come
9 down and lease the space out. And she saw that Sallie
10 was in that office. And she goes: How are you going
11 to lease this out, you know, when you've got somebody
12 over here?

13 And Sallie wasn't leaving, I guess. So that's
14 when I just started leasing them individually. I told
15 David that's what I was going to do, and he was fine
16 with it, and that's what I did.

17 MR. SLOTCHIVER: We would move into evidence
18 the packets of e-mails that we produced, Your Honor.

19 THE COURT: Okay. That was I think marked as
20 Plaintiff's 1 or 2?

21 MR. SLOTCHIVER: I believe -- I have one
22 document that I haven't gone to. I will very briefly.

23 Number 1 was the plaintiffs' e-mails.
24 Defendants' was Number 2. And then we have the
25 operating agreement, which was 3. And then we had --

1 and 4 was not admitted. For ID purposes only.

2 MR. DUFFY: No objection to operating
3 agreement as stated. And generally no objection to,
4 you know, the authenticity of e-mails except for
5 everything goes back to the same motion in limine.

6 (PLAINTIFF EXHIBIT NUMBERS 1, 2, 3 WERE
7 ADMITTED INTO EVIDENCE.)

8 THE COURT: Okay. Got it.

9 MR. SLOTCHIVER: All right. Thank you, Your
10 Honor.

11 THE COURT: Yes, sir. It's 12:15. How much
12 time are you going to take?

13 MR. DUFFY: Certainly more than 15 minutes,
14 Your Honor.

15 THE COURT: More than 45 or not?

16 MR. DUFFY: Probably around there.

17 THE COURT: I'd just as soon roll through it
18 if you would.

19 CROSS EXAMINATION

20 BY MR. DUFFY:

21 Q. Good afternoon, Mr. Kachmarsky.

22 A. Good afternoon.

23 Q. Is it all right if I call you John?

24 A. That's okay.

25 Q. Okay. Thank you. I just want to touch base

1 on a couple of things that you went through with
2 Mr. Slotchiver, and I'm going to hand you one of
3 the -- a page that was on one of the -- in the e-mail
4 group there that counsel had identified or moved in as
5 an exhibit.

6 They weren't numbered yet, but this is an e-mail.
7 If you'll see, it's March 13th, 2014. Do you see the
8 e-mail at the bottom from you to Linda Kennedy?

9 A. I see: The agreement for Taylor Capital, LLC
10 will be coming from April. The sooner we can get a
11 definitive answer on this, the sooner I can get rid of
12 Wells Fargo.

13 Q. Right. So you were indicating you were
14 looking forward to getting rid of Wells Fargo?

15 A. They were getting rid of us would probably
16 have been a better way of characterizing.

17 Q. That's not how you characterized it at the
18 time, though, is it?

19 A. No.

20 Q. Okay. There were some talk about Taylor
21 Foley not paying market rent for their office space.
22 Does your law firm pay market rent for its office
23 space?

24 A. They're not paying rent for the extra offices
25 they have, and I've explained this. I am paying rent

1 in the form of -- we both pay rent in the form of we
2 put equal amounts in after we collect rents. That is
3 our rent.

4 Q. I understood all that. But what I kept
5 hearing Mr. Slotchiver saying --

6 MR. SLOTCHIVER: I'm not sure he has finished
7 his answer, Your Honor.

8 A. We got into this in my deposition. You want
9 to talk about whether or not it's rent or it's
10 capital. It's rent. I put the money --

11 Q. That's not what I'm asking you.

12 MR. SLOTCHIVER: Let him finish his answer.

13 Q. I asked if you're paying fair market value.
14 Is your law firm paying fair market value for the
15 space that you occupied?

16 A. I don't know.

17 Q. Don't know? Didn't Mr. Legare suggest
18 everybody get fair market value leases to avoid all
19 this?

20 A. I agreed with the statement that he made, but
21 I am not in agreement with putting money into an
22 account when I am fighting with somebody who is not
23 paying their rent so that I am now in a situation
24 where I'm paying his expenses would really be what it
25 boiled down to.

1 Q. Mr. Kachmarsky, I'm not asking for the whole
2 story we just heard. I asked about fair market value
3 rent. You said you don't know if you're paying it.
4 I said didn't Mr. Legare suggest y'all get leases for
5 fair market. Is that a yes?

6 A. Yes, it is a yes.

7 Q. Okay. Thank you. You didn't want to do it,
8 do you?

9 A. I think I did it.

10 Q. You did get fair market value leases?

11 A. I told you on -- well, I told on direct
12 testimony that I wasn't going to do that and I said
13 the reason why.

14 Q. Did you produce any leases between K&T Group
15 and Taylor Foley or your law firm?

16 A. There are no leases.

17 Q. Right. There aren't any leases.

18 A. Right.

19 Q. Okay. So you didn't do it, did you? You
20 didn't enter fair market value leases as Mr. Legare
21 suggested as a way to stop what you were concerned
22 about?

23 A. It wasn't -- well, no, I didn't.

24 Q. Okay. Now, you testified that other than two
25 years of someone associated with Mr. Taylor keeping

1 the books that essentially you have handled the books
2 and the leasing and everything for the company since
3 2003; is that right?

4 A. Pretty much, yes.

5 Q. So you have been in control of its
6 operations?

7 A. I wouldn't say control. I mean, I have
8 handled the leasing and I have handled the books.
9 I've paid the bills, and we own it 50/50.

10 Q. Okay. What else does it do as an operation
11 other than lease and pay bills and get listings, get
12 people signed up? What else does it do?

13 A. Deal with banks.

14 Q. Do you do that?

15 A. I have, yes.

16 Q. Okay. You do that and not Mr. Taylor?

17 A. Well, he has had to provide his information
18 separately.

19 Q. But you manage that relationship. You just
20 told us already.

21 A. I mean, what --

22 Q. You manage the relationships with the banks,
23 right?

24 A. I'm the one who has dealt with the banks.

25 Q. Right. You've managed the operations of the

1 LLC of K&T Group?

2 A. I have, yes.

3 Q. Okay. Now, will you agree with me that the
4 only money in dispute with the claims that you brought
5 that you say is owed is this rent that we're talking
6 about from January 2021 through July of 2021?

7 A. I'm not sure about that, actually. I mean,
8 I'm under like a quantum merit theory. I know that
9 this has been an expensive relationship for me. It's
10 cost me a lot of money over the period of time that we
11 have been in this thing together.

12 Q. Okay. Would you agree with me that you would
13 characterize the situation as if you're talking about
14 anything within three years of before the lawsuit that
15 you're, quote, "pretty square"?

16 A. David, as I said, testified he has paid the
17 rent after I essentially, I don't know, forced him to
18 after every round we've gone through. And at this
19 point, the difference in what he paid and what I said
20 he should pay is the amount in dispute, whatever that
21 is.

22 Q. That's what I started asking. We're talking
23 about the \$8,750. That's the only amount of money in
24 dispute right now. And you're trying to hedge on
25 that. So I want to know is that the only amount of

1 money in dispute?

2 A. I'm trying to hedge on it because it's cost
3 me a lot of money over the course of 20 years.

4 Q. Right. And then I said, okay, well, let's
5 talk about anything within three years of when you
6 brought suit, and you said before that you're pretty
7 square. Do you agree with that now or no?

8 A. Based on the rents, again, yes. I mean, it's
9 what we agreed to. What I -- the difference between
10 what I asked him to pay and what he paid is the amount
11 that is arguably in dispute at the moment.

12 Q. Okay. Got it. Now, one thing I didn't hear
13 you talk about on direct is the idea that y'all
14 agreed -- you indicated, didn't you, that if somebody
15 was temporarily using an office, it didn't have a
16 permanent employee there, you didn't expect any law
17 firm to pay rent for that?

18 A. I have never agreed to that. I mean, that
19 keeps coming up. And I think I made it clear in my
20 e-mail to him that I expected him to pay rent for an
21 extra office if he used it.

22 Q. Would you agree with me that it was your
23 position and has been that you expect Taylor Foley to
24 pay rent if Taylor Foley's occupying an office
25 permanently, which you would say means you can't show

1 it for lease?

2 A. If they have exclusive possession of it I
3 think is the term I would use then they should pay
4 rent for it.

5 Q. Okay. But I want to make sure. I want to
6 understand if you're agreeing with me or not.

7 Well, the question is if it's something of a
8 temporary nature and there is otherwise space opened
9 for rent and you can still show the office that's
10 temporarily being used to be leased, are you saying
11 that Taylor Foley should pay rent for that or is okay
12 not paying rent for that?

13 A. They should pay rent for it.

14 Q. Okay.

15 MR. DUFFY: Your Honor, may I open the sealed
16 deposition?

17 THE COURT: Please do.

18 Q. There you are, John. John, I'm going to ask
19 you to follow with me in a few places. First, if you
20 will turn to page 32 with me. We're exploring this
21 topic in a deposition, and I'm asking about this
22 temporary nature of things. And you'll see at the top
23 of 32, I'm saying: Do you expect that the firm would
24 pay -- for the firm to pay rent for that office in the
25 circumstance of something temporary?

1 And your answer was: I expect them to pay rent
2 if I cannot show the office and cannot lease it.

3 Do you see that?

4 A. I do.

5 Q. Do you agree with that?

6 A. I do.

7 Q. Okay. And then I asked: Tell me what makes
8 an office an office that you can't show or lease.

9 And your answer was: Well, if he's got somebody
10 in there permanently. I'm not going to go show an
11 office that's in there permanently. Okay. I'm going
12 to ask him to pay rent for it. And that's pretty much
13 our history.

14 Did I read that correctly?

15 A. Yes.

16 Q. You mentioned "permanently" twice, right?

17 A. If that's what I did, yeah.

18 Q. Well, you see it, don't you? I'm not making
19 that up.

20 A. Okay.

21 Q. Okay. And then you say that's what your
22 history has been, right?

23 A. That's what it says.

24 Q. Okay. And then on page 34, when I'm again
25 addressing somebody in there temporarily, and I say:

1 Okay. You could show it even if somebody is using the
2 office?

3 And you say: I guess, yeah.

4 A. Yeah. And I've learned since that that
5 honestly is not true.

6 Q. Okay. So you're changing the deal from the
7 time of your testimony of your deposition which was --

8 MR. SLOTCHIVER: Objection. Argumentative.

9 Q. -- July 7th, 2023?

10 THE COURT: Just one second. Hold on,
11 everybody.

12 MR. SLOTCHIVER: I want to make an objection.
13 Argumentative. He's badgering him. He can ask him a
14 question and he'll answer the question. He doesn't
15 have to beat him up.

16 THE COURT: All right. Mr. Duffy, restate
17 your question.

18 Q. I believe my question was answered in that,
19 in fact, you could still show an office even if
20 somebody were temporarily using it; would you agree
21 with that?

22 A. No, I would not.

23 Q. But you did agree with that at the time of
24 your deposition?

25 A. I said, "I guess" --

1 Q. Okay.

2 A. -- at that point but that has not been what
3 has happened. And what I have learned the hard way is
4 that an office that has maybe not so much furniture
5 but if you've got a person in an office and you show
6 that office to a prospective tenant, they're not going
7 to bite on it.

8 I mean, the history has been real clear. And the
9 same thing with putting boxes or stuff like that in an
10 office. If you show that office to a person that has
11 boxes in it, they're going to -- inevitably they don't
12 take it. I just went through this with some of my
13 offices downstairs.

14 Q. Okay. But as far as your deal with
15 Mr. Taylor, when you're saying you're expecting him to
16 pay rent if someone is in there permanently and you
17 can't show it, the understanding was you could still
18 show it if someone was in there temporarily?

19 A. You might be able to show it. I'm not even
20 sure Zach would show it. Zach Lord who is -- if he
21 saw offices that had people in them or that had junk
22 in them, debris, whatever, he basically would not show
23 them. He stopped showing them.

24 Q. Okay. Well, whatever that hypothetical may
25 be after the fact of this issue, you can't tell me

1 that somebody tried to show the office that we're
2 talking about whether rent should be paid from January
3 1 through the end of July, can you?

4 A. What was the question?

5 Q. There was no effort that got blocked?

6 A. Actually, that is a question you need to ask
7 Zach Lord.

8 Q. Okay. You're not aware of any evidence to
9 suggest someone tried to show that office and
10 couldn't, are you?

11 A. I'm not aware of anybody showing that office
12 when there was somebody present in it, either.

13 Q. Okay. Now, about this particular office,
14 would you agree with me that someone from Taylor Foley
15 advised you that somebody was going to be hired on a
16 temporary basis and would be in that office and you
17 had no objection to it?

18 A. I didn't object to it. I didn't know how
19 long temp -- I didn't know what that meant.

20 Q. At the time of this very office we're talking
21 about, when you understood it was going to be in
22 temporary use, you did not expect Taylor Foley to pay
23 rent for that; is that fair?

24 A. I expected them to pay rent for it after they
25 kept it for a month and they kept using it. They

1 should have paid rent for it.

2 Q. Okay. Let's be clear about it and look on
3 page 37, please.

4 A. Okay.

5 Q. So we're talking about the particular office
6 at issue. And I was asking: Did you ask anybody who
7 this person was who showed up?

8 And you answered: I didn't ask anybody. I was
9 told that she was somebody that they had hired on a
10 temporary basis and that she was going to be in there
11 for a little while or something, and the office was
12 empty, and I didn't have any objection to it.

13 And then I asked: Okay. So you didn't object to
14 it at the time; is that right?

15 And your answer was: No, I didn't.

16 A. That's because Taylor had an obligation. He
17 knew he had an obligation.

18 Q. Can I ask the question first? Is that right?

19 A. That's what it says, yes.

20 Q. Okay. And then later is --

21 MR. SLOTCHIVER: Your Honor, he can finish
22 his answer.

23 A. I mean, it goes to -- because I knew
24 Taylor -- he knew that he was supposed to pay rent for
25 the office, 1250. I wasn't supposed to go out there

1 and ask him to do what he knew he was already supposed
2 to do and he had agreed to do.

3 Q. No one was going in there permanently, which
4 is what you testified was a problem with showing it.
5 You weren't going to show if it was permanent. They
6 told you it was going to be temporary, and you didn't
7 object, correct?

8 A. They also told me that the office was not
9 occupied until August when they took permanent
10 possession of it in May. And when I use that term
11 "permanent," they had had somebody in there for the
12 four months prior to that. They had permanent
13 possession of the office for the entire year.

14 Q. You didn't decide until 2022 that you thought
15 they should pay for the time that the temporary person
16 was in there; isn't that right?

17 A. I didn't decide anything. I decided finally
18 to tell him he what he already knew, which was he
19 supposed to pay that money.

20 Q. You got approached, told someone it was going
21 to be temporary, said that's fine with you, and then
22 later when you were in an argument about stuff that
23 should get paid, you said, by the way, you should pay
24 me for the full year. Am I right?

25 MR. SLOTCHIVER: Objection.

1 Mischaracterizing the evidence.

2 THE COURT: Overruled. Go ahead.

3 A. I mean, I realized when we got the special
4 assessment that -- and I was moving some people into
5 another office, I realized at that time that he had
6 possession of the office during the entire year.

7 Q. Okay. Let's --

8 A. And that he had not paid rent for it. And I
9 asked him to pay the rent on it, which he should have
10 done by himself.

11 Q. Let's look at page 37. I'm not misstating
12 anything. I'm trying to get direct answers, and if we
13 have to go back to your testimony, we'll just look at
14 it.

15 So page 37. I say: Okay. When did you decide
16 later that rent should have been paid for the
17 temporary employee sitting in that office?

18 Your answer was: I decided after I was ghosted
19 from November of '21 through May of '22.

20 Is that right?

21 A. That's when I decided that I was going to
22 tell him that he needed to pay it. But, again, that
23 doesn't remove his obligation to have done it in the
24 first place.

25 Q. You just said -- do you agree with me that

1 you told them I have no objection to a temporary
2 employee being in there?

3 MR. SLOTCHIVER: Asked and answered
4 repeatedly.

5 THE COURT: Okay.

6 Q. Good. Okay. Now, when you were testifying
7 at your deposition, I understood you to say that the
8 office was occupied from January 2021 through July of
9 2021 by the same woman. Is that your understanding?

10 A. Well, my understanding at this point is I
11 don't -- I testified to what my understanding is at
12 this point.

13 Q. Right. Now you're saying that there was two
14 different people?

15 A. Well, there was one or two women. I don't
16 know if they're the same ones or different ones. And
17 there was one gentleman.

18 Q. Will you turn -- do you have the defendants'
19 binder in front of you?

20 24 is what I want to look at. If you look with
21 me, I'm going to start at the back e-mail which is one
22 from April Shores to you on April 20th of 2021.

23 And you know April Shores worked from Taylor
24 Foley?

25 A. Of course.

1 Q. Okay. And she is indicating to you in April
2 that they have a new intern who will be working
3 starting in May. Do you see that?

4 A. Yes.

5 Q. And he's asking you if they can rent a
6 parking card from you; is that right?

7 A. Correct.

8 Q. And, in fact, they did rent one from you for
9 some time; is that right?

10 A. They did.

11 Q. Okay. And April tells you that she starts on
12 May 3rd; is that right?

13 A. That's what the e-mail says, yes.

14 Q. Okay. And this is Gabrielle Murphy who was a
15 summer intern for Taylor Foley; is that your
16 recollection?

17 A. I have no recollection of this. I didn't
18 know what a clerk was, where the clerk was going to go
19 or anything. I just know that they asked me for a
20 parking card. I had one, and I let them use it.

21 Q. And you were citing earlier in your
22 testimony, you pulled out and called attention to
23 Defendants' 103 in I believe it was Exhibit 2 for the
24 plaintiffs' that was Bates-labeled Defendants' 103.

25 A. This is number 2 here?

1 Q. No, I'm sorry. It's what you pulled out
2 earlier when you were on direct. So it's from the --
3 did you hand over the documents?

4 A. I've got some.

5 Q. From Dan? I'm talking about documents from
6 Dan, the second stack.

7 MR. SLOTCHIVER: The Court has them.

8 Q. Okay. So if you turn to page 103, please.
9 Do you remember this e-mail and you calling it to the
10 attention of the Court earlier?

11 A. Yeah. Because it's the first time I saw it
12 was like on Friday.

13 Q. And you see here, this is an internal
14 discussion from April to David saying that we have
15 this new law clerk starting, right?

16 A. That's what I --

17 Q. That's what this was about. Are you with me?

18 A. Yeah.

19 Q. Okay. And if you see the second paragraph,
20 it says -- well, we'll start with the second sentence
21 where she's indicating it would probably be best to go
22 ahead and get the basics furniture wise, desk, chair,
23 and rug for the office.

24 So is it fair to say that before April, there
25 wasn't even a desk, chair, or rug in the office?

1 A. No, I don't think that's fair to say. There
2 was somebody sitting in there, and they were there
3 from the beginning of the year.

4 There was some type of furniture in there. I
5 didn't pay that much attention to it. There was a
6 person sitting behind a table or a desk, whatever you
7 want to call it. And that was from January 1 through
8 December 31st.

9 I didn't pay attention to the changes in the
10 furniture. But there was furniture in there and there
11 was a person in there.

12 Q. Right. And in your deposition, you testified
13 that that person was in the office from the beginning
14 of January to when they hired Mr. Spears in August; do
15 you recall that?

16 MR. SLOTCHIVER: Asked and answered. He's
17 already testified he doesn't know who it was but that
18 it was a female, but it might have been two people.

19 MR. DUFFY: Your Honor, in his deposition, he
20 testified that the same woman was there from January
21 to the end of July. Earlier -- now after he's just
22 seeing this documents he said he saw on Friday, now
23 he's saying it's two different people. So I want to
24 clarify that.

25 A. I didn't say it was two different people. I

1 said it might have been two different people or could
2 have been the same one. I don't know.

3 MR. SLOTCHIVER: That's what he said a few
4 minutes ago, the exact same thing. He said I'm not
5 saying it was the same person. He said there was a
6 female there up until a certain point and then a
7 gentleman, if you recall.

8 THE COURT: His position is it was occupied
9 since January 1. On that, I'm clear. Okay?

10 Q. Okay. Mr. Kachmarsky, I just want to
11 understand your testimony. You're saying that -- can
12 we agree that at least at the time of your deposition
13 that your testimony was that there was a woman who
14 stayed there from the first of the year until
15 Mr. Spears came?

16 A. That's what I said in my deposition, yes.

17 Q. Okay. And am I correct that today you're
18 saying it might not have been the same woman; it might
19 have been somebody else?

20 MR. SLOTCHIVER: Same, asked and answered for
21 the third time.

22 MR. DUFFY: I'm trying to clarify.

23 A. There was someone in that office for some
24 period of time. That's all I know. I mean, I can
25 tell the difference between a man and a woman real

1 easy.

2 Q. Right. And you said she was in there all the
3 time; is that right?

4 A. A woman was in there all the time.

5 Q. Okay. That's my only point is today for the
6 first time I heard you say that it might have been two
7 different people.

8 A. It could have been three different people. I
9 don't know.

10 Q. Okay. Got you. And you just recently saw
11 the e-mails which indicated when the law clerk was
12 going to be starting for Taylor Foley in May; is that
13 right?

14 A. Yeah.

15 Q. Okay. Got it.

16 A. Yes.

17 Q. Now, isn't it true that you basically -- at
18 this point, you just sent any referrals to Zach -- any
19 referrals for leasing to Zach at Carolina One?

20 A. I have created a website called
21 frankebuilding.com. We traditionally have advertised
22 on Craigslist. And when I get leads, I forward those
23 e-mails to Zach Lord and he takes it from there.

24 Q. Right. And even David sent you some leads
25 and you forwarded those to Zach?

1 A. Correct.

2 Q. Okay. Okay. And can you agree with me that
3 David Taylor or Taylor Capital has done nothing to
4 frustrate K&T leasing space in the property?

5 MR. SLOTCHIVER: I'm sorry. I didn't hear
6 you, Brian. I apologize.

7 Q. Let me clarify. From any time three the
8 years before the lawsuit until now, can we agree that
9 there's nothing that David Taylor is doing to
10 frustrate the operation of K&T leasing out the
11 property?

12 A. If he has somebody in an office or if he's
13 putting files in an office, which he has done, he is
14 frustrating K&T leasing.

15 Q. Okay. Will you turn to page 29 for me in
16 your deposition? I want to clarify the timeframe.
17 Because my question here was whether at the time of
18 your deposition, so let me say it a little
19 differently.

20 At least at the time of your deposition, the
21 property was fully rented; is that right?

22 A. It was fully rented at that time, yes.

23 Q. Okay. And, in fact, you had had an
24 agreement -- let's go ahead and introduce that.

25 Will you turn to Exhibit 12, please? Are you

1 with me?

2 A. Yes.

3 Q. Okay. This is a listing agreement that you
4 entered into with Carolina One Real Estate, right?

5 A. Looks like it, yes.

6 Q. And is this what basically gives Zach Lord
7 the responsibility as an agent?

8 MR. SLOTCHIVER: Your Honor, can I place an
9 objection on the record? I'm not really sure what the
10 relevancy is. At this point, they have dismissed
11 their initial counterclaim that dealt with leasing
12 issues, so I don't know how this is relevant to where
13 we are today.

14 THE COURT: Okay.

15 MR. DUFFY: This is the point that David
16 Taylor is not frustrating any leasing that is being
17 done by Zach Lord. And I'm getting to the point where
18 in his deposition, Mr. Kachmarsky says ever since I
19 had this agreement, it's basically been fully
20 occupied. And that's perfectly relevant to the fact
21 that this place is operating just fine.

22 THE COURT: Okay.

23 MR. DUFFY: I'm going to get there if I can.

24 THE COURT: I'll allow it. Overruled. Go
25 ahead.

1 Q. Now you know where I'm going, John. You see
2 Exhibit 12?

3 A. Okay.

4 Q. This is when you entered into an agreement
5 that gives Zach at Carolina One -- lets him be the
6 agent for leasing the building, right, the suite?

7 A. Yes.

8 Q. Okay.

9 A. I think so. I'm pretty sure it is.

10 Q. Now, to be clear, it's giving him authority
11 to lease more than just 330; it's your other suites as
12 well, correct?

13 A. I don't see any suites listed on here.

14 Q. Okay. Well, I mean, just at the top where it
15 says address, vacant executive space, and available
16 offices.

17 A. Okay. That's what I was looking for, yes.
18 It's 140, 150, 230, 330 and 340.

19 Q. Right. And we're talking about 330?

20 A. 330 is K&T.

21 Q. Okay. Would you agree with me other than a
22 month or two from the time this agreement was entered
23 in 2021, at least until the time of your deposition in
24 July of 2023, that Suite 330 was fully occupied?

25 A. Give me the timeframe again, please.

1 Q. This agreement was entered June 1, 2021.
2 Your deposition was July 7, 2023. And it's my
3 understanding that Suite 330 has been fully occupied
4 during that time other than maybe a month or two; is
5 that right?

6 A. I think that's correct. And I do own --
7 there is a vacancy now. We had a vacancy that came
8 open in August, and we have another one that came open
9 this month.

10 Q. Okay. And do you know what efforts have been
11 made to lease those?

12 A. Same efforts as always.

13 Q. Okay. And so let me get back to my question
14 in the deposition, which was at the time of your
15 deposition, is there anything that David Taylor was
16 doing to frustrate the operation of K&T leasing
17 property?

18 MR. SLOTCHIVER: Where are you looking at the
19 deposition?

20 MR. DUFFY: Page 29 line 10.

21 A. Am I supposed to be looking at that now?

22 Q. Yeah. Sorry, John. Page 29, line 10 where I
23 asked: Is there anything that David Taylor is doing
24 to frustrate the operation of K&T leasing out the
25 property now?

1 A. Okay. Well, the thing I'm trying to explain
2 to you is we were full at that time. So, no, there
3 wouldn't have been anything that he could do. And
4 I -- other than having April Shores in the office who
5 is telling our tenants what to do and what not to do
6 and that sort of thing, which I think is very -- has
7 been very frustrating.

8 But other than that, no, there was not a vacancy
9 and there wasn't anything he could be doing to be
10 frustrating the leasing at that point.

11 Q. Okay. And so now when you say there are two
12 vacancies, is there anything that David Taylor or
13 Taylor Capital is doing to frustrate the leasing of
14 the space now?

15 A. At this point, there's not that I'm aware of.

16 Q. Okay. Okay. The basic setup of the business
17 that you described, is it fair to say that each of
18 your law firms occupies space in Suite 330?

19 A. Each of our law firms does occupy some space
20 in Suite 330.

21 Q. And each of your law firms pays rent for
22 space in 330?

23 A. Yes, we pay rent.

24 Q. Okay. And it's been part of what we're
25 talking about here is that the rent is determined

1 based on what other funds are coming in to K&T Group;
2 is that right?

3 A. Yes.

4 Q. Okay. And so isn't it true that in some of
5 the -- at least one of the circumstances that you were
6 talking about earlier, your law office had decided not
7 to use an office that it had been using, and so you
8 went to Taylor Foley and said now you have to pay
9 higher rent; is that right?

10 A. Yes. The example I gave you was that if we
11 had a \$2500 negative deficit and we had two offices --
12 or we had one office that was vacant, that would be
13 the one I moved out of, that office was rented for
14 2500, David would pay another 1250. 1250 each.
15 Basically he's paying the exact same amount, but he's
16 paying it in the form of rent and not as a deficit.

17 Q. I understand. And so in fact that happened
18 also in this 2022 timeframe, isn't that right, when
19 beginning in January, you took an additional office so
20 that then affected that Taylor Foley's rent could stay
21 where it was?

22 A. He had two more offices than me, and I asked
23 him to pay for two more offices than I had.

24 Q. Right. And you were letting him know you had
25 taken a different one so his obligation would vary

1 based on what you had done?

2 A. My obligation would vary based on what he
3 does as well, that's correct.

4 Q. Now, we talked about Dan Legare recommending
5 fair market value leases to avoid any disputes like
6 this. Has David proposed using a property manager?

7 A. He has.

8 Q. Okay. And you didn't want to do that, did
9 you?

10 A. No.

11 Q. Okay. How long have you been a lawyer,
12 Mr. Kachmarsky?

13 A. 40 years.

14 Q. Okay. And you specialize in business
15 organizations and business formations; is that fair?

16 A. I form them.

17 Q. Okay. And you advise your clients when you
18 form them; is that right?

19 A. Correct.

20 Q. And in this agreement, the K&T Group, LLC,
21 you decide here -- you agreed that company would be a
22 term company; is that right?

23 A. That's correct.

24 Q. And, in fact, I believe you testified that
25 that is what you recommend your clients all the time?

1 A. Right. It creates perpetual duration.

2 Q. Perpetual duration. And it has limited
3 transfer and exit rights; is that right?

4 A. Right.

5 Q. Okay. You can either look at 3 or 1 one for
6 us. It's the operating agreement for K&T.
7 Plaintiff's 3 or Defendants' 1.

8 So I would like to walk through a couple of
9 provisions here, John. If you look with me on page 2,
10 section 127 is in fact where it is stated this is a
11 term company; is that right?

12 A. Yes.

13 Q. Okay. And if you turn with me to page 326 --
14 I'm sorry. To page 8, section 3.6, do you see that
15 there's -- ceasing to be a member is if you transfer
16 your entire membership share or are expelled by
17 judicial determination, those are two ways you cease
18 to be a member?

19 A. Yes.

20 Q. And transfer of a share would be by unanimous
21 approval; is that right?

22 A. I think it would require both parties
23 agreeing.

24 Q. Okay. Another provision I want to highlight
25 is 3.8. This company may make a mandatory capital

1 call. Do you see that provision?

2 A. Yes.

3 Q. Okay. If you look with me on page 13,
4 section 5.5, a management committee meeting may be
5 called at any time by any manager. Do you agree with
6 that?

7 A. Yes.

8 Q. And if you look with me on page 26, section
9 11.2, that's the wrongful disassociation section in
10 the transfer article. It's about the right to buy.
11 Do you see that?

12 A. Yes.

13 Q. Do you see there that about a quarter of the
14 way down in that section, it says notwithstanding
15 anything in this agreement or the act to the contrary,
16 any purchase price to be paid for a wrongfully
17 disassociated membership share shall equal 75 percent
18 of the appraised value of such member's membership
19 share. Do you see that?

20 A. I do.

21 Q. Okay. And then there's reference to 11.3
22 with the purchase price, which is on page 28. And
23 that appraised value takes into account minority or
24 marketability discounts. Do you see that?

25 A. Yes.

1 Q. Okay. And the last point I just want to get
2 through is 12.2 is a notices provision. It's on page
3 30.

4 A. It's a generic notice provision.

5 Q. Right. And it says it shall be in writing
6 and hand delivered or sent by certified or registered
7 mail, postage prepaid. Do you see that?

8 A. I see it.

9 Q. Okay. You didn't send that kind of notice to
10 Taylor Capital for any default, did you?

11 A. Not in a postage envelope with all that, no.

12 Q. Okay. And you never called a member meeting
13 to address the claims about rent from January through
14 July, did you, of 2021?

15 A. I did not and neither did Mr. Taylor.

16 Q. Okay. And you didn't call a management
17 committee meeting, did you?

18 A. Informally, all of this was pretty much done
19 through the e-mails. I mean, it's . . .

20 Q. Okay. And you mentioned certain things
21 didn't get paid. You didn't make a capital call under
22 the agreement, did you?

23 A. You use the term capital call. You can call
24 it whatever you want to call it. It's semantics. I
25 told him what he owed, and I gave him the formula for

1 how it was calculated.

2 Q. You said Taylor Foley owed rent for that
3 office, right?

4 A. For the '21 we're talking about?

5 Q. Yeah.

6 A. After he didn't do what he was supposed to
7 do, I did, through an e-mail that you have.

8 Q. And there wasn't a vote that you called for
9 that ended in a deadlock, was there?

10 A. Well, if we didn't disagree, that's the only
11 vote we were going to have. That's where we were.

12 Q. You didn't send a notice for a meeting or a
13 vote or a default or anything?

14 A. No, and neither did Mr. Taylor.

15 Q. Right. He didn't sue you, did he?

16 A. Counterclaimed.

17 Q. Right. Okay. Would you agree with me that
18 the idea of getting a property manager is a reasonable
19 idea?

20 A. No, I think it's a terrible idea.

21 Q. Okay. You don't like it, but do you think
22 it's unreasonable and impractical?

23 A. I didn't say it's unreasonable. I think it's
24 a terrible idea for what we have and what we're doing.

25 Q. My question is is it in the context of people

1 who have an office suite that they're renting out to
2 different tenants and they occupy some together, is it
3 reasonable to have a property manager?

4 A. Reasonable or unreasonable? I mean, if
5 that's what you want, it's fine.

6 Q. Okay. And is it practical to be able to go -
7 - I mean, there are plenty of property managers around
8 that you can hire and it's practical?

9 A. There's plenty around.

10 Q. Okay. Now, the same question about getting
11 leases. If you could get, you know, the law firm to
12 enter into fair market leases, I mean, that's
13 something that is reasonable; is that right?

14 A. Well, my general opinion of where you're
15 going with this is that you hire somebody who you then
16 pay them 10 percent, at least the last time I looked
17 at this stuff, that's kind of the going rate, to do
18 essentially a job worse than is being done.

19 So all it would have done is cost money, and I
20 don't think there's any way they could have marketed
21 the space any better than it was already marketed.

22 Q. I'm talking about the fair market value lease
23 now. You agree with me that's something law firms
24 could reasonably do if they're in the situation like
25 your law firm and Taylor Foley?

1 A. If you want to get a property manager, yeah,
2 you can get one.

3 Q. Okay. We talked about that. Now I'm
4 talking -- so property manager is one way you could
5 address your situation. Another way like Dan Legare
6 proposed was get the law firms to enter fair market
7 value leases. Do you recall that?

8 A. I recall it, and I told you I was not going
9 to do that, absolutely not. Based on the history that
10 we had, that was -- I was not going to put money into
11 an account and then have somebody turn around and tell
12 me they didn't rent a space or didn't take it and then
13 use my money to pay bills that belonged to him.

14 Q. Right. But if you had a fair market value
15 lease in place, you could just say the lease says you
16 have to pay this, correct?

17 A. I don't know what that means actually.

18 Q. You would enforce the lease, right? If
19 Taylor Foley didn't pay what was required under the
20 lease, you would say, hey, you have to pay what's
21 under the lease and you could enforce that lease; is
22 that fair?

23 A. I have probably 25 or 30 month-to-month
24 leases, but they're month to month. I mean, you can
25 have a lease. A person wants to leave, they leave.

1 It doesn't really make any difference.

2 Q. I understand that you've chosen a different
3 course. My point is what Mr. Legare suggested is a
4 way to solve these issues is one reasonable way, and
5 would you agree with that?

6 A. It would have resolved the issues if you had
7 a partner who was going to basically do whatever he
8 said he was going to do. Every time you get a new
9 property, he's going to go in there and lease it
10 again? It's going to create a new lease and pay
11 money? That would have resolved this issue?

12 Q. I'm asking is it reasonable and practical for
13 a company that owns and leases space to enter into
14 fair market value leases with its tenants?

15 A. It's done all the time. I said if that's
16 what you want to do.

17 Q. And would you agree with me that Taylor
18 Capital is not in control of K&T Group?

19 A. He's not in control, and I'm not in control.
20 We are deadlocked 50/50.

21 Q. Now, you went through with Mr. Slotchiver the
22 sort of statutory provisions in your complaints about,
23 you know, different things that fall under those
24 provisions, and I just want to make sure I understand.
25 When I went through those things with you in your

1 deposition, and I think it's probably the same. I
2 just want to clarify.

3 Basically you're saying he's not paying rent for
4 space that's being used, and that's the answer to all
5 of these things?

6 A. It's been chronic.

7 Q. Right. You're saying it's all about not
8 paying rent, correct?

9 A. It's all about not paying rent or paying
10 capital calls or whatever you want to call it.

11 Q. That's a little bit different because you've
12 been calling it rent and it's not about rent and it's
13 about paying rent. You've said that over and over; am
14 I right?

15 A. Those terms in this context that we are in do
16 not mean anything different to me.

17 Q. Okay. Let's look at page 100 of your
18 deposition, please. Okay. I'm asking you about the
19 enumerated allegations of the complaint, and I said
20 I'm going to ask you about each of them. And I ask
21 you to tell me everything you think fits within that
22 category. Do you see that?

23 A. Yes.

24 Q. Okay. And then your answer was: Not paying
25 rent for space being used.

1 Correct?

2 A. Correct.

3 Q. And then you say: Wrongfully. I mean, it's
4 all about not paying rent.

5 Correct?

6 A. Correct.

7 Q. And then I go through the next pages and ask
8 you about each thing enumerated in your complaint
9 under the statutes, and your answer is: Not paying
10 rent. It's not paying rent.

11 Correct?

12 A. Right.

13 Q. Okay. Now, one point, what we're talking
14 about in this lawsuit that you claim hasn't been paid
15 is rent from January 2021 through July of 2021 --

16 MR. DUFFY: Objection, Your Honor.
17 Mischaracterizes the testimony.

18 THE COURT: Overruled. Go ahead.

19 Q. -- which comes out to be \$8,750, right?

20 A. That's what the number is today. That's not
21 what the number was when he failed to pay it. It was
22 more like \$30,000 on numerous occasions.

23 Q. The money you're asking for that you say is
24 in dispute any time -- I heard a lot from 2014 that
25 got resolved in 2015 and whatever arguments he had

1 before. But any time three years before you filed
2 suit in 2022, the only rent outstanding right now that
3 you contend is outstanding is 8,750?

4 MR. SLOTCHIVER: Asked and answered. He's
5 mischaracterized the testimony. He said that's the
6 amount still left but it's not the amount that was
7 owed at the time he filed it. It's not appropriate
8 with the Court because it's setting a message that
9 it's different than what he testified to.

10 THE COURT: Acknowledged. Overruled.

11 Q. I would be happy to go through the
12 deposition. Tell me what rent you think is
13 outstanding today.

14 A. I've already answered that question. I told
15 you it was the difference between what he paid and
16 what I put in my e-mail. I don't know what that
17 number is. It's \$8,000 or something like that.

18 Q. Okay. Great. Got it. Okay. And there's
19 \$8,000 in dispute. Would you agree with me that -- or
20 roughly 9,000.

21 Would you agree with me that the Suite 330 is
22 valued at somewhere close to \$2 million?

23 A. It's 325 a foot. 5,106 times 325 a foot.
24 Something like that.

25 Q. Okay. Is it fair to say at the time of your

1 deposition, you agreed that it was on a higher end 1.9
2 plus million dollars?

3 A. It was a little bit higher when I had my
4 deposition. There's an office for sale in that
5 building. It's for sale at 345 a foot, and there have
6 been no takers.

7 Q. Okay. Well, is it fair to say that a quarter
8 of the value is \$450,000 plus?

9 A. Walk me through the math.

10 Q. Well, it would be 500,000 would get you to 2
11 million. 450 is a good bit lower than 2 million. At
12 least that amount for 25 percent; would you agree with
13 that?

14 A. If it were 2 million and it was 75 percent of
15 that would be 1.5, I agree with that.

16 Q. Okay. And so half of that 25 percent -- so
17 Taylor Capital and your trust own the building half
18 and half, right? 50 percent each? The LLC, 50
19 percent each?

20 The value of Suite 330 roughly being just under
21 \$2 million, a quarter of that is roughly \$450,000?

22 A. Correct.

23 Q. Then half of that, meaning your part of that
24 and his part of that, 25 percent is \$225,000 -- just
25 these are approximate numbers. You agree with that?

1 A. Following the math.

2 Q. Okay. And so isn't it true that you are
3 seeking to push Taylor Capital out of the company and
4 get his interest valued at \$225,000 lower than it
5 otherwise would be plus discounting that would be
6 appropriate in an appraisal?

7 A. Well, as I told you in my deposition, that
8 was plan B. But it's now plan A.

9 Q. Right. So we've got under \$9,000 in dispute
10 for rent, and you're seeking to push him out and get
11 the value of -- at the low end \$225,000 from the
12 discount?

13 MR. SLOTCHIVER: Same objection.
14 Mischaracterization of the testimony.

15 THE COURT: Overruled.

16 Q. That's correct, right?

17 A. As you know, we have discussed partitioning
18 it as well, and that was plan A originally.

19 Q. Your lawsuit is about pushing him out and
20 getting this value as a result; is that right?

21 A. My lawsuit is -- I mean, this is what the
22 agreement says. That's what it says.

23 Q. Okay. And Taylor Capital is a member of the
24 LLC, correct?

25 A. That's my understanding.

1 Q. And Taylor Capital doesn't owe any rent to
2 K&T Group, does it?

3 A. I don't -- I mean, I don't -- it's the law
4 firm that I guess is level for the rent.

5 Q. Thank you.

6 MR. SLOTCHIVER: I won't be that long. Or we
7 can stop lunch. It's 1:15 now.

8 THE COURT: Let's just press on.

9 REDIRECT EXAMINATION

10 BY MR. SLOTCHIVER:

11 Q. John, there were questions given to you about
12 did you figure out the fair market value of your
13 personal offices.

14 My understanding your personal office and David
15 Taylor's personal office are basically mirrors of each
16 other.

17 A. They are the exact same square footage.

18 Q. So as long as you both are occupying one of
19 those offices and you're still sharing the rest of the
20 expenses after taking into account the money that came
21 in to offset it, it doesn't matter what those offices
22 are worth because the value to the two of you still
23 works out to be the same way?

24 A. That's always been my opinion.

25 Q. Mr. Duffy has repeatedly asked you questions

1 insinuating the only money that's owed is this \$8,500.

2 Is that because -- and I believe you testified to
3 this -- because after pushing him and writing him
4 again and again, he finally made the payment?

5 A. I mean, it's been, I testified, two times
6 when rent was six months behind. This last time, it
7 was three or four. And it just repeats and repeats.

8 Q. And to be clear, you wrote him a letter and
9 said you've got to pay the rent. You owe the rent.
10 And he paid part of the rent, not all of the rent, and
11 that's when you filed the lawsuit?

12 A. Correct.

13 Q. Okay. So the dispute is not over \$8500; the
14 dispute is over the fact that he doesn't pay the rent.
15 He doesn't pay the capital calls. Whatever he is
16 obligated to do, he doesn't pay it, and you're all
17 just having to cover or deal with it until eventually
18 he'll come and pay it?

19 A. I always end up in a dispute. Walk on
20 eggshells trying not to create a problem and end up
21 with another problem.

22 On this last round, all I said was just keep
23 paying the same amount that you're paying. And we got
24 this problem. I mean . . .

25 Q. Because you took another office and he still

1 wanted to do that, correct?

2 A. Right.

3 Q. Okay. Just to be clear, your position is
4 that Taylor Foley owes rent if it uses an office?

5 A. Correct.

6 Q. And he brought up the point that for a while,
7 Zach was -- that all the offices were filled.

8 Is one of the reason that all the offices were
9 filled is because he was occupying offices in his firm
10 but some of those offices were not being paid for?

11 A. On and off, that has continually happened.

12 Q. So while the offices are filled, the business
13 purpose of generating income from the use of those
14 offices by rental couldn't be fulfilled because some
15 of them were being occupied without rent being paid?

16 A. Correct.

17 Q. There was a point in time you testified about
18 in January when an employee, an intern, a clerk,
19 whatever you want to want to call it, took possession
20 of the office outside of your office.

21 And then you were asked did you object to it, and
22 you said no because they were supposed to pay rent for
23 it, which you brought up later on down the road.
24 Correct?

25 A. Correct. And he understands he has an

1 obligation to do that.

2 Q. And that's the same obligation you've always
3 had and the same obligation that was affirmed or
4 reaffirmed with Dan Legare?

5 A. Right.

6 Q. So when he asked you about how did they
7 frustrate the purpose, I guess they frustrated the
8 purpose by not paying rent therefore affecting what
9 the purpose of the whole business was was to generate
10 rent to offset the expenses so you can build equity in
11 the property and at the same time use it?

12 A. That's correct.

13 Q. I believe you stated -- let me clarify -- you
14 consider rent to be interchangeable with capital
15 calls?

16 A. In this context, yes.

17 Q. So when you use the word rent, it could be
18 rent, it could be capital calls, it could be rent and
19 capital calls?

20 A. Correct.

21 Q. In this case, it's actually both?

22 A. Yeah, I mean, like special assessment would
23 be more capital call-ish.

24 Q. And, again, to be clear, what rent is
25 outstanding today was not precipitous to filing the

1 action; it was the failure to pay rent which was a
2 much larger amount than the \$8500, correct?

3 A. It was like \$30,000.

4 Q. Or the action that you're moving for today,
5 basically to expel him or to terminate the group, you
6 filed a lawsuit, correct?

7 A. Yes, I did.

8 Q. And in connection with the lawsuit, you had
9 him and the defendant served with a lawsuit, right?

10 A. I believe they accepted it for service but,
11 yes.

12 Q. Okay. And so the service if you look back --
13 there was an issue made over 12.2, which was in the
14 defendants' notebook, tab 1, page 30.

15 Is it your position that that notice was
16 satisfied by having him served with the lawsuit?

17 A. Yes. Actually, it was before the lawsuit
18 also he was noticed.

19 Q. And he was noticed beforehand with
20 communication, correct?

21 A. Correct.

22 Q. There's been an argument made that the
23 pretext was for you to get advantage of some hundreds
24 of thousands of dollars of equity. The truth is you
25 filed for -- or, in the alternative, a partition

1 action, correct?

2 A. I did.

3 Q. And you asked the Court to sever and to
4 divide that suite into two units, correct?

5 A. Correct.

6 Q. And there's another unit next door and
7 throughout the building where that exact same thing
8 has taken place?

9 A. He's actually done the exact same thing.

10 Q. And you would ask the Court to award you if
11 they were to go that direction the section of the
12 office suite where you currently are and to give David
13 the section where NEFA was?

14 A. Correct.

15 Q. Okay. Or in the alternative to pursue with
16 the termination of the agreement and then to let you
17 buy it back or buy him out based on the terms set
18 forth in the agreement?

19 A. Yes.

20 Q. And the agreement was drafted by him,
21 correct?

22 A. Yes.

23 MR. SLOTCHIVER: Okay. Nothing further.
24 Thank you.

25 THE COURT: Let me just ask this. Is

1 partition still an option for you? That's what I'm
2 trying to figure out.

3 WITNESS: That's what I would prefer.

4 THE COURT: I got you. Is it my
5 understanding there are no leases with the K&T Group?

6 WITNESS: Well, there's none --

7 THE COURT: Let me restate that. No written
8 leases with the K&T Group?

9 WITNESS: Not with the law firms.

10 THE COURT: Not with the members?

11 WITNESS: Right. But there are with the
12 other ones. They're all month to month.

13 THE COURT: The rest of them are month to
14 month. They're written leases, but they're month to
15 month leases with whatever the tenants are that are in
16 the outlying units?

17 WITNESS: Yes, sir.

18 THE COURT: Okay. All right. And as relates
19 to the members of the LLC, is that rent amount, the
20 1250 figure and whatever else y'all get, is that the
21 same as its been since 2003?

22 WITNESS: Yes.

23 THE COURT: Or is that part of the 2015
24 agreement? What's the genesis of that?

25 WITNESS: That's what it was when we started.

1 And, frankly, I mean, I've got other suites that have
2 comparables offices that I'm getting 1500 and \$1750
3 for.

4 That's also been one of the problems here is
5 that if I were to increase the rent, I would have to
6 go to David and say would you mind paying another 250
7 or \$500 per office.

8 In the grand scheme of thing, it costs me
9 money and it costs me money not being able to do that,
10 but I would end up in another argument about it, so I
11 haven't done it.

12 THE COURT: All right. But as people come
13 and go from the units, they're paying something that's
14 relative to more of a market value rent?

15 I understand if you own something, you take
16 out a 30-year mortgage and you pay the same amount.
17 I'm with you on that.

18 WITNESS: But we've had a lot of
19 consistency -- the market really changed a lot after
20 COVID and then in the last year or two with inflation,
21 so a lot of this has been very recent.

22 THE COURT: All right. You had some other
23 questions?

24 MR. DUFFY: I just wanted to clarify.

25 RECROSS EXAMINATION

1 BY MR. DUFFY:

2 Q. John, we're talking about the rent for the
3 law firm being in the spaces. Who pays the rent for
4 your law firm? Is it the law firm?

5 A. Yes.

6 Q. Okay. And does Taylor Foley pay the rent
7 that's associated with Taylor Foley's use?

8 A. Yes.

9 Q. Okay. Thanks.

10 THE COURT: Any follow-up? All right. Well,
11 we went about an hour longer than I thought we might.
12 We made some progress.

13 Thank you, Mr. Kachmarsky. You may step
14 down. All right. How about 2:30?

15 MR. SLOTCHIVER: 2:30 is great.

16 (Recess from 1:28 to 2:37 p.m.)

17 THE COURT: Back on the record.

18 MR. SLOTCHIVER: The plaintiffs would like to
19 call Linda Kennedy. This is dealing with the
20 transaction that took place in 2014. The relevancy of
21 it is the pattern of conduct. The same that we argued
22 before. It will take about two minutes, but I wanted
23 to call her regarding the Ameris note.

24 THE COURT: The document I wouldn't let into
25 evidence?

1 MR. DUFFY: Right.

2 THE COURT: Okay. Is there a stipulation as
3 to this? Do we have acknowledgment or not?

4 MR. DUFFY: I don't think -- there's
5 certainly no pattern that there was -- that something
6 happened with a bank. This didn't have anything to do
7 with rent from Taylor Foley or anything else.

8 MR. SLOTCHIVER: The pattern is not doing
9 what you have agreed to do and obligated yourself to
10 do.

11 I will be happy to stipulate if you wish to
12 the extent you want take it under relevancy that
13 Ameris required him to move his operational account
14 and that he did not do that.

15 MR. DUFFY: I mean, I don't think any of that
16 is relevant to the case. That's my objection.

17 MR. SLOTCHIVER: We can stipulate to that?

18 MR. DUFFY: I'm not going to stipulate to
19 anything.

20 THE COURT: Go ahead and call your witness,
21 but I'm going to limit you to about five minutes.

22 MR. SLOTCHIVER: You got it. Let me call
23 Linda Kennedy to the stand.

24 THE COURT: Ms. Kennedy, come on up, if you
25 would.

1 LINDA KENNEDY having been duly sworn to tell
2 the truth, the whole truth, and nothing but the truth,
3 was examined and testified as follows:

4 THE COURT: Thank you, ma'am. Give me your
5 full name and address for the record.

6 WITNESS: Linda Holiday Kennedy. And it's
7 [REDACTED] Meggett, South Carolina,
8 29449.

9 DIRECT EXAMINATION

10 BY MR. SLOTCHIVER:

11 Q. Thank you, Your Honor. May it please the
12 Court.

13 Ms. Kennedy, my name is Dan Slotchiver and I
14 represent John Kachmarsky in this action which is
15 pending before the Court today. In that capacity, we
16 subpoenaed you to be here. So here we go. I will be
17 as quick as I can.

18 Okay. Where do you currently work?

19 A. Pinnacle Bank.

20 Q. I'm sorry?

21 A. Pinnacle.

22 Q. And back in 2014, were you working at Ameris
23 Bank?

24 A. Yes.

25 Q. Okay. And in 2014, did you have an

1 opportunity to -- or did you have a general working
2 relationship with K&T Group where you would handle
3 banks for them?

4 A. Yes.

5 Q. Okay. Do you recall a scenario where John
6 Kachmarsky reached out to you for some financing in
7 2014 to see if you would take over a note?

8 A. I don't recall, but I have a copy of my
9 commitment letter.

10 Q. You have paperwork showing a copy of the
11 correspondence?

12 A. Yes.

13 Q. And is that the same document that I'm
14 holding here?

15 A. Yes. Yeah. That's it.

16 Q. So this is what's previously been marked by
17 identification for the Court.

18 THE COURT: Plaintiff's 4 for ID.

19 Q. Ms. Kennedy, my understanding is at the time
20 you quoted the loan, the rate was at a fixed rate of
21 4.75 percent for this loan; is that correct?

22 A. Right.

23 Q. And my understanding is at the same time you
24 had quoted John Kachmarsky on a different suite a
25 lower rate of 4.25. Do you recall that?

1 A. I don't recall.

2 Q. Okay.

3 A. I can't.

4 Q. You don't recall the reason as to why or if
5 that took place?

6 A. It's ten years ago.

7 Q. Fair enough. If you'll look at --

8 THE COURT: Rates were certainly better back
9 then.

10 WITNESS: Yeah. Better than now.

11 Q. If you'll look at the second page of the
12 document under caption A, deposit accounts, do you see
13 that?

14 A. Yeah.

15 Q. And it says in consideration of the interest
16 rate outlined above, borrower and law practices shall
17 maintain their primary business deposits accounts with
18 Ameris Bank during the life of the loan.

19 A. That's correct.

20 Q. Okay. Was that a material term to this
21 agreement?

22 A. Well, we write that in all of our
23 commitments.

24 Q. So that's a requirement in order to get the
25 loan?

1 A. Yeah.

2 Q. If you don't agree to that, you don't get the
3 loan?

4 A. Well, we would honor this when we had part of
5 it because, you know . . .

6 Q. I'm sorry?

7 A. I know that John Kachmarsky opened his
8 accounts and was using his accounts at Ameris, and so
9 therefore we went ahead and honored the note.

10 Q. Okay. All right. And do you understand that
11 David Taylor did not move his operational account?

12 A. He didn't move his operational. They did
13 have K&T with us.

14 Q. Okay. And this was signed on the back
15 accepting this by both John Kachmarsky and David
16 Taylor?

17 A. Yes.

18 Q. Okay. Did you strong arm David Taylor
19 individually or in capacity as representing any of
20 these different organizations to sign this document?

21 A. No.

22 Q. Okay. Did he sign it voluntarily?

23 A. Yes.

24 Q. But he did not comply with the terms of the
25 agreement, correct?

1 A. Yes.

2 Q. Okay. I've got nothing further. Thank you.
3 You may have some questions by opposing counsel
4 Mr. Duffy.

5 CROSS EXAMINATION

6 BY MR. DANIEL:

7 Q. Thank you, Your Honor. May it please the
8 Court.

9 Ms. Kennedy, we were talking about the commitment
10 that Ameris made back in 2014; is that correct?

11 A. Yes.

12 Q. Okay. And did you have a relationship with
13 Mr. Kachmarsky before 2014?

14 A. Yes.

15 Q. Okay. What was that relationship?

16 A. I did some financing for his offices.

17 Q. Okay. Do you remember when that business
18 relationship started?

19 A. When I was at South Trust, which I don't
20 know. I think I left them in 2006.

21 Q. Okay. So at least as far back as 2006, you
22 had a business relationship with Mr. Kachmarsky; is
23 that fair?

24 A. Yeah.

25 Q. Okay. And fair to say that Mr. Kachmarsky in

1 2014 had other accounts open with you at Ameris Bank?

2 A. Yes.

3 Q. Okay. To your knowledge, did Taylor Capital
4 ever agree with Mr. Kachmarsky or his trust to obtain
5 financing at an optimal credit rate? Is that
6 something you have knowledge of?

7 A. No. I don't know exactly what you're asking.

8 Q. You don't have any knowledge of any
9 agreements between Mr. Taylor and Mr. Kachmarsky
10 related to your financing, correct?

11 A. No.

12 Q. Okay. Do you have knowledge about whether
13 K&T Group's change in financing to Ameris Bank in 2014
14 had any impact on K&T's business?

15 A. No.

16 Q. Okay. Do you have any knowledge of whether
17 that change in financing had any impact on K&T's
18 ability to place tenants at the Franke Building?

19 A. No.

20 Q. Okay. Mr. Slotchiver asked you a question
21 about Mr. Taylor's account moving or not moving to
22 Ameris Bank; is that correct?

23 A. Right.

24 Q. And you testified it did not move to Ameris
25 Bank?

1 A. Yes.

2 Q. Did that impact K&T's loan with Ameris Bank
3 in any way?

4 A. No.

5 Q. Okay. Thank you. No further questions.

6 REDIRECT EXAMINATION

7 BY MR. SLOTCHIVER:

8 Q. One follow up, Your Honor. You were asked by
9 Mr. Wilson if the loan provided by Ameris Bank had any
10 impact on the business of K&T.

11 Would you agree with me that if the loan that you
12 provided to K&T was higher, at a higher interest rate
13 because of Mr. Taylor's credit, than what would
14 otherwise be afforded, if the higher interest rate
15 cost more money, and if it cost more money, then it
16 does have an impact on someone's business?

17 A. Well, I don't recall any of the rates back
18 then.

19 Q. I understand that. But I'll represent to you
20 and you can take as a hypothetical that Mr. Kachmarsky
21 has testified he was offered four and a quarter for
22 his other property but because of Mr. Taylor's credit,
23 it was 4.75. So 4.75 is a higher payment than four
24 and a quarter, correct?

25 A. Yes.

1 Q. Okay. So higher payment means that the net
2 monies retained by the group would be less than if it
3 was a lower payment, correct?

4 A. Yes.

5 Q. Okay. And therefore over time that would
6 have a negative impact on the company?

7 A. Yes.

8 Q. Okay. Thank you.

9 THE COURT: You still have the document in
10 front of you?

11 WITNESS: Yes.

12 THE COURT: Would you have been involved with
13 the underwriting as well as the senior lender or the
14 business banking manager?

15 WITNESS: No.

16 THE COURT: Terms were determined by the bank
17 and make sure it gets done?

18 WITNESS: Yes.

19 THE COURT: And is that your signature on
20 what's page 5 of the document?

21 WITNESS: That's right.

22 THE COURT: All right. And so I think it was
23 dated the 24th of April and gave a deadline of the 1st
24 of May and looks like everybody else signed it on the
25 28th; is that right?

1 WITNESS: That's right.

2 THE COURT: Does that look to be a true and
3 accurate copy of what they signed at the time?

4 WITNESS: Yes.

5 MR. SLOTCHIVER: We would move to enter this
6 into evidence again.

7 THE COURT: Granted. Thank you. You may
8 step down.

9 (PLAINTIFF EXHIBIT NUMBER 4 WAS ADMITTED INTO
10 EVIDENCE.)

11 MR. SLOTCHIVER: Thank you, Judge. We would
12 call Edward Lapine.

13 THE COURT: Mr. Lapine?

14 EDWARD LAPINE, having been duly sworn to tell
15 the truth, the whole truth, and nothing but the truth,
16 was examined and testified as follows:

17 THE COURT: And if you would when you get
18 comfortable give us your full name and address,
19 please, sir.

20 WITNESS: Edward Peter Lapine. 45 Pedal
21 Creek Avenue, Charleston, South Carolina, 29412.

22 THE COURT: Okay. Thank you.

23 DIRECT EXAMINATION

24 BY MR. SLOTCHIVER:

25 Q. Mr. Lapine, would you please advise the Court

1 what you do for a living?

2 A. I work at the Law Office of John Kachmarsky.

3 Q. Are you a lawyer?

4 A. Yes, sir.

5 Q. Okay. You're a practicing lawyer?

6 A. Yes, sir.

7 Q. Okay. And can you tell us about when it was
8 that you came to work for Mr. Kachmarsky?

9 A. February 2021.

10 Q. Okay. And did you work in the same office
11 suite that his office is located in?

12 A. Yes.

13 Q. Okay. Are you still working for John as we
14 speak today?

15 A. Correct.

16 Q. And you work in a different office suite?

17 A. Yes.

18 Q. Neighboring office suite?

19 A. Yes.

20 Q. Okay. And not going to belabor with "why,"
21 but if the Court wanted to know, I'd be happy to go
22 into it.

23 THE COURT: Is it Suite 330?

24 Q. You work in --

25 A. -- 340.

1 Q. Okay. And is the reason you work in 340
2 because of issues with personnel in 330?

3 A. I'd say that was a contributing factor, yes.

4 Q. When you went to work for John initially,
5 describe to the Court -- so, you know, the background
6 of this, the office has two partner suites, partner
7 offices, and then there's two associate offices for
8 lack of a better term, and then there's kind of a
9 bullpen.

10 And the bullpen is where all the different staff
11 can work from the offices. Was your location in the
12 bullpen?

13 A. Yes.

14 Q. Okay. In February of '21, who if anybody --
15 or was there a person occupying the office next door
16 to John Kachmarsky's personal office, an office that I
17 would also describe as the associate office?

18 A. So John's office, the office in question, and
19 then Brent Bullock's office.

20 Q. And then Brent Bullock's office and David's
21 office?

22 A. Yeah. There was a woman who was working
23 there when I got there.

24 Q. Okay. And so when you started in February,
25 there was a woman who worked in that office?

1 A. Yes, sir.

2 Q. She worked there on a regular basis?

3 A. I mean, I worked there on a part-time basis
4 at that time, so I was working about 20 hours a week.
5 And whenever I was there, I felt like I would see her
6 in that office, yes.

7 Q. Okay. Did she generally keep her door open
8 so you would know if she was there or not there?

9 A. I would say the door was basically always
10 open.

11 Q. In order for you to get into John's office,
12 did you have to walk by her office?

13 A. Yes.

14 Q. And when you left John's office to go to your
15 office, you would walk by her office?

16 A. Correct.

17 Q. And as a young lawyer, you would do that on a
18 regular basis?

19 A. Back and forth all day.

20 Q. Did somebody, whether her or somebody else,
21 utilize working for Taylor Capital in that office the
22 entire calendar year?

23 A. I remember seeing that woman in there fairly
24 consistently, and then there was a gentleman that was
25 working in there after her. And it's like three and a

1 half years ago, so my mind -- first she was there and
2 then he was there.

3 Q. Okay. I've got nothing further. Thank you.

4 CROSS EXAMINATION

5 BY MR. DUFFY:

6 Q. Good afternoon, Mr. Lapine.

7 A. Yes, sir.

8 Q. When were you first contacted about being a
9 witness in this case?

10 A. Several months ago, I guess.

11 Q. Several months ago. And who contacted you?

12 A. I work in the office with John, so John.

13 Q. Okay. And did he tell you it was about
14 whether somebody was occupying this office that you
15 just talked about?

16 A. Well, there was that issue and some other
17 issues possibly, but, yeah.

18 Q. Okay. So this was you're saying a few months
19 ago from now, so this was summer of 2024?

20 A. I feel like it was whenever the case was
21 started and filed. I don't know.

22 Q. Well, that was summer of '22, so that's more
23 than a few months ago. So when was it that you were
24 first approached about being a witness?

25 A. I feel like it was when it was first filed,

1 he asked me about it and asked me to look at the
2 complaint.

3 Q. Okay. And did he ask you then about whether
4 somebody had been in the office the year before?

5 A. No.

6 Q. Okay. The first time you've thought about
7 that issue is when? First time you've thought about
8 who was sitting in the office in January of 2021
9 through July of 2021?

10 A. Sorry, what's the question?

11 Q. All right. I asked when you were first asked
12 to be a witness, and I think you first said a few
13 months ago.

14 A. Right.

15 Q. But you looked at the complaint maybe when it
16 was filed, right?

17 A. Right.

18 Q. So you're a witness here today about whether
19 somebody was in the office in 2021.

20 A. Okay.

21 Q. And when were you first approached with that
22 question?

23 A. I would say I guess a couple of months ago.

24 Q. And had you thought about that at any time
25 from 2021 until a couple of months ago?

1 A. Only if it had been brought up.

2 Q. And was it?

3 A. I wasn't -- truly, you know -- I wouldn't say
4 so, no.

5 Q. Okay. All right. So now you come in today
6 and you said that someone was in the office when you
7 started in February of 2021, right?

8 A. Uh-huh.

9 Q. Yes?

10 A. Yes, sir. Sorry.

11 Q. And what was her name?

12 A. The woman in the office?

13 Q. Yeah.

14 A. I do not know.

15 Q. Did you ever speak to her?

16 A. I don't believe I did.

17 Q. You walked back and forth with her office
18 door open, looked at her all day back and forth, and
19 you never spoke to her?

20 A. Walking to John's office and back to my desk.

21 Q. Did she ever come out of the office?

22 A. I'm sure she did, but I don't remember having
23 any interaction.

24 Q. You didn't interact with her at all?

25 A. No, sir, not that I can recall.

1 Q. Does the name Gabrielle Murphy sound
2 familiar?

3 A. Not particularly.

4 Q. Okay. So when you would walk back and see
5 this woman -- let's say February, you get there.
6 She's got her office open. Is she just sitting at a
7 desk in a chair?

8 A. Yeah. Again, I was walking to John's office
9 and I would just, you know, walk by and see somebody
10 in the office, and I wasn't staring in.

11 Q. You said you walked by and saw her all the
12 time. Is she sitting at a desk in a chair, a
13 computer? What's she doing?

14 A. I saw her in the office, and so she was in
15 the office I presume sitting at a desk.

16 Q. Okay. Was it an office space that looked
17 like some professional is using it? It's got carpet,
18 desk, chair and whatever else? Is that what it looked
19 like?

20 A. Yes, sir.

21 Q. Okay. And you don't know her name? What did
22 she look like?

23 A. Caucasian woman wearing like office clothes,
24 professional, casual business attire.

25 Q. And this was the same person you saw from

1 February of 2021 through end of July of 2021?

2 A. Again, in my mind, I was, you know, going in
3 and I was seeing a woman in that office for the first
4 several months, and then next thing I know, there's a
5 guy in that office.

6 Q. Mr. Spears moved in in August. We all agree
7 on that.

8 A. Okay.

9 Q. And you're saying that the woman you saw was
10 there from when you started in February until
11 Mr. Spears moved in?

12 A. Basically, yeah.

13 Q. Okay. Thank you. That's all the questions I
14 have.

15 REDIRECT EXAMINATION

16 BY MR. SLOTCHIVER:

17 Q. Just a quick follow-up, Your Honor. Is the
18 reason you never spoke to the person in the office
19 because you were working in somewhat of a hostile
20 environment?

21 A. You could say that.

22 Q. Did you generally wear noise-canceling
23 headphones because of the noise in the bullpen?

24 A. I did.

25 Q. Okay. And were you made to feel unwelcome in

1 the portion of the office where you were working?

2 A. I mean, not explicitly, but it wasn't very
3 welcoming.

4 Q. Is that part and parcel why John moved you to
5 a different office suite so that you would be away
6 from that environment?

7 A. It was a very big contributing factor.

8 Q. One second, Your Honor. And one of the
9 reasons that you moved next door to a different suite
10 was because there was nothing available in your
11 office?

12 A. Correct.

13 Q. Okay. So the office next to John's was
14 occupied by somebody from David's office?

15 A. Yes.

16 Q. Okay. I've got nothing further. Thank you.

17 RECROSS EXAMINATION

18 BY MR. DUFFY:

19 Q. Follow up on that last point. So when was it
20 that you moved from the bullpen area to 340?

21 A. January of this year.

22 Q. Okay. So you were in there in that bullpen
23 area until that time. In February of 2021, were you a
24 lawyer?

25 A. No, sir. Well, I was a law school graduate.

1 Q. When did you pass the bar?

2 A. May '22.

3 Q. Okay.

4 A. I think.

5 Q. And, ultimately, do you meet with clients?

6 A. Yes.

7 Q. Okay. And you do that in Suite 340, right?

8 A. Yes.

9 Q. Wouldn't really be a good place to do that in
10 a bullpen area with a lot of different people around;
11 is that fair?

12 A. I would say so.

13 Q. And would you think that's a reason why
14 you're in Suite 340?

15 A. I can say that is a conceivably contributing
16 factor.

17 Q. And do you know if anybody at Taylor Capital
18 was being rude to you?

19 A. When you say Taylor Capital, are you talking
20 about everybody who worked in like that area out there
21 with me?

22 Q. Do you know who works at Taylor Capital? Do
23 you know anything about Taylor Capital?

24 A. Is Taylor Capital Taylor Foley, or is that
25 something different?

1 Q. Taylor Capital, LLC. Do you know anything
2 about it and do you have complaints about how Taylor
3 Capital, LLC behaved towards you?

4 A. I don't know what Taylor Capital is involved
5 with or in, so no complaints about Taylor Capital.

6 Q. You didn't get along with people or didn't
7 enjoy the atmosphere with people at Taylor Foley; is
8 that right?

9 A. No, I didn't enjoy it. It was a difficult
10 environment to work in.

11 Q. And when you passed the bar and meeting with
12 clients, you moved to Suite 340, right?

13 A. Among other reasons.

14 Q. And you're not part of the Kachmarsky Trust,
15 are you?

16 A. No, sir. No, sir.

17 Q. Okay. Thank you.

18 THE COURT: Can you describe this bullpen?
19 Are there multiple people in one room? What
20 constitutes a bullpen? I know what a bull is and I
21 know what a bullpen is. I'm unfamiliar with that in
22 the legal environment context.

23 WITNESS: So it's an area like about as big
24 as half this courtroom maybe or maybe a little shorter
25 than that.

1 And there was -- so there's the law offices
2 here and then like 10 feet and then there's the two
3 Taylor Foley girls. They worked face to face here
4 like sort of -- I'm across like six feet away from
5 their desks on the other side of that room, and then
6 there was another desk next to me that was unoccupied.
7 And then back here was like -- I think their
8 bookkeeper was back there. So there were usually two
9 or three people out there with me.

10 THE COURT: You described there being four
11 people and at least five desks in the space you just
12 talked about; does that sound about right?

13 WITNESS: Me being one of those people?

14 THE COURT: Yes.

15 WITNESS: Yes, sir.

16 THE COURT: So if somebody is on the phone
17 talking to somebody else, you can overhear them in the
18 background and it's not conducive to interviewing
19 clients and that type of thing?

20 WITNESS: Yes, sir.

21 THE COURT: And the difficulty in the work
22 environment, is it the noise or is it one person in
23 particular that worked in the room? Where are you
24 getting that there?

25 WITNESS: Generally it was the noise, but it

1 seemed to be exacerbated by certain people out there
2 making things louder and more disruptive.

3 THE COURT: In the bullpen?

4 WITNESS: Yes, sir.

5 THE COURT: Got it. Okay. All right.

6 That's all I need to know. Okay.

7 MR. SLOTCHIVER: Nothing further.

8 THE COURT: Mr. Lapine, thank you very much.
9 May he be excused and go back to making a living?

10 MR. SLOTCHIVER: Yes, sir.

11 THE COURT: Go all right. Very good. All
12 right.

13 MR. SLOTCHIVER: Your Honor, at this point,
14 we're going to rest our case.

15 THE COURT: All right. Very good. Plaintiff
16 rests.

17 Mr. Duffy?

18 MR. DUFFY: Despite what Your Honor just said
19 about lawyers on the witness stand, I'm going to ask
20 Mr. Taylor to come up.

21 THE COURT: All right. Mr. Taylor's turn.
22 All right.

23 DAVID TAYLOR, having been duly sworn to tell
24 the truth, the whole truth, and nothing but the truth,
25 was examined and testified as follows:

1 THE COURT: Thank you, sir. Give us your
2 full name and address, please.

3 WITNESS: David Glenn Taylor, 167 Cooper
4 River Drive, Mount Pleasant, South Carolina 29,464.

5 THE COURT: Thank you, sir.

6 DIRECT EXAMINATION

7 BY MR. DUFFY:

8 Q. David, will you please tell the Court a
9 little bit about your background?

10 A. Yes. I've been a lawyer. I graduated from
11 law school in 1996. Studied and received an LLM in
12 taxation. I moved back to South Carolina and took a
13 job at Holmes and Thompson in 1998 and loved those
14 people. I was very happy with that culture and that
15 environment. Great lawyers. I practiced with Holmes
16 and Thompson for a year and a quarter.

17 Our business department split from the firm and
18 went to Moore and Van Allen. I did not want to leave
19 Holmes and Thompson, but there was no law firm left.

20 So I went over to Moore and Van Allen with our
21 business department. I stayed there three weeks and
22 knew it wasn't a good fit for me, and I left and
23 started my own practice.

24 Q. Okay. Good. You know, the Court's heard a
25 good bit about the history, but why don't you just

1 tell us briefly about you getting in contact with
2 Mr. Kachmarsky and how it led to K&T Group?

3 A. Yes, sir. I had a roommate of mine from law
4 school that was an associate of John's, and John had
5 just purchased a suite in the Franke Building at 140.
6 His associate and my friend mentioned there was office
7 space.

8 At that time, I had been invited with multiple
9 former Holmes and Thompson lawyers to join them and
10 just sort of wanted to do my own thing. And so I went
11 over and saw some space in Suite 140 and had met John
12 before that and just rented space from him in that
13 suite.

14 Q. Okay. And tell me how the 330 opportunity
15 came up.

16 A. Yes. So John testified at some point about a
17 year after we were -- I was a tenant, we were office
18 mates together. John approached me about forming a
19 law partnership.

20 So we had done that -- I think that was the
21 beginning of 2000 probably. And then at some point as
22 John mentioned in the Franke Building, if you own real
23 property in the building, there's a right of first
24 refusal. So each owner has a right to step into the
25 contract of a potential purchaser.

1 Warren and Sinkler had Suite 330, had purchased
2 it, and then had put it back on the market. And
3 Robert Rosen and I think his wife had another
4 contract. John came to me and said that he wanted to
5 buy it and wanted to know if I wanted to buy it with
6 him.

7 He had a vendetta against Robert, and I wanted to
8 buy space in the building for my law practice, and so
9 it was just a good fit.

10 Q. Okay. Good. And so y'all created K&T Group.
11 And tell me how that operated once you moved into 330.

12 A. We created K&T Group. Purchased the
13 property. We moved into the -- well, after we
14 purchased it, we did some renovations and put in
15 hardwood floors and reconfigured the offices that John
16 and I have now. I have one; he has the other. And
17 after the renovation, we moved in and started
18 practicing law there.

19 Q. Okay. Can you grab that black binder booklet
20 there and look at Exhibit 1, which is the first
21 amendment in the operating agreement. Just verify is
22 that in fact the operating agreement, most recent
23 governing agreement?

24 A. Yes, sir.

25 Q. Okay. And does it indicate when the entity

1 was first formed?

2 A. Yes, sir.

3 Q. When is that?

4 A. November 11th of 2003.

5 Q. Okay. And so tell me again how -- or tell
6 me -- walk me through how it worked, you know, when
7 y'all first got started in Suite 330. Who was there?
8 Who paid what?

9 A. It's been a long time ago. I don't really
10 remember who all was part of our firm at that point.
11 I know we had staff level people, paralegals and the
12 like.

13 It's been a long time ago. I'm not sure who all
14 was in the firm at that point. I'm not sure I'm
15 answering your question.

16 Q. Fair enough. We'll fast forward. Ultimately
17 at some point you and John had a disagreement about
18 how the space was going to be used and paid for. Do
19 you agree with that?

20 A. Yes, sir. Well, at some point after we
21 purchased the space, our law partnership disbanded.
22 So it went from us as a law partnership to John and
23 his own law firm and me with my own law firm.

24 Q. Okay.

25 A. And at that point, we had to, you know,

1 figure out who's sitting where and who's working for
2 whom. And at that point, some disagreements about how
3 to use space became an issue.

4 For a very long time, we -- it's a very large
5 space. John said it's 5160. I think it's bigger than
6 that. It's a lot of space, and we had a lot of open
7 space. It was almost eerie.

8 And so there were instances where with all this
9 open space, I had someone working for me in my law
10 firm, and with a spacial need bigger than John's, I
11 would suggest that they would sit in that empty space
12 and occupy it.

13 And John at some point voiced some issues with
14 that. I think, if memory serves, it was after we had
15 started to lease out the space but not before.

16 Q. Okay. Will you take just a minute and try to
17 get this through this quickly. It was addressed
18 earlier, so I want to touch on it.

19 Will you look through Exhibits 2, 3, 4 and 5
20 there and just page through them and refresh your
21 recollection and I will ask you some questions about
22 it.

23 A. Yes.

24 Q. Okay. Is it fair to say -- trying to cut
25 through some of it -- that you directly addressed with

1 John you had a different perspective than he did on
2 how space in the building y'all owned together would
3 be used?

4 A. Yes, sir.

5 Q. And did you, with John's agreement, reach out
6 to Dan Legare for some help in resolving that between
7 you?

8 A. Yes, I did.

9 Q. Okay. And did, in fact, Mr. Legare suggest
10 that you should pay for space -- that your law firm
11 should pay for space that you're using if it's more
12 than what John's law firm is using?

13 A. Dan suggested we treat the property as an
14 investment like any other owner would and that our
15 respective organizations pay for space, occupy that
16 space under a lease agreement, and treat it as an
17 investment.

18 Q. Okay. But y'all didn't enter into the fair
19 market value leases that he was referring to?

20 A. We did not.

21 Q. And why didn't y'all enter into lease
22 agreements?

23 A. John did not want to.

24 Q. Okay. Was it your understanding that there
25 was a difference between hiring --

1 MR. SLOTCHIVER: Objection, leading question.

2 Q. Is it your understanding there was a
3 difference between placing someone as a permanent
4 employee and having a temporary use of office?

5 A. Absolutely.

6 Q. Okay. Tell me about that.

7 A. Well, when you have someone coming in on a
8 temporary basis, you find a place for them to sit
9 that's open. It wasn't uncommon for us to have like a
10 clerk or intern sit in our conference room, for
11 example, or grab an open desk that's -- you know,
12 they're there for a temporary period of time. You're
13 just giving them some place to sit.

14 Q. Okay. And there was some talk earlier about
15 fair market value lease or whatever, and you had
16 leased some space back from this NEFA group. Tell me
17 what that was about.

18 A. Yes. Again, this has been a while ago. My
19 staff handled most of this. Sallie Holder, who was
20 sitting in that NEFA space, was hired to come in and
21 run the practice.

22 I was in New York at the time, and so my staff
23 handled all of that. But she needed space to sit.
24 NEFA, who is a tenant that John had procured, wasn't
25 using the space, so my staff went over and negotiated

1 a deal with NEFA for her to sit in basically a
2 conference room.

3 Q. But NEFA already had control of that through
4 their arrangement that John orchestrated?

5 A. Yes, sir.

6 Q. Okay. So that has no impact whatsoever on
7 K&T Group, does it?

8 A. No, sir.

9 Q. Okay. Okay. Let's talk a minute about that
10 early 2022, and I will turn your attention to Exhibit
11 7, 8, and 9. Do you recall that Mr. Kachmarsky had
12 been reaching out to someone named Julie?

13 A. I do recall.

14 Q. Can you tell me about that?

15 A. Yes, sir. Julie Tilman is a CPA. She has
16 been part of our team on a temporary basis, like two
17 days a week, to do bookkeeping and handle financial
18 affairs for our organization and for K&T Group
19 actually.

20 And around the beginning of -- at the end of
21 2021, I think it was, Julie left our -- she went to do
22 other things, so we had to replace her with a few
23 other bookkeepers. We had a problem finding someone
24 that could do that work.

25 At some point, I'm not sure if it's Julie or the

1 person who replaced Julie, sent a message to me saying
2 that John or somebody -- must have been the lady that
3 replaced Julie. Somebody had come by and requested
4 that a check be cut and wanted to run it by me and
5 verify it. And so that was the situation at the
6 beginning of 2022.

7 Q. Okay. And do you recall reaching out through
8 Ms. April Shores to get more information?

9 A. Yes.

10 Q. And tell me, why did you do that?

11 A. Well, because the request for the payment
12 came from John and, historically, John's request for
13 payments and other things like that aren't very
14 accurate. And I don't have a lot of faith in his
15 ability to accurately summarize obligations that are
16 owed.

17 Q. And do I understand correctly that when
18 Ms. Tilman was there, Ms. Tilman handled whatever the
19 payments --

20 MR. SLOTCHIVER: Objection to the leading
21 testimony.

22 Q. Did you just testify that Ms. Tilman was
23 there as a CPA who handled payments for K&T Group?

24 A. Yes, sir.

25 Q. Okay. And so does that mean that you relied

1 on her to do that rather than you doing that?

2 A. Yes, sir.

3 Q. And she was gone, and now you started to look
4 into it; is that fair?

5 A. Yes, sir. The question came to me asking for
6 confirmation for the payments, and they weren't
7 standard payments. It didn't appear to be standard
8 payments. There were things in there that I needed to
9 understand what they were.

10 Q. Okay. And is it fair to say ultimately --
11 you see in Exhibit 8 you were e-mailing directly with
12 Mr. Kachmarsky in early March?

13 A. Yes.

14 Q. And do you see that he's e-mailing about your
15 inquiring about the \$15,000 number that he said on
16 March 7 was something in addition that you needed to
17 pay?

18 A. Yes. As John mentioned, not our first time
19 that a request for payment would be made and then it
20 would change and things sort of bounced around.

21 So, yes, I was trying to figure out what payments
22 were for and confirm everything.

23 Q. And ultimately at the top of Exhibit 8, he
24 responds the 12 times 1250 equals 15,000, which is a
25 reference to 12 months at that monthly rate; is that

1 right?

2 A. That was my understanding, yes, sir.

3 Q. And so that's what we're here about today is
4 this additional office that John was demanding payment
5 for for use of all year; is that right?

6 A. Yes, sir.

7 Q. Okay. And you see on Exhibit 9 that you made
8 payment in April in the reference there at the bottom,
9 do you see the August 5th through December 31st?

10 A. I do, yes.

11 Q. Okay. Tell me why did you pay for office
12 space use at that time?

13 A. Because we had our new associate, Jay Spears,
14 obviously -- that was his starting date.

15 Q. Okay. And was someone in that office before
16 Jay Spears?

17 A. Not to my knowledge at the time. I have
18 since found out that a temporary employee of a law
19 clerk, Gabby Murphy, would sit in there when she was
20 in the office.

21 Q. Okay. And so on Exhibit 8, you see that at
22 March 7, you're having these discussions with
23 Mr. Kachmarsky.

24 If you look at Exhibit 10, what did you receive
25 on March 17th?

1 A. A letter from Dan Slotchiver.

2 Q. Okay. And the re line is the caption of this
3 lawsuit; is that right?

4 A. Yes, sir.

5 Q. Okay. Aside from those e-mails, you had not
6 received a notice of a capital call, had you?

7 A. I've never received a notice of a capital
8 call.

9 Q. Management meeting, anything like that?

10 A. No, sir.

11 Q. Okay. Taylor Foley hadn't received an
12 eviction notice, had they?

13 A. No, sir.

14 Q. Okay. Let's skip a few and look with me to
15 Exhibit 22, please. Can you tell me what that is?

16 A. My eyes could be better, but it's a payroll
17 summary report for Gabby Murphy.

18 Q. And what period of time does it indicate that
19 this is for?

20 A. Parts of May through July.

21 Q. But just under payroll summary report, what
22 time does this capture?

23 A. January 1st, '21 through December 31st, '21.
24 All of the 2021 year.

25 Q. And what entries show when Ms. Murphy was

1 working with you?

2 A. May 14th and through the end of July.

3 Q. Okay. So this would be payroll on May 14th,
4 which she might have started earlier in May, but this
5 is when she hits that payroll; is that fair?

6 A. Yes, sir, probably fair.

7 Q. Look at Exhibit 23 with me, please. We've
8 seen this one before earlier today.

9 A. Yes, sir.

10 Q. And do you see that this is indicating that
11 this law clerk is going to be starting in May?

12 A. Yes.

13 Q. And what else is April indicating to you in
14 this e-mail?

15 A. That we need to buy furniture for that office
16 in anticipation of hiring Jay Spears in August and
17 that there was no furniture in the office previous to
18 that. And Ms. Murphy was going to sit in there on a
19 temporary basis if she wanted to -- April wanted to
20 furnish the office in anticipation of the August
21 occupation.

22 Q. Okay. And if you look at Exhibit 24 with me,
23 please.

24 A. Yes, sir.

25 Q. Now, we looked at this with Mr. Kachmarsky.

1 Does this reflect that -- the first e-mail at the
2 back, you see Ms. Shores. Does Ms. Shores work with
3 Taylor Foley?

4 A. She does, yes.

5 Q. What is she advising Mr. Kachmarsky of?

6 A. The acquisition of a parking card so that the
7 law clerk would have ability to park in May.

8 Q. In May. So at the bottom of 105, does she
9 indicate when this person is going to be starting?

10 A. In May.

11 Q. Yeah. Okay. And Mr. Kachmarsky acknowledges
12 that and agrees with the parking card; is that fair?

13 A. Yes, sir.

14 Q. And then Ms. Shores on the first page there
15 says she technically starts May 3rd; is that right?

16 A. Yes, sir.

17 Q. Okay. And so on Exhibit 25, does that
18 indicate that Ms. Shores is following up on payment
19 that was being paid to Mr. Kachmarsky for this parking
20 card?

21 A. Yes, sir, it does.

22 Q. Did your office have anybody in that space
23 that Ms. Murphy used prior to Ms. Murphy in 2021?

24 A. No, sir. No one.

25 Q. Do you have any idea who could have been a

1 young woman with Taylor Foley sitting in that office
2 space?

3 A. We don't have any young women or any women
4 working for our firm except for the two young ladies
5 that sit in the bullpen that Ed Lapine mentioned.
6 Gabby Murphy was the only other female in our
7 organization.

8 Q. And did you do any investigation of Taylor
9 Foley's files on people to find out if in fact that is
10 correct or if you missed something?

11 A. I did. I actually was so confused by it I
12 asked for a staff meeting --

13 MR. SLOTCHIVER: Objection, Your Honor.
14 Hearsay.

15 MR. DUFFY: He's testifying to his
16 understanding.

17 MR. SLOTCHIVER: He's testifying about
18 conversations he had with people that are not here
19 today. That's hearsay.

20 MR. DUFFY: It's his understanding. It's not
21 being truth of the matter, it's being what is his
22 understanding and why.

23 MR. SLOTCHIVER: I believe the question was
24 did you do any investigation and the response was yes,
25 I reached out to . . .

1 That's not understanding at that point. That
2 becomes testimony about hearsay.

3 THE COURT: All right. Restate the question.
4 Let me get this.

5 Q. Did you investigate whether or not your
6 understanding was correct?

7 A. I did, thoroughly.

8 Q. And did you confirm it?

9 A. Yes, sir.

10 Q. Now let's talk a little bit about some issues
11 came up about how whatever disputes come up can be
12 fixed. What is your view of that?

13 A. I'm sorry?

14 Q. What's your view of how you make sure you and
15 John don't have disputes about rent for each law firm?

16 A. I think it's very simple. It's a real estate
17 investment. If you have real property leases with the
18 rights of the landlord and tenant and the obligations
19 of everyone, it's very well documented and set forth,
20 then all these disputes go away.

21 If you have the property manager that enforces
22 those leases and leases any open space, it all goes
23 away.

24 So, you know, this has been a very good
25 investment for both John and I and should continue to

1 be that way. And, to me, these issues need to be
2 taken up and we can be owners and go practice law.

3 Q. From 2003 on, the company is continuing to --
4 K&T Group owns, leases, manages the property at Suite
5 330; is that right?

6 A. Yes, sir.

7 Q. Okay. Thank you very much.

8 A. Okay. Thank you.

9 CROSS EXAMINATION

10 BY MR. SLOTCHIVER:

11 Q. David, do you work in your office on location
12 every day of the week?

13 A. Not every day of the week, no.

14 Q. All right. Is it fair to say that there are
15 weeks when you don't come in at all and weeks when you
16 come in every single day?

17 A. It's fair to say I have times when I'm in the
18 office and times when I'm out.

19 Q. But you have extensive times when you're not
20 in the office. I'll represent John has told me there
21 will be weeks that go by --

22 MR. DUFFY: Your Honor, speaking of hearsay.
23 Putting it in his question.

24 MR. SLOTCHIVER: It's cross examination. I
25 think there's some leeway.

1 MR. DUFFY: That's somebody else's statement.

2 THE COURT: Hold on. Go ahead and ask the
3 question.

4 Q. My understanding is that weeks go by when
5 you're not in the office.

6 A. I don't know if weeks go by, but I have times
7 when I'm in the office and times when I'm not.

8 Q. In fact, you've got an office manager who
9 generally uses your office because you're not there
10 that often.

11 A. Right now, I have a CEO, office manager, who
12 we hired on August 1st that's sitting in my office
13 right now, yes, sir.

14 Q. Okay. So if you're not there on an everyday
15 basis then you don't necessarily know what's going on
16 on an everyday basis; is that a fair statement?

17 A. I think I would know what's going on with my
18 firm when I take it up with my staff. But I'm not
19 sure -- give me specific examples of questions, I
20 could answer them.

21 Q. Sure. I'll come to that in a minute. Let's
22 go through a couple of housekeeping things that will
23 help us move along.

24 Would you agree with me that back in 2014, your
25 credit was not good?

1 A. I wouldn't agree with that. I don't know
2 what my credit was in 2014.

3 MR. DUFFY: Your Honor, just for the record,
4 credit in 2014 has nothing to do with the claims in
5 the lawsuit.

6 THE COURT: Got it.

7 MR. SLOTCHIVER: May I open and publish his
8 deposition, Your Honor?

9 THE COURT: All right. Well, the objection
10 has been raised on relevance. Where are we going?

11 MR. SLOTCHIVER: Your Honor, one of the
12 issues is credibility. There's an obvious dispute as
13 to what discussions took place and what facts were
14 discussed, and I think the response to his answer just
15 now is inconsistent with what I will tell you the
16 testimony shows.

17 THE COURT: All right. Go ahead. You can
18 open it up.

19 Q. If you'll turn to page 39.

20 A. Okay.

21 Q. And you remember my taking your deposition,
22 correct?

23 A. Yes, sir.

24 Q. And this was back on July 7th of 2023. Look
25 and read along with me on line 12. I asked you: Do

1 you have any credit issues?

2 And your response was: I don't. Not right now,
3 I don't.

4 And my next question was: Have you back in 2014?
5 Did you have any judgements against you?

6 And you said: I did.

7 I said: Do you have any judgements against you
8 that are current?

9 You said: I don't. They all expired.

10 So if you had judgements against you back in
11 2014, would you agree with me that you had credit
12 issues in 2014?

13 A. No. Credit issues in my view is credit
14 score. Judgements don't necessarily show up on credit
15 scores. What I mean was I don't know what my credit
16 score was in 2014.

17 Q. Okay. Do you remember that Wells Fargo
18 declined to renew your loan because of your personal
19 financial condition and credit history?

20 A. Do I remember that?

21 Q. Yes.

22 A. That came to my attention in this lawsuit. I
23 did not realize that beforehand.

24 Q. Okay. So you would agree with me back in
25 2014 when Wells Fargo declined to renew your loan, it

1 was because of your credit history?

2 A. I read that in the response, which seemed a
3 canned read. Whether that was part of their decision
4 to not renew our loan is -- I don't know that for a
5 fact.

6 Q. Well, you say "canned," but that's what not
7 your testimony was. If you'll look on page 80, the
8 question reads -- my question to you is: You've
9 testified earlier that Wells Fargo declined to renew
10 the loan because of your personal financial credit and
11 credit history. Do you disagree with that?

12 And your response was: What I'm saying is I
13 believe that the denial was based on more than that.

14 And I said: Despite the fact that you received a
15 letter from Wells Fargo stating essentially that, you
16 think there's more to it?

17 And you said: I believe there's more to it than
18 a canned letter from Wells Fargo.

19 And the next thing I read to you was: It's been
20 alleged because of your -- I'll strike that. It's not
21 a part of the transcript.

22 Would you agree with me back in 2014 you had
23 significant and multiple judgements against you?

24 A. I don't recall the judgements in 2014. I
25 don't recall time periods and judgements, no.

1 Q. Okay. I can show them to you.

2 A. Okay.

3 MR. DUFFY: Again, I don't know why we're
4 going through this, Your Honor. I would object to
5 judgements in 2014 against somebody -- or against an
6 individual, not a member, and not for the entity, not
7 acting on behalf of the entity we're here for.

8 THE COURT: I'm going to allow him leeway to
9 go back ten years but no more.

10 MR. SLOTCHIVER: Fair enough.

11 Q. I want to go to 16. If I may approach, Your
12 Honor.

13 Here's a copy of the judgement against you in PNC
14 Bank Association that was rendered in the amount of
15 the judgement of favor of Capital Bank in the amount
16 of \$2,233,709.77.

17 Can you look at this and see if this refreshes
18 your recollection?

19 A. It does as to which project. This was --
20 this was a -- yes, it does.

21 Q. Okay. So that was a judgement against you
22 after 2014, correct?

23 A. Let me look.

24 Q. Here's another one. Take your time. I'm
25 sorry.

1 A. Okay. I remember that, yes.

2 Q. Okay. Do you admit now that judgement is a
3 judgement that was entered against you back in 2014
4 and forward?

5 A. It appears to be a 2016 document or letter.

6 MR. SLOTCHIVER: Okay. I'd like to introduce
7 that into evidence or mark it for identification.

8 THE COURT: You can mark it for ID. It's not
9 coming in as evidence.

10 MR. SLOTCHIVER: Let's mark it for ID, then.

11 (PLAINTIFF EXHIBIT NUMBER 5 WAS MARKED FOR
12 IDENTIFICATION.)

13 THE COURT: I assume this is being offered
14 for impeachment, right? He couldn't remember? You're
15 just trying to refresh his memory?

16 MR. SLOTCHIVER: I am, Your Honor. There's a
17 handful.

18 Q. Here's another one for \$1,569,926.44. This
19 is from PNC. 2016.

20 A. This is the same matter.

21 Q. Is it the same matter I gave you?

22 A. Yes, sir. This property was a development on
23 Daniel Island with more than one partner. And the
24 entire development had retail, office, residential so.
25 The entire project was carved up into facilities.

1 It's the same primary project.

2 Q. What made the deal fall apart?

3 A. 2008. Came to CO it in December of 2007, and
4 we couldn't get any tenants or we couldn't sell any
5 property, couldn't sell any of the residential
6 properties, and the other partners involved couldn't
7 make any payments.

8 Q. Why were you not able to make the payment of
9 the debt when it came due?

10 A. Because the other partners couldn't put in
11 the capital. I tried, and I couldn't.

12 Q. So you remember it now?

13 A. I remember the project.

14 Q. And you remember the fact you weren't able to
15 make the payments and therefore there was a judgement
16 entered against you?

17 A. Well, your original question was whether I
18 had judgements against me in 2014, and I didn't
19 remember if I had them in 2014.

20 This project was from 2007, so I don't know about
21 the judgements and your timing.

22 Q. Okay. So you've had judgements since back in
23 2007?

24 A. No, sir. The project was in 2007. We COed
25 it at the end of 2007 and then things fell apart as

1 the economy fell apart.

2 Q. Okay. You entered into an arrangement --
3 also, do you recall dealing with legal advertising
4 where you were advertising as basically a car wreck
5 lawyer in the Myrtle Beach area?

6 A. Injury lawyer.

7 Q. Injury lawyer under D.T. Law?

8 A. David Taylor Law, yes, sir.

9 Q. And you took on investors in order to gain
10 capital to utilize for purposes of the advertising?

11 A. Yeah. A group of lawyers put money into a
12 fund so that we could go and operate in that industry
13 a little differently than other people do.

14 So our intention for that fund was to do things a
15 little differently in the injury world.

16 Q. And you've advertised the lawyer, the car
17 wrecks, and all that kind of stuff?

18 A. That's part of it.

19 Q. You've never handled a car wreck?

20 A. No.

21 Q. You've never been in a jury trial before as a
22 lawyer?

23 A. That's right.

24 Q. Okay. And isn't it true that even with your
25 advertising plan that -- it came at a horrible time

1 because it came during COVID. But despite that, you
2 never actually put any real money into it; you did a
3 line of credit?

4 A. I had a lot of credit and I had capital
5 invested, too.

6 Q. You had capital invested by your partners but
7 not capital by you?

8 A. Yes, I did.

9 Q. Okay. I haven't seen that in the paperwork,
10 but okay.

11 And that was a failed venture, correct?

12 A. It's still operating. I wouldn't call it a
13 home run venture, no. But it's still operating.

14 Q. Then you've got a --

15 A. We have active cases. We have active lawyers
16 on the case.

17 Q. And you have a lawyer against Hostilo,
18 correct?

19 A. Yes.

20 Q. And Hostilo is one of the advertising lawyers
21 out of Georgia?

22 A. Yes.

23 Q. And you're claiming that he owes you money
24 because he failed to comply with a deal he made you to
25 let you basically go national with a different way of

1 legal --

2 A. He wanted to come to Charleston, and he
3 wanted to team up and take our branding into his
4 branding and team up and let us -- let the team that I
5 assembled be the South Carolina operating
6 administrative arm.

7 Q. Okay. And that failed?

8 A. He backed out 13 days before we were supposed
9 to launch.

10 Q. Okay. That lawsuit is currently pending?

11 A. Yes, sir.

12 Q. Okay. Would you agree with me that John
13 handled for the most part all of the day-to-day
14 activity with this suite that you own together?

15 A. Yes, sir.

16 Q. Okay. And you admit that -- I believe your
17 testimony about NEFA a few minutes ago was that NEFA
18 had rented the suite, you rented part of it back from
19 them so it didn't cost K&T anything because the same
20 amount of money that NEFA was going to pay for that
21 office was still being paid to K&T.

22 A. I didn't testify to that. I said we rented
23 space from NEFA, that NEFA had all of that space on
24 that side of the building.

25 Q. When you rented the space from NEFA, you were

1 paying \$435 a month, correct?

2 A. That's what I have read since this lawsuit.
3 I didn't know that beforehand.

4 Q. You were not aware of that?

5 A. No, sir.

6 Q. Who would have been aware of that, your
7 bookkeepers?

8 A. Sallie Holder, who was running the firm at
9 that point, and Julie.

10 Q. You were aware at the time that you met with
11 Dan Legare and he discussed one of the issues were
12 that you have to pay market value for the offices
13 you're using, correct?

14 A. I don't remember if that was brought up with
15 Dan. But I think we met with Dan in 2014 and Sallie
16 started in 2011. So I'm not sure when I found out
17 about it.

18 Q. And you remember writing e-mails saying: I
19 don't think I should have paid any of that money
20 because our agreement was if an office is empty, we
21 can utilize it?

22 A. I don't remember that, what you're saying.
23 Can you repeat that?

24 Q. Sure. My understanding is that your position
25 that was asserted about three years after Sallie moved

1 into the office, when she moved out was that you
2 should not have had to pay rent for the office that
3 Sallie is in or for the office that your other
4 associate was in.

5 You were paying 435 for Sallie and a thousand
6 dollars for the other associate, because if those
7 offices were empty, you should be able to utilize
8 them?

9 A. Well, I believe that was a difference of
10 opinion that John and I had all the way up until we
11 met with Dan and decided to do something differently,
12 but I don't remember having an issue with anything I
13 paid NEFA because that's something my staff did with
14 another third party.

15 I'm sure that I did have an issue with when a
16 5,000 square foot office is sitting there empty, it's
17 a little odd to be paying -- by the same token, why
18 don't John and I pay rent for our offices? They're
19 sitting there as well.

20 Q. At the end --

21 A. Can I finish? We had a difference of opinion
22 before we met with Dan Legare.

23 Q. At the end of the day, you and John equaled
24 out on your offices because you both had your own
25 offices, correct, so it dealt with the extra offices?

1 A. The principal remains the same. Either you
2 own a space and you use it however you see fit based
3 on the demand for it, or what I would prefer to do,
4 which is have a fair market value lease and everybody
5 knows their rights.

6 Q. Your theory, if you had empty offices and
7 eight staff members, you could fill all of the offices
8 that were empty. Let's say you had ten offices in the
9 whole building. You take one and John takes one. If
10 there's eight empty ones, you fill all the other
11 offices without paying rent because nobody else is
12 there?

13 A. That would be my theory because at that
14 point, you would not have anything to offer to the
15 general public.

16 What I'm talking about is if you have eight
17 offices and you need one more and there's not a clear
18 need for the other seven then it makes sense to me
19 that you could use space that is sitting there vacant
20 or you could pay for it under a lease and everybody
21 knows that one is off the table and now you just have
22 seven.

23 Q. If you take one under a lease then the
24 payment is being made to the group, correct?

25 A. Uh-huh.

1 Q. Okay. And by the group, I mean you and John
2 are 50/50 owners. So if you're paying 435 a month for
3 an office that would otherwise rent for 1250, then
4 John is being injured every month because he's getting
5 less in his column and you're benefiting more by
6 getting a lower rate and still having an office with
7 somebody?

8 A. I'm not paying John. I'm subleasing a space
9 because that's the only space that she could go in to
10 at the time.

11 Q. When you're subleasing a space, you broke it
12 off from the rental and it was worth 1250 but instead
13 you were paying 435?

14 A. I'm sorry. I was subleasing it from a tenant
15 that had rights over the whole space, and that's what
16 occurred.

17 Q. Okay. So just as well as subleasing, you
18 could have subleased that space and rented it out for
19 1250 and paid market value, correct?

20 A. I don't know what you just said.

21 Q. The only person benefiting from this was you,
22 not your partner, because you took advantage of the
23 fact that you subleased from a tenant at a lower rate
24 than you would have had to pay if you were renting it
25 from the group?

1 A. I don't know how that harms my partner or by
2 extension me, too, since we owned it 50/50 when I'm
3 subleasing it from someone who's renting it from the
4 partnership because there was no other space.

5 Q. Just to be clear we're on the same page, if
6 NEFA had released that office and it were marketed at
7 the rate that all the other offices were marketed for
8 since 2003 then it would have been for \$1250 a month?
9 We've heard that testimony, correct?

10 A. In the hypothetical land and now the tenant
11 that had the whole half of the office and the only
12 space we could go into, they weren't there and it was
13 sitting wide open with all the other spaces that NEFA
14 had that also were now wide open, before I met with
15 Dan Legare, would it be my contention that one of my
16 staff go sit in one of the five open offices? Before
17 I met with Dan Legare, it would be. After I met with
18 Dan Legare, it wouldn't have been.

19 Q. Let's go to Dan Legare. When you met with
20 Dan Legare, do you remember testifying that the terms
21 of the settlement that you entered with John via the
22 meeting with Dan Legare was that basically that you
23 own office space together; is that correct?

24 You and John owned office space together? That's
25 the agreement?

1 A. Can you ask the question --

2 Q. Was the agreement that you and John entered
3 into after meeting with Dan Legare that you owned
4 office space together, that you would each pay for the
5 office space that you occupied, and if you occupied
6 more space than the other partner owns, then you will
7 pay the 1250 per month for that office?

8 A. That's right.

9 Q. Okay. So in 2014, you entered into that
10 agreement. And then in 2015, you took office space
11 and did not pay for it?

12 A. Could you tell me in 2015 what office space
13 you mean?

14 Q. Yes. And, actually, I'll move all the way up
15 to 2021. Why don't we go into the timeframe we're
16 talking about.

17 In 2021, the testimony we've heard today is that
18 you put a person into the office next to John's
19 office, correct, and did not pay for it?

20 A. August 5th, Jay Spears moved into John's
21 office on a permanent basis with all of his stuff and
22 his picture and diplomas, and we did pay for it.

23 Q. Okay. But you didn't pay for it in August,
24 did you?

25 A. It's not outstanding. We paid for it.

1 Q. That wasn't the question. The question was
2 you didn't pay for it in the month of August, did you?

3 A. I don't think it was paid in the month of
4 August because we had a new bookkeeper that left and a
5 new one that came on.

6 John presented a bill for more than just August
7 5th through whatever date he submitted it. It wasn't
8 accurate, which is standard with him.

9 I took time; I reviewed it; I clarified it. And
10 once we found out -- again, it wasn't even accurate.
11 The first bill wasn't accurate, and the second bill
12 wasn't accurate.

13 We found the accurate amount and made the
14 payment.

15 Q. You didn't pay for the August rent in August,
16 correct?

17 A. There was no August bill.

18 Q. You had a lawyer in August, correct?

19 A. Yes.

20 MR. DUFFY: Asked and answered.

21 Q. Did you make a payment in the month of August
22 for the lawyer who was using the office that you admit
23 to in August?

24 A. The payment did not occur in August.

25 Q. Did you make it in September?

1 A. No. It was made in I think March or April of
2 the next year.

3 Q. So this gap from August until March, your
4 admission you had somebody here from August, but you
5 actually had somebody in since May, correct?

6 A. Somebody in? No. We had somebody
7 permanently in on August 5th.

8 Q. I believe the testimony was you had a law
9 clerk move in in May. That's when you started renting
10 the card, correct? And you didn't put a permanent
11 lawyer in there until August?

12 A. That's correct.

13 Q. So by your own testimony, you occupied that
14 space from May until the end of the year without
15 making any payment?

16 A. Actually, I didn't know that Gabby Murphy sat
17 in that office or wherever else she sat in May through
18 July, not until this dispute.

19 But a real lawyer with books and art and all the
20 stuff that you bring into an office that is your
21 office started on August 5th. No one sat in that
22 office -- there wasn't any furniture in that office
23 before May except for --

24 Q. -- well, the testimony --

25 A. (crosstalk) -- that David Lewis gave to me, a

1 former client. That's the only thing that was in the
2 office.

3 Q. Well, let's go back to the agreement you made
4 with Mr. Legare that we just talked about.

5 Would the terms of the settlement basically be
6 that you owned the office together and you would each
7 --

8 COURT REPORTER: I'm sorry --

9 THE COURT: Slow down.

10 MR. SLOTCHIVER: I apologize.

11 Q. Would the terms of the agreement basically be
12 that you own office space together, that you would
13 each pay for the office space that you occupied, and
14 if you occupy more space than the other partner owns,
15 then you will pay the 1250 per month for that office;
16 was that the agreement we discussed earlier?

17 A. I'll use the word "basically" to describe --

18 Q. I'm asking you a question --

19 A. I'm giving my answer.

20 Q. Did I read it correctly?

21 A. I'm giving my answer.

22 Q. Did I read it correctly?

23 A. Read it again, please.

24 Q. If you look at it, you have it in front of
25 you.

1 A. Okay. Then I can talk about the word
2 "basically" now.

3 THE COURT: Hold on a second. Mr. Taylor, if
4 you'll answer his question yes or no and then I'm
5 going to allow you to explain it.

6 WITNESS: Okay.

7 Q. Page 53. You're welcome to turn to it.
8 Let's look at line 18. Why don't we start at line 15.
9 "Dan proposed a settlement. John and I agreed to it."

10 Question: Okay. Would the terms of the
11 settlement basically be that you own office space
12 together, that you would each pay for the office space
13 that you occupied, and if you occupy more space than
14 the other partner owns, then you would pay the 1250
15 per month for that office?

16 And your response was: I think that's my
17 recollection, yeah.

18 Did I read it correctly?

19 A. You did.

20 Q. That is on page 53 of the deposition. Okay.
21 Can you tell me where in this deposition transcript
22 here that it reflects the agreement that it has to be
23 a lawyer versus a law clerk or an intern?

24 A. It doesn't say that in this deposition word
25 for word. The spirit of my answer was that it was a

1 permanent basis, not a temporary student coming in to
2 work for a few hours a few days a week.

3 Q. Okay. So by permanent basis, you mean a
4 permanent person, not the permanent occupancy?

5 A. What I mean is if I need a desk and I go out
6 in the hall and I find a desk like this and I sit
7 there and do something while we're at lunch, that's
8 not permanently occupying that space.

9 Q. Well, your testimony, to be correct, is that
10 effective -- we take the position it's all January
11 forward.

12 But from your testimony that I've heard, it's
13 from May forward. You had somebody in that space that
14 wasn't a lawyer in May. The lawyer came in August.
15 But from May forward, you had somebody in that space
16 all the way through the end of the year, correct?

17 A. No. Because in that space, I am finding it
18 differently from August 5th through the end of the
19 year than before. It's no different if Gabby came in
20 one day and sat in the conference room.

21 She didn't leave her stuff there. She didn't
22 have anything in the drawers. She didn't have any
23 furniture or any pictures or anything else.

24 She was a law student who came in and sat down
25 every day to do research. How is that occupying the

1 space?

2 Q. How do you even know that if you said you
3 didn't even know she was using that office?

4 A. Because I've been told that by everybody I
5 have talked to since then.

6 Q. How do you know that of personal knowledge?

7 A. I talked to her and I talked to everybody on
8 my staff.

9 Q. Okay. And you've heard testimony that
10 someone has been in there since May?

11 A. I'm sorry?

12 Q. You've heard the testimony that someone has
13 been in there since January forward?

14 A. Well, that's absolutely incorrect.

15 Q. Okay. And you've heard testimony that -- in
16 fact, you've introduced testimony that you obtained a
17 parking card for the purpose of someone who was going
18 to come to your office to use effective May?

19 A. Yes, sir.

20 Q. Okay. And your testimony now is that she
21 might use that office or she might use somewhere else?

22 A. Yes, sir.

23 Q. Okay.

24 A. She was coming in and grabbing a desk.

25 Q. Okay. And her work space, according to the

1 witnesses who have testified, was in that office next
2 to John's?

3 A. The witnesses that have testified that, yeah,
4 that's what they testified. My understanding from
5 talking to my team is --

6 Q. I'm not asking what your team told you. Your
7 only testimony is based on something somebody else
8 told you who is not in court today to testify,
9 correct?

10 A. Not yet.

11 Q. You have no personal knowledge?

12 A. No, I never saw Gabby working in that space
13 or anywhere else.

14 Q. Okay. Fair enough. And regardless if it was
15 May through the end of the year, January through the
16 end of the year, or August through the end of the
17 year, you admit that payments were not paid until the
18 following spring?

19 A. A large payment was made in March or April
20 once I was able to go through and verify the correct
21 amounts, not the amounts that John submitted because
22 they were incorrect.

23 And by the way, not just the difference of
24 opinion on when rent for that office should start.
25 Other amounts in his calculation were incorrect.

1 Q. And they weren't paid until you received
2 notification that John was going to file a lawsuit
3 against you? That was just coincidental?

4 A. Very coincidental.

5 Q. And the fact that you knew the office went
6 for 1250 a month didn't require you in your mind to go
7 ahead and make payments despite the fact that at least
8 in August, you had somebody permanently in that spot?

9 A. As soon as I realized that there hadn't been
10 any payments made. Because Julie Tilman left in the
11 fall of 2021 and then John submitted to the new
12 bookkeeper, hey, you owe this amount of money. And my
13 question to her was where did that number come from?

14 And so through iterations of e-mails from John
15 and looking at -- and talking to my team and asking to
16 see the books of K&T Group, I worked in that time
17 period to figure out the exact amount of rent because
18 I didn't trust John's calculations, which turned out
19 to be correct and weren't accurate.

20 Q. Well, I mean, you did make a payment of
21 \$28,000, right?

22 A. And some change because I calculated the
23 correct amount.

24 Q. So you knew you owed some money, you just
25 weren't sure how much?

1 A. That's right.

2 Q. And you understand the purpose of this
3 business is to generate money in order to pay down the
4 debt, and you weren't contributing any money over this
5 time period.

6 A. Weren't contributing is a good question.
7 We're talking about rent. If there needed to be a
8 capital call then we could at least put in the capital
9 to provide the company with whatever financing it
10 needs.

11 There is a way to run an investment and there's a
12 way to run a landlord/tenant relationship. But
13 throwing big numbers on somebody's desk that don't
14 understand what's due and when and expecting them to
15 just pay is not fair.

16 Q. What about the idea of saying I don't know if
17 I owe you that much, but let me give you some money,
18 at least the monthly rent, because I know I owe that
19 because I know we're occupying it? You never did
20 that, either, did you?

21 A. No. I figured out the correct amount and
22 paid it.

23 Q. Eight months later, nine months later?

24 A. I don't know if it was nine months later.
25 This was in March or April when John presented that

1 amount for the end of the year. Three months.

2 Q. Whether John presents it to you or not, you
3 know you're occupying in August and you know you're
4 not paying the rent?

5 A. Well, I had to go verify everything.

6 Q. Even the fact you were occupying an office?

7 A. I knew when Jay started, but I didn't know
8 what the entire amount was constituting and I needed
9 to go figure it out.

10 I needed to get it to match the books of the
11 company because I don't have eyes on that and I try to
12 get that from John as well.

13 Q. Would you agree with me that most of the time
14 you're asking to see the books of the company is when
15 John is pressuring you to make payments that are
16 overdue?

17 A. Not when I don't have a CPA that's been
18 looking over that for the last eight years like Julie
19 Tilman was.

20 Q. Was it John's problem that you did not have a
21 CPA?

22 A. No, sir. It was his problem that I couldn't
23 get into our books that he unilaterally took away from
24 my CPA the year before.

25 Q. If the Court were to determine the

1 appropriate measure to take in the case was to
2 partition this property, to close the door and --
3 there's a door now. You can permanently close that
4 door between the offices we have described as you and
5 John's and the bullpen and the other two offices and
6 the rest of the offices, would you agree with me that
7 that would be consistent with a pattern of conduct
8 that has taken place not only in the Franke Building
9 but in one of the office suites that you own in the
10 Franke Building?

11 A. Well, I stated before I don't believe the
12 value of that space is enhanced by it being
13 partitioned. I believe the opposite. And I know
14 because I partitioned one on the second floor with
15 Jimmy Streetman, and it impaired the value.

16 And if I could buy Jimmy Streetman's space back
17 from him, I would put them back together. So, no, I
18 don't believe that a property in the Franke Building
19 is maximized by partitioning. In fact, I think the
20 building has been a little bit ruined by that
21 occurring.

22 Q. When was it that you and Jimmy Streetman
23 partitioned that property?

24 A. A long time ago.

25 Q. So your experience is based on something that

1 happened 15-plus years ago?

2 A. We bought our office in there in 2003, so
3 it's been a long time.

4 Q. Okay.

5 A. But I am an active real estate investor. I
6 keep my eye on everything. I have right of first
7 refusal.

8 Q. We've spoken about this before, and I wasn't
9 aware that you had any basis why other than you just
10 didn't want to do it?

11 A. That's the valuation piece.

12 Q. We hadn't discussed that before.

13 A. You permanently impair it.

14 Q. But that's something that's customary in that
15 building throughout and people are doing the exact
16 same thing? They're dividing it into multiple TMS
17 numbers and solidifying that door?

18 A. I don't know how often that happens, but it's
19 not something I think is smart for the property.

20 Q. You would agree with me that if that did
21 happen, that you and John could both continue to
22 practice in the Franke Building and you could both
23 continue to go into your offices, although one would
24 be in a different set than the other office, and it
25 would not result in impact where if the Court agrees

1 with our position that John would buy you out for 75
2 cents on the dollar over a five-year time period?

3 A. I don't know why I entered into a business
4 investment with my former partner and friend in 2003
5 why now I'm forced into a different investment than I
6 bargained for and now I'm -- I would be potentially
7 forced to vacate my office that I've been in for over
8 20 years. I don't know why that's happening. That
9 doesn't make any sense to me.

10 Q. Have you considered the fact that it's
11 because repeatedly over and over again you've
12 neglected to make payments for periods of time and
13 John has had to cover them or he's had to deal with
14 the fall-out until you have caught up?

15 A. I don't agree with that characterization.
16 We've had differences of opinion on how certain things
17 have looked. I mean, there's times in our past where
18 John was negative in our operating account. I didn't
19 sue him over it. We worked it out. This is a
20 business investment with somebody I've been in
21 business with for a long time.

22 And if you do business with anybody for over 20
23 years, I'm sure everything wasn't agreeable all the
24 time.

25 But right now, we've worked everything else out

1 until he decided to file a lawsuit presumably to try
2 to take my investment at a discount. That doesn't
3 make any sense to me.

4 Q. Or to partition it?

5 A. And ruin the value and kick me out of my
6 office that I've been in for 20 years.

7 Q. How many offices are in the other suite? If
8 we were to close it off, we know there's yours and
9 John's and two associate offices. How many offices
10 are on the other side?

11 A. I'm not sure of the count.

12 THE COURT: Why don't we take about five
13 minutes?

14 MR. SLOTCHIVER: I'm about ready to wrap up.

15 THE COURT: Let's take five minutes. You may
16 step down and come back up.

17 (Recess from 4:04 to 4:11 p.m.)

18 MR. SLOTCHIVER (resumed):

19 Q. David, how many lawyers do you have in your
20 office?

21 A. Currently in our office, Charleston, we have
22 five.

23 Q. Okay. I know it's you, David Foley, Brent is
24 the CEO?

25 A. Yes, sir.

1 Q. Okay. You have two other lawyers and then
2 you have staff, correct?

3 A. Yes.

4 Q. So my understanding is that the other side of
5 the office actually has six offices and a conference
6 room. That's more than you have, right, that you
7 occupy right now, correct?

8 A. We occupy -- we have lawyers in offices and
9 staff not in offices.

10 Q. Correct. Okay. All right. We received some
11 documents the other day.

12 Do you have the notebook that your lawyer gave
13 you?

14 A. This?

15 Q. Let's use some of his exhibits. Okay. Your
16 testimony, to make sure I got this straight, is that
17 one of the reasons that you don't believe you owe rent
18 prior to the time that your lawyer came in August of
19 '21 is because Gabrielle would just come and get a
20 desk and float around different places different
21 times, correct?

22 A. I'm saying she wasn't there on a permanent
23 basis.

24 Q. Okay. Can we look at Exhibit 23?

25 MR. SLOTCHIVER: Your Honor, do you have a

1 copy of this notebook?

2 THE COURT: I do.

3 A. Yes, sir.

4 Q. And this is dated -- it's an e-mail from
5 April Shores. She's your office manager? One of your
6 paralegal staff?

7 A. She's an executive assistant.

8 Q. Okay. April 20th. Brent and Foley tell me
9 that we are hiring a new law clerk that will be here
10 full time starting in May.

11 Full time, correct? Not part time? Do you agree
12 that's what it says?

13 A. That's what she wrote.

14 Q. Do you think she misspoke?

15 A. Probably.

16 Q. Okay. Do you agree that full time is
17 generally 40 hours a week and less than 40 is not full
18 time?

19 A. Full time to me is either salaried or -- I
20 don't even have a good definition of full time.

21 Q. Why don't we take a look, then, at Exhibit
22 22.

23 A. Okay.

24 Q. And this appears to be a payroll summary
25 report of Gabriel M., who I understand from you,

1 Gabrielle Murphy is the law clerk we're talking about,
2 correct?

3 A. Yes.

4 Q. And this seems to indicate from my reading of
5 this is that these are two-week increments referencing
6 payments in the amount of hours you worked.

7 Do you see the reference 5/14/21 to 86.76 for a
8 two-week period? That would be a little over 40 hours
9 per week, correct?

10 A. I do. Those numbers are all hard entered.
11 This is actually asked of April. That's not
12 indicative of anything other than her pay schedule,
13 how much she was guaranteed in payment.

14 Q. This is a document that your lawyer presented
15 to me this past Friday. Okay. Would you agree with
16 me on the face of this document -- because I don't
17 work for your office and John doesn't work for your
18 office. I can't verify what you're telling me.

19 But on the face of the document, this shows that
20 every two weeks, she was working 86.67 hours, correct?

21 A. No, she was paid on a schedule that would
22 hard enter those hours into this program summary, but
23 that's more indicative on how she was paid.

24 Q. So this document is wrong?

25 A. No, sir. I'm saying this document doesn't

1 speak to the fact of how and where she worked, how
2 often and where she worked.

3 Q. All right. Even though it seems to be
4 consistent with document 23 which talks about her
5 being hired to work full time?

6 A. I mean, I don't know what April meant by full
7 time. But anybody that's -- she's certainly not
8 salary. She's there for a few months. She was in
9 school.

10 Q. Uh-huh. Okay. Would you agree with me that
11 it is in the best interest of the group to receive as
12 much rent as possible?

13 A. It's in the best interest of an investment to
14 maximize its revenue, yes, sir.

15 Q. All right. And would you agree with me that
16 it's in the best interest of your law firm to minimize
17 to the best of your ability your expenses?

18 A. No, it's in the best interest of my law firm
19 to provide services to our client that are best in
20 class.

21 Q. Well, that's part of it.

22 A. That's all of it.

23 Q. But also it deals with expenses as a
24 business.

25 A. No. It's professional practice. It's not an

1 expense-driven practice. I disagree with that.

2 Q. Would you agree with me paying less than
3 market value rent to the group by a tenant does not
4 benefit the group?

5 A. I'm sorry. Say that again, please.

6 Q. Would you agree with me that someone
7 occupying a space and renting an office and paying
8 less than market value does not benefit the group, the
9 investment group?

10 A. It has to be contextual. Like there was many
11 times in our ownership of this property when there's
12 multiple offices sitting there open, there's no
13 demand. As John testified like during COVID, there's
14 just no demand.

15 Q. How many offices were open at the time you
16 took the one from NEFA?

17 A. I didn't take it. I paid for it. My firm
18 paid for it as a subtenant. There was no offices
19 open.

20 Q. And you got a discount because you paid 435
21 instead of 1250?

22 A. I subleased. I don't know what you mean by
23 discount. I got a discount as if there was another
24 space open that I could have rented in our office, it
25 would have been more; is that what you mean?

1 Q. You could have just taken that property back
2 and then rented it for the market value. You would
3 have gotten half in your column and John would have
4 gotten half in his column.

5 A. How am I supposed to take property back from
6 a tenant that has a lease on it and part of the
7 property back?

8 Q. So you were doing them a favor --

9 A. You're saying me. This is a law firm dealing
10 with another tenant of an organization that there's a
11 landlord. I mean . . .

12 Q. It was relatively kind of you to pay less
13 rent than it would have been. I don't know how that
14 helps your company, but it seems like it doesn't help
15 --

16 A. If I paid 1250 rent to NEFA, would that have
17 gone to K&T Group?

18 Q. You could have carved it out of NEFA, taken
19 the office back, which is essentially what you did,
20 but then paid 1250 and then John's column would have
21 been much more flush than only giving \$217 a month.

22 A. I think I just had testimony that I couldn't
23 take an office back from somebody that had a lease in
24 place.

25 Q. Well, you essentially did by subleasing it.

1 A. Subleasing is pretty normal in the world.
2 This is pretty much normal business.

3 Q. Do you understand why it appears to breach a
4 fiduciary duty when you take advantage of a situation
5 and put a lawyer in an office that could otherwise be
6 rented for 1250 -- or a staff member -- and only pay
7 435?

8 MR. DUFFY: Object to the form, Your Honor.
9 Asking for legal conclusions about something that
10 happened in 2014 before they came to a different
11 agreement.

12 MR. SLOTCHIVER: He's a lawyer. He can give
13 us some legal conclusions.

14 THE COURT: I'm going to sustain the
15 objection. Let's move on.

16 MR. SLOTCHIVER: Your Honor, I've got nothing
17 further. Thank you.

18 REDIRECT EXAMINATION

19 BY MR. DUFFY:

20 Q. David, just touching on this law clerk point,
21 the law clerk was going to be there on a temporary
22 basis; is that right?

23 A. Yes, sir.

24 Q. You mentioned that she's in school? She was
25 in school?

1 A. She was in school, yes.

2 Q. So she was there for the summer; is that
3 right?

4 A. Yes.

5 Q. Your staff raised the point that you had
6 someone temporary come in with John; is that right?

7 A. Yes.

8 Q. Office was otherwise open and John indicated
9 he had no objection; is that right?

10 A. Correct.

11 MR. DUFFY: Okay. All I'd like to do now is
12 move in Exhibits 1 through 25.

13 THE COURT: All right. Without objection?
14 Very good.

15 (DEFENDANT EXHIBIT NUMBERS 1 THROUGH 25 WERE
16 ADMITTED INTO EVIDENCE.)

17 THE COURT: All right. So let me just ask
18 this so I'm clear. NEFA, whatever this company was
19 that was there, they had a lease in place, did they
20 not?

21 WITNESS: I believe -- that was my
22 understanding.

23 THE COURT: As far as you know, they were
24 paying the lease?

25 WITNESS: They were paying the lease for a

1 while and then there was some times when they weren't
2 paying the lease. I'm not sure when that was.

3 THE COURT: Okay.

4 WITNESS: That was something John managed.

5 THE COURT: Did the lease then end and they
6 vacate the space or did they vacate the space and
7 continue to pay for a while?

8 WITNESS: I'm not sure. I don't recall.

9 MR. SLOTCHIVER: If I may, Your Honor.

10 RECROSS EXAMINATION

11 BY MR. SLOTCHIVER:

12 Q. Isn't it true that after NEFA moved out, you
13 continued to only pay the 435 a month?

14 A. I don't have any recollection of that.

15 Q. It's what the bookkeeping logs we have shown
16 you today indicate. They are what they are, correct?

17 A. I don't even know what you're talking about.
18 I haven't seen those and reviewed those. Like Brian
19 mentioned, it's been a long time ago. I don't
20 remember.

21 Q. Okay. Speaks for themselves into the record.
22 Thank you.

23 REDIRECT EXAMINATION

24 BY MR. DUFFY:

25 Q. What year was NEFA a tenant? What years?

1 A. So long ago. I'm not sure. It was a 9/11
2 foundation, so it's been a while.

3 Q. I mean, was it before 2015?

4 A. Way before. Sallie left in 2013 or 2014 or
5 something like that. Started in like '11 maybe.

6 THE COURT: We saw them on some sheet that
7 showed a zero balance. I think that was in the
8 '14/'15 time period.

9 Back to the funds that were paid, at the time
10 the action was commenced, apparently there was a claim
11 for some 30-something-thousand dollars. Must have
12 been the 28,000 and some change was paid it looked
13 like in April of '22, was it not?

14 MR. DUFFY: Yes, before the action.

15 THE COURT: Before the action was commenced.
16 Okay. After the letter of March '17 but before the
17 action was commenced. Okay.

18 And it's your position that, one, there was
19 nobody in there in January. Clearly appears that this
20 Gabrielle Murphy who was a summer law clerk was in the
21 office in the summer, May, June, July timeframe
22 working for your office, but she was a temporary
23 employee.

24 WITNESS: Yes, sir.

25 THE COURT: And then when Mr. Spears came in,

1 you got the request for the payments. You checked
2 back on the record and you sent whatever 28,000 and
3 some change in.

4 WITNESS: Yes, sir.

5 THE COURT: And it's your belief that that
6 took care of whatever that claim was.

7 WITNESS: Yes. I calculated that myself.

8 THE COURT: All right. And I think you
9 covered -- but that's still from August to April is
10 eight months so it would have been eight months later.
11 Took that long for you to do the calculations?

12 WITNESS: Well, I got the request closer to
13 the end of the year. I had a new bookkeeper, and I
14 couldn't get into the K&T records to verify the
15 information so I had to piece all of this together.

16 THE COURT: Were you ultimately provided
17 those records or access to the records?

18 WITNESS: I have never gotten into the
19 records, no, sir. But we also had a different
20 bookkeeper. Julie left at the end of '21. We had a
21 new bookkeeper. She lasted until about April. Didn't
22 work out. And had a new bookkeeper, and that was when
23 I was able to export the records from other areas to
24 make the calculation.

25 THE COURT: So was it the new bookkeeper that

1 got you the number or was it the interim person?

2 WITNESS: Not the interim person. She could
3 not perform.

4 THE COURT: Got you. Okay. I think that's
5 all the questions I have. Thank you. You may step
6 down.

7 MR. DUFFY: Defense rests.

8 THE COURT: All right. Very good. It is
9 about 4:30. I don't know if you plan on putting any
10 reply testimony up. I was looking at your witnesses.
11 I saw three names that I haven't heard from yet.

12 MR. SLOTCHIVER: No, the trial changed when
13 the counterclaims changed. And then a lot of ours is
14 based on what the testimony was and what came in, so
15 we don't have anyone else to call, Your Honor.

16 THE COURT: Very good. Let me talk to you
17 lawyers back here for a second. Let's talk about this
18 case a second, and I don't think we're going to need
19 to go back on the record.

20 (Off the record at 4:25 p.m. on September
21 17th, 2024.)

22

23

24

25

1 COURT REPORTER'S CERTIFICATE

2
3 I DO HEREBY CERTIFY THAT THE TESTIMONY
4 CONTAINED IN SAID HEARING WAS, BY ME, REDUCED TO
5 WRITING IN THE PRESENCE OF SAID WITNESS BY MEANS OF A
6 COMPUTERIZED TRANSCRIPTION. THE SAID HEARING IS A
7 TRUE AND ACCURATE TRANSCRIPT OF THE WHOLE OF THE
8 TESTIMONY GIVEN BY SAID WITNESS, AS AFORESAID.

9 I DO FURTHER CERTIFY THAT I AM NOT CONNECTED
10 BY BLOOD OR MARRIAGE WITH ANY OF THE PARTIES OR THEIR
11 ATTORNEYS OR AGENTS, AND THAT I AM NOT AN EMPLOYEE OF
12 EITHER OF THEM, NOR INTERESTED DIRECTLY OR INDIRECTLY
13 IN THE MATTER OF CONTROVERSY EITHER AS COUNSEL,
14 ATTORNEY, AGENT, OR OTHERWISE.

15 SIGNED THIS THE 11th DAY OF OCTOBER 2024.

16 

17 JOSIE ALLEN BOEHM

18 My Commission Expires 10/18/32
19
20
21
22
23
24
25

Exhibit E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2022-CP-10-02589

**John Kachmarsky, Individually, as
Manager of K&T Group, LLC, and as
Trustee of the Revocable Trust of John
Kachmarsky dated November 30, 2007, as
Member of K&T Group, LLC,**

Plaintiffs,

v.

**David G. Taylor, Individually and as
Manager of K&T Group, LLC; Taylor
Capital, LLC, as Member of K&T Group,
LLC; and K&T Group, LLC,**

Defendants.

ORDER

On September 17, 2024, this Court held a bench trial in the matter between Plaintiffs John Kachmarsky, Individually, as Manager of K&T Group, LLC, and as Trustee of the Revocable Trust of John Kachmarsky dated November 30, 2007, as Member of K&T Group, LLC (“Plaintiffs”) and Defendants David G. Taylor, Individually and as Manager of K&T Group, LLC; Taylor Capital, LLC, as Member of K&T Group, LLC; and K&T Group, LLC (“Defendants”). Having considered all matters of record and the evidence and arguments presented at trial, the Court finds that Plaintiffs did not satisfy their burden of proof for the claims asserted in their Complaint and dismisses those claims with prejudice. The Court further finds that Defendants satisfied their burden of proof for their counterclaim and enters judgment in Defendants’ favor on that claim.

A. Facts

This dispute involves the interests of a limited liability company formed in 2003: K&T Group, LLC (“K&T” or the “Company”). K&T’s interests are owned in equal halves by Plaintiff the Revocable Trust of John Kachmarsky dated November 30, 2007 (the “Kachmarsky Trust”), and Defendant Taylor Capital, LLC (“Taylor Capital”). The respective principals of those member entities are John Kachmarsky (Trustee) and David Taylor, who are also the managers of K&T. The primary asset of the Company is a commercial office known as Suite 330 of the Franke Building at 171 Church Street in Charleston.

Under the Company’s Operating Agreement, K&T is a Term company. Under the South Carolina Uniform Limited Liability Act (the “LLC Act”), a Term company like K&T has limited rights of transfer and exit. *See* S.C. Code Ann. § 33-44-101(19) (“Term company means a limited liability company in which its members have agreed to remain members until the expiration of a term specified in the articles of organization.”); Trial Tr. 104:20 – 105:4. According to the Operating Agreement, the stated purpose of the Company is “to hold and manage Company Property.” (Defs’ Ex. 1, § 1.10.) Kachmarsky and Taylor operate different commercial entities (law firms) within Suite 330, and K&T rents the remaining office space in Suite 330 to third parties. For the last several years, Suite 330 has been occupied by rent-paying tenants, save for infrequent vacancies. (Trial Tr. 100:21–101:9.)

Plaintiffs presented evidence of payment disputes having arisen a few times during the more than twenty years of company operations. One such disagreement led the parties to a common understanding to address significantly different expectations for use of the property. In 2014, Kachmarsky and Taylor addressed their respective law firms’ use of additional office space in Suite 330 and whether such use of unoccupied office space obligated that firm to make additional

rental payments to K&T. (Defs' Ex. 2.) The parties brought that issue to a trusted third party. (Defs' Ex. 4.) With the third party's guidance, the parties agreed that a law firm's sustained use of vacant office space would require that firm to make additional rent payments. The parties moved forward, however, allowing the firms to use additional space without payment when each firm used an equivalent amount of additional space. (Trial Tr. 102:16 – 104:3.) And K&T permitted temporary use of empty office space by a law firm without additional payment as long as the temporary use did not preclude rental of the space to interested third parties. (Trial Tr. 84:18 – 85:23; 155:2-13.) In light of Kachmarsky's resistance, K&T did not follow the third party's suggestion to enter lease agreements with the law firm occupants in Suite 330. (Trial Tr. 80:1–23; 110:3 - 111:16; 104:4–10; 154:9–23.)

The disagreements raised by Plaintiffs occurred prior to the statutory period, that is, more than three years before the filing of this action, save one. (Trial Tr. 82:3 – 83:11.) That one disagreement that occurred during the statutory period involves the Taylor Foley law firm's use of an otherwise vacant office in Suite 330 for the firm's summer intern in 2021.

During trial, Taylor testified that the summer intern used an available office on a part-time basis and only in the summer months of May, June, and July. (Trial Tr. 159:15–20; 160:14–164:9.) Defendants presented documents demonstrating that a summer intern began working for Taylor Foley in May and that the summer intern was paid by Taylor Foley only for the months of May, June and July 2021. (Defs' Exs. 22, 23, and 24; Trial Tr. 160:14– 162:21.) In fact, the evidence was clear that Kachmarsky knew that the firm's intern started in May. (Defs' Exs. 24, 25.) Taylor testified that no other person associated with Taylor Foley used vacant office space in Suite 330 during that time, that Taylor Foley had no records of any female that might have utilized that space

prior to May, and that Taylor's investigation into the matter confirmed that no Taylor Foley employee utilized vacant office space prior to May 2021. (Trial Tr. 163:22–164:9.)

There is no credible evidence of an additional Taylor Foley employee having been hired and placed in that (otherwise unoccupied) office before May 2021. Indeed, although an employee of Kachmarsky's law firm testified that he remembered a female using the subject vacant office in February 2021, he could recall little detail from that time years ago except that only one female had occupied the subject office in 2021, until the male associate took the office in August. (Trial Tr. 138:20 –139:3; 142:21 –143:12.)

In early 2022, rent payments due to the Company from Taylor Foley were delayed. Taylor Foley's longtime bookkeeper—who had historically handled rent payments to K&T—exited, and the firm had difficulty finding a replacement. (Trial Tr. 156:14–157:6.) When the matter of rental payments was brought to Taylor's attention, he sought information from Kachmarsky -- a more detailed statement as to what Kachmarsky said was owed. (*Id.* at 156:25–159:2.) In April of 2022, following email exchanges between Taylor and Kachmarsky and Kachmarsky's counsel threatening litigation as to K&T and its members, Taylor Foley paid rent for the use of the additional office starting in August of 2021 when its full-time associate attorney started work. (Defs' Ex. 9.) Kachmarsky contends that rent remains due for the months of January through July of 2021.

Plaintiffs filed this lawsuit in June 2022.

B. Procedural History

In this action, Plaintiffs assert three claims against Defendants: (1) breach of contract, (2) judicial expulsion under S.C. Code Ann. § 33-44-601, and (3) judicial dissolution under S.C. Code Ann. § 33-44-801. On August 19, 2022, Defendants filed an answer and asserted a counterclaim

for breach of the Operating Agreement. On September 16, 2024, Defendants filed a motion to amend their answer and counterclaim, attaching a proposed amended answer and counterclaim as an exhibit to the motion. The Court granted that motion during a pre-trial hearing on September 17, 2024. The Court then held a non-jury trial on Plaintiffs' claims and Defendants' counterclaim on September 17, 2024.

C. Discussion

Having considered the evidence and arguments presented at trial and all matters of record, the Court addresses the parties' claims below.

1. Plaintiffs' Claim for Breach of Contract

As an initial matter, the Court declines to consider any alleged breach which occurred prior to the statutory period, that is, more than three years before the initiation of this action. *See Maher v. Tietex Corp.*, 331 S.C. 371, 376, 500 S.E.2d 204, 207 (Ct. App. 1998) ("An action for breach of contract must be brought within three years from the date the action accrues.") (citing S.C. Code Ann. § 15-3-530(1)). Although Kachmarsky presented evidence to demonstrate why he would prefer that his Trust be permitted to exit the term company K&T after twenty years, he concedes that the dispute over eight months of rent he says Taylor Foley should pay K&T "is the amount that is arguably in dispute at the moment." (Trial Tr. 83:4 – 11.) Plaintiffs are correct that what is in dispute is whether Taylor Foley must pay for alleged use of one office for seven months of 2021, prior to its full-time employee occupying that office in August of that year. Plaintiffs are incorrect, however, in pressing that claim for \$8,750.00 in rent against the Defendants.

The party that rents space from the Company, and which temporarily used and ultimately rented the specific office at issue, is the law firm Taylor Foley. (Trial Tr. 102:16 – 23; 78:20 – 79:10.) Kachmarsky communicated with Taylor Foley employees about office space and rent

generally and specifically owed in this instance. (Defs' Exs. 24, 9, 7.) Kachmarsky acknowledged that his law firm, not the Plaintiff Trust, rents other space in Suite 330. In fact, Kachmarsky acknowledged that the payments K&T receives for the respective law firms' rentals come from the law firms. (Trial Tr. 125:2 - 9.) To the extent there was any remaining rental obligation at issue, that obligation belonged to Taylor Foley, LLC. (Trial Tr. 116:19 – 117:4; 108:2 – 7; 119:3 - 5.)

Taylor Foley is not a party to the Operating Agreement. At Kachmarsky's insistence, there is no written lease agreement between K&T and Taylor Foley. (Trial Tr. 80:1 – 23; 154:18 - 23.) And, of course, Taylor Foley is not a party to this suit; no plaintiff here brought a claim against Taylor Foley, LLC.

Moreover, to the extent that Plaintiffs complain about actions of K&T Manager David Taylor, those actions all relate to whether rent was being paid on time or in the correct amount by the law firm—not by K&T member Defendant Taylor Capital LLC and not by K&T manager Taylor. Those complaints are not complaints of David Taylor acting as a manager of K&T. In fact, Taylor testified that Taylor Foley employees have handled rental duties for years. (Trial Tr. 156:14 – 158:2; 191:13 - 18.) Not surprisingly, no Plaintiff sent notice of any default of obligations or duties to Taylor Capital per section 12.2 of the K&T Operating Agreement. (Defs' Ex. 8; Trial Tr. 107:1–11.) Kachmarsky's Trust did not call a member meeting per section 4.2 of the Operating Agreement. Kachmarsky as manager did not call a Management Committee meeting per section 5.5, or seek to make a capital call per section 3.8. (Trial Tr. 107:12–108:16.)

Accordingly, Plaintiffs have failed to demonstrate that Defendants breached any contract. *Hotel & Motel Holdings, LLC v. BJC Enters., LLC*, 414 S.C. 635, 652, 780 S.E.2d 263, 272 (Ct. App. 2015) (“The elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach.”).

2. Plaintiffs' Claim for Judicial Expulsion

The Court finds that Plaintiffs have failed to justify expelling Taylor Capital, LLC from the Company. A Court may judicially expel a member from a limited liability company if the member:

- (i) engaged in wrongful conduct that adversely and materially affected the company's business;
- (ii) wilfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under Section 33-44-409; or
- (iii) engaged in conduct relating to the company's business which makes it not reasonably practicable to carry on the business with the member[.]

S.C. Code Ann. § 33-44-601(6). The South Carolina Court of Appeals has recently recognized that:

[Limited liability company] members seeking to expel a fellow member . . . are required to clear a high bar" and a court may not order disassociation "merely because there is a conflict." "[D]isagreements and disputes among [limited liability company] members that bear no nexus to the [limited liability company's] business" do not justify a member's expulsion, and "it must be unfeasible, despite reasonable efforts, to keep the [limited liability company] operating while the disputed member remains affiliated with it.

Boathouse at Breach Inlet, LLC by & through Stoney v. Stoney, 442 S.C. 633, 652, 900 S.E.2d 483, 493 (Ct. App. 2024), *reh'g denied* (Apr. 29, 2024) (quoting *IE Test, LLC v. Carroll*, 226 N.J. 166, 140 A.3d 1268, 1279 (2016)) (alterations in original).

At trial, Plaintiffs failed to clear this "high bar" for three reasons. As an initial matter, just as the Court cannot consider stale alleged breaches, it cannot consider allegedly wrongful conduct that occurred more than three years prior to the filing of this action in determining whether expulsion is warranted. *See Mazloom v. Mazloom*, 382 S.C. 307, 323, 675 S.E.2d 746, 755 (Ct. App. 2009), *aff'd*, 392 S.C. 403, 709 S.E.2d 661 (2011) (finding that claims asserted under the

South Carolina Limited Liability Act are subject to a three-year limitations period) (citing S.C. Code Ann. § 33-44-410)). Accordingly, the Court considers only circumstances that occurred within the statutory period, that is, from June 2019 to June 2022.¹

Plaintiffs' request for expulsion relies upon the same conduct as their breach of contract claim—the non-payment of rent based on Taylor Foley's alleged use of vacant office space in 2021. (Trial Tr. 73:20 - 25.) That conduct does not justify Talyor Capital's expulsion from K&T. For one, for the same reasons explained above, the Court cannot expel Taylor Capital from the Company based on the alleged misconduct of Taylor Foley. If any obligation to pay rent was in fact owed, it was owed by Taylor Foley, and not by Taylor Capital.

Second, as a factual matter, the Court has determined that no additional rent payments were owed. As explained in greater depth above, the evidence demonstrates that the subject office was not in use from January through April. And the Court finds that the temporary use of the office by Taylor Foley's intern from May through July did not give rise to any rental obligations. (*See, e.g.*, Trial Tr. 84:18 – 85:23; 87:14 – 88:12.)

Third, even if additional rent payments had been owed for three months of temporary use, an outstanding receivable of \$3750 in no way makes it “unfeasible, despite reasonable efforts, to keep the [limited liability company] operating[.]” *Boathouse*, 442 S.C. at 652, 900 S.E.2d at 493. In fact, Plaintiffs agreed that no Defendant is frustrating the operation of K&T. (Trial Tr. 101:22 – 102:15.) Indeed, the evidence demonstrates that Taylor Foley pays rent for the office space it utilizes, and K&T continues to fulfill its purpose “to hold and manage Company Property.”

¹ Moreover, even if the Court were to consider the full record of complaints lodged by Plaintiffs, these few disagreements over a twenty-year lifespan are not sufficiently material or injurious to the continued operation of the company for its intended purpose. Nearly all were resolved without incident.

While Kachmarsky testified that this lawsuit arises from “[n]ot paying rent for space being used,” (Trial Tr. 112:17–113:12), he acknowledged that the rent he sought from Taylor Foley would change depending on his law firm’s use of space; there was no set lease amount. (Trial Tr. 102:16 – 104:3.) Nevertheless, aside from the months of 2021 at issue, there is no dispute that Taylor Foley has paid any rent Plaintiffs consider to have been due. The core of the dispute here is whether temporary use of a vacant office for three months by a summer intern triggers obligations for Taylor Foley to pay rent for that space. As the Plaintiffs have known and resisted for years, one solution to any guesswork about what is due from each firm and when, and how to enforce that obligation, is **to have the Company enter written leases with the law firms**. That is one reasonable and practicable way for the members to carry on the Company’s business.

The issues presented by Plaintiffs are more aptly categorized as “disagreements and disputes among members” that do not justify judicial intervention. *Boathouse*, 442 S.C. at 652, 900 S.E.2d at 493. Even viewing the evidence in the light most favorable to Kachmarsky, the total amount in dispute at the time that this lawsuit was filed was \$8,750. (*Id.* at 113:13 – 114:17.) That amount-in-controversy pales in comparison to the value of the Suite 330, the Company’s primary asset, which Kachmarsky testified is worth well over \$1.5 million. (*Id.* at 113:13–115:6.) An \$8,750-dollar rent dispute does not clear the “high bar” required to justify expulsion, and there is no evidence in the record indicating that the continued operation of K&T would be “unfeasible” if Taylor Capital were not expelled. *Boathouse at Breach Inlet*, 442 S.C. at 652, 900 S.E.2d at 493.

Accordingly, the Court finds that the circumstances do not warrant judicial expulsion under S.C. Code Ann. § 33-44-601.

3. Plaintiff's Claim for Judicial Dissolution

Plaintiffs seek judicial dissolution of K&T pursuant to subsections (a), (b), and (e) of S.C. Code Ann. § 33-44-801(4), which permit a Court to dissolve a limited liability company if its finds that: (a) the economic purpose of the company is likely to be unreasonably frustrated; (b) another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member; or (e) the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner. For the same reasons discussed above with respect to Plaintiffs' claim for judicial expulsion, the Court finds that Plaintiffs have failed to demonstrate that judicial dissolution is appropriate here.

In addition, as to the claim under subsection (e), the Plaintiff has failed to demonstrate that Taylor Capital or manager Taylor is in control of the Company. In fact, the evidence demonstrates that, if any member or manager is in control of the Company, it is Kachmarsky as Trustee or as Manager. For nearly twenty years and for all times relevant here, Kachmarsky has managed the operations and the money. He handles advertising, rentals, and banking. (Trial Tr. 48:10 – 49:5; 80:24 – 82:2.) In fact, he acknowledges that Taylor has no more control than he has. (Trial Tr. 111:17 – 20.)

Accordingly, the Court dismisses Plaintiffs' claim for judicial dissolution.

4. Defendants' Counterclaim for Breach of Contract

Defendants assert a counterclaim for breach of the Operating Agreement. Defendants contend that Plaintiffs' actions in pursuing claims against them for payments owed, if at all, by another party constitute breaches of the Operating Agreement's duties of care and of good faith and fair dealing. Moreover, Defendants contend, Plaintiffs' effort to dissolve the Company in this

misguided lawsuit violates these duties as well as the duty of loyalty. And Defendants contend that seeking the result of, or leverage from, a claim to expel Taylor Capital and impose the penalties of wrongful dissociation further violates these duties.

The K&T Operating Agreement establishes duties that the managers owe to the Company and to the Members. Specifically, section 6.2(a) of the Company's Operating Agreement imposes upon the Managers a duty of loyalty: "[t]o refrain from dealing with the Company in the conduct or winding up of the business as or on behalf of a party having an interest adverse to the Company." Section 6.3 imposes upon the Managers a duty of care "to refrain[] from engaging in grossly negligent or reckless conduct" And section 6.4 of the Operating Agreement demands that "[e]ach Manager shall discharge his duties and exercise any of his rights consistently with the obligation of good faith and fair dealing which he owes to the Company and the Members."

Kachmarsky, in his capacity as Manager of the Company,² breached the Operating Agreement's duties of loyalty, care, and good faith and fair dealing owed to Taylor Capital by seeking to dissolve the company over \$8,750 in rental payments allegedly owed, and when any such obligation clearly belonged to a third party. Moreover, any reasonable inquiry into the matter by Manager Kachmarsky would have demonstrated that the most money even arguably at issue was \$3750 for three months of use. To the extent Kachmarsky wished to address issues within K&T, he could have availed himself of any of several other less drastic alternatives, such as (a) sending notice of any alleged default of obligations to Taylor Capital per section 12.2 of the Operating Agreement, (b) calling a member meeting per section 4.2, (c) calling a Management Committee meeting per section 5.5, or (d) pursuing a capital call per section 3.8.

² The applicable duties of the Company's Operating Agreement apply to Managers and generally not to Members. Accordingly, the Court analyzes this claim as to the acts of Kachmarsky as Manager and not as to the Kachmarsky Trust.

The fact that Kachmarsky sought to expel Taylor Capital under these circumstances and thereby impose drastic financial penalties through the Operating Agreement's provisions for wrongful dissociation violates his duty of good faith and fair dealing to Taylor Capital. (*See, e.g.*, Trial Tr. 116:2 – 117:4.)

The Court agrees that the conduct outlined above constitutes a breach of duties owed under the Operating Agreement and awards judgment in favor of Defendants against Kachmarsky. "The general rule is that for a breach of contract the [breaching party] is liable for whatever damages follow as a natural consequence and a proximate result of such breach." *Hotel & Motel Holdings*, 414 S.C. at 650, 780 S.E.2d at 272 (quoting *Kemper*, 399 S.C. at 492, 732 S.E.2d at 209). Here, the natural consequence of any one or all of Kachmarsky's breaches of duties is Defendants' obligation to defend this lawsuit. Therefore, the proper measure of damages are the reasonable costs and attorneys' fees that Defendants have expended defending this matter.

For these reasons, the Court enters judgment for Defendants on their counterclaim and awards Defendants their reasonable costs and attorneys' fees for the defense of claims in this matter to be determined in a subsequent hearing after submission of affidavits in support thereof.

D. Conclusion

THEREFORE, it is hereby ordered that:

- (1) Plaintiffs' claims be dismissed with prejudice, and
- (2) Judgment be entered on Defendants' counterclaim in favor of Defendants against Kachmarsky only.

Within fifteen days of entry of this Order, Defendants shall file an affidavit of the reasonable costs and attorneys' fees that they have incurred in defending the claims in this action and a hearing thereon.

AND IT IS SO ORDERED.

Mikell R. Scarborough
Master In Equity, Charleston County

_____, 2024
Charleston, South Carolina



Charleston Common Pleas

Case Caption: John Kachmarsky , plaintiff, et al VS David G Taylor , defendant, et al
Case Number: 2022CP1002589
Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2024-11-26 10:24:32 page 14 of 14

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
 2 COUNTY OF CHARLESTON FOR THE NINTH JUDICIAL CIRCUIT
 3 CASE NO. 2022-CP-10-02589
 4

5 John Kachmarsky, et al,)
 6)
 7 Plaintiffs,)
 8)
 9 vs.)
 10)
 11 David G. Taylor, et al,)
 12)
 13 Defendants.)
 14
 15
 16

17 Hearing before the Honorable Mikell R.
 18 Scarborough, reported by Josie Allen Boehm, Registered
 19 Professional Reporter and Notary Public, at 100 Broad
 20 Street, Courtroom 2A, Charleston, South Carolina,
 21 January 27th, 2025 commencing at 12:07 p.m.
 22
 23
 24
 25

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1 THE COURT: We are back on the record in the
2 case, it's Kachmarsky versus Taylor. It's 2022-CP-
3 10-2589.

4 This Court issued its order -- what was the
5 date of the order? Sometime back last year.
6 November 26th. I received a timely motion to
7 reconsider from the plaintiffs December the 6th and
8 the affidavit of costs and attorney's fees was
9 received on the 11th of December and then received
10 motions for relief from the judgement in January.

11 I have had a chance to review that, despite
12 our snow weather of the last week. And I have been
13 doing some legal research just to be up to speed with
14 y'all.

15 So let me hear from you Mr. Slotchiver or
16 Mr. Sanchez on your motion.

17 MR. SLOTCHIVER: Thank you. And if I may,
18 there's -- in addition to receiving the motion for the
19 reconsideration or filing the motion for
20 reconsideration and filing the motion for relief on
21 the judgement based on new evidence that has come in,
22 there was an additional motion filed last week by
23 Jamie Khan on behalf of the Foley Bullock Law Firm.

24 And as a Court of Equity, it seems to make
25 sense that this Court -- either that the parties go

1 forward with the new motion to intervene or that we
2 continue this hearing in order to have Mr. Khan
3 address the Court on issues that are pertinent and
4 relevant to these issues, because everything is kind
5 of intertwined.

6 There's been a lot of developments that have
7 come to light in the last month or so, and they're
8 still trickling out as you can see and understand
9 based on the recent filings that have taken place.

10 And they all come to bear on where we are.
11 And so it's an interesting place, because while we
12 filed the motion to reconsider based on issues we
13 wanted to address with the Court on the order, they
14 are independent of the new matters that have come
15 forward, which we believe are actually as strong if
16 not stronger than the old issues that came forward.

17 And now we're -- with the motion to
18 intervene, it all intertwines and brings it full
19 circle so everything can be heard and the Court can
20 consider it in an effort of fairness to figure out how
21 to proceed.

22 So at the very least, I think Mr. Khan can
23 address that briefly and let the Court decide how to
24 rule. We can't control the timing of it as things are
25 developed, but this being a Court of Equity and

1 wanting to have the issues heard, I think it makes
2 sense rather than us having to come back and talk
3 about it in the future. Maybe we can address it now
4 while people are here.

5 I know in addition to Mr. Khan being here, we
6 did subpoena to the extent that the Court wanted to
7 hear any testimony or wanted to get evidence directly
8 from David Taylor's prior statement. I don't believe
9 he's coming today. I don't see him. But his partner,
10 one of his prior partners, is present in the courtroom
11 as well as April Shores, and you may have seen, Your
12 Honor, there's affidavits that have been submitted by
13 John Kachmarsky and April Shores.

14 And April Shores' name is one that had been
15 brought up before that was never called to testify.
16 So I think it probably makes sense to start there if
17 that's okay. If you'd like me to go through them
18 separately, I will. But I wanted an opportunity to
19 have a fair hearing in light of everything that has
20 come up that wasn't known before because I think it's
21 pertinent to the issue.

22 THE COURT: Let me hear from Mr. Duffy before
23 we get a new party in here.

24 MR. DUFFY: Thank you, Your Honor. I'll add,
25 Your Honor, that this new party is a company that

1 didn't even exist when you issued a final order in
2 this case. So to suggest that it has some interest
3 that it can assert in an internal LLC dispute and ask
4 for accounting from one of the parties is not well-
5 founded.

6 I would be happy to discuss that further, but
7 the main point is, all of this, that everyone is using
8 to argue that they're entitled to some relief, there
9 has not been anything secret. They have had the
10 information for ten years. They've talked about the
11 records for the past ten years, the fact that
12 Mr. Taylor -- and we can, you know, we can go through
13 the whole argument about how Mr. Kachmarsky didn't
14 want fair market value, so Mr. Taylor, who has
15 partners isn't going to give them the economic benefit
16 of owning the whole space, so he has rent that
17 includes his office, which otherwise wouldn't be paid
18 to K&T.

19 Anyway, nothing surreptitious. It's
20 perfectly normal business that everybody had right in
21 front of them for ten years. And the fact that
22 they're trying to use this and come up with a document
23 with the losing party entering a document with a
24 company that didn't exist at the time of trial to keep
25 this case going I think is improper.

1 THE COURT: Okay. All right.

2 MR. SLOTCHIVER: Happy to address those
3 points. Your Honor, for the record, nobody had this
4 information. We couldn't have had the information
5 because what was happening was and what we've
6 determined is that David Taylor, since '14, was
7 charging the law firm \$10,500, but he had duties to
8 Kachmarsky Taylor as a manager and the duties forbade
9 him -- and, in fact, it's plainly addressed in their
10 file this morning by Mr. Sanchez. But the duties did
11 not allow him to take advantage or to benefit from any
12 actions. It wasn't a sublease.

13 So I think if David wasn't a partner with
14 John Kachmarsky -- for example, if I sublease an
15 office to Matt Kelly who rents space from me, and if I
16 leased an office to Matt Kelly and I gave him the
17 right to sublease it, Matt can sublease it for
18 whatever he wants to. He doesn't owe any duty to me.

19 What's different here is that these two guys
20 had a management partnership. They had an agreement.
21 David was a manager. As a manager, he had certain
22 obligations, and those obligations don't allow him to
23 take advantage of the partners and to take money and
24 pocket it.

25 We never knew. What we knew is that rent

1 came in. We filed a lawsuit over the fact that -- and
2 that there were periods of time where rent wasn't
3 coming in and it just was being reduced and it wasn't
4 being paid.

5 We could have taken all the depositions in
6 the world. We would have never known that what David
7 Taylor was doing was charging one price to the law
8 firm, claiming that that was the rent, and then
9 pocketing the difference to the tune of hundreds of
10 thousands of dollars.

11 And it's especially interesting if you look
12 at the order that was signed by the Court that was
13 drafted by counsel for David Taylor, it says that the
14 tenant was Taylor Foley. The tenant wasn't -- their
15 order says the tenant was Taylor Foley, which means
16 how do we find out about this different amount of
17 money?

18 And it didn't come out until the trial was
19 over and the order came out and all of a sudden there
20 was an effort to -- can we lease -- the firm broke up.
21 David is moving out. He bought another building. Can
22 we lease the property, John, because we'd like to stay
23 here. And when they start discussing the prices.
24 What do you mean the prices? That's not the same
25 price we've been paying. And all of a sudden, it

1 unraveled as things do.

2 This is what happens when you have improper
3 activity is a lot of times they will unravel and we
4 learned about it. The fact that this firm wasn't
5 involved at the time, that's not the point. The point
6 is that those lawyers that were partners with David
7 Taylor have uncovered the fact that they were
8 overpaying him, and that we, John Kachmarsky, who was
9 partners with David Taylor in another entity where
10 they were both managers signed on with certain
11 responsibilities have learned that David was
12 overcharging one group and underpaying another group.

13 All comes together. And one thing very
14 interesting --

15 THE COURT: My question to you is why or how
16 was this not discovered prior to our trial? I think
17 that's your linchpin.

18 MR. SLOTCHIVER: Prior to trial?

19 THE COURT: Yes.

20 MR. SLOTCHIVER: Because we could not have
21 known. It's not -- we received Kachmarsky Taylor
22 received payment of rent for the amount that was due.
23 That's the amount he was paid.

24 THE COURT: Checked that box. That's what we
25 tried the case over.

1 MR. SLOTCHIVER: But he didn't know -- what
2 he didn't know that -- the violations we have alleged
3 are breach of contract or dissolution. We know what
4 they are. And what we didn't know and couldn't learn
5 -- in fact, April Shores' affidavit affirms that they
6 made the payments of what they were told the rent was.

7 John Kachmarsky said that's not the amount of
8 money. We wouldn't have known. We didn't know that
9 he was, from my vantage point, unlawfully embezzling
10 money. We would not know.

11 The whole case was not about did you take
12 money and pocket it. The whole case was about why
13 haven't you made payments when you're supposed to make
14 payments? Why are we always chasing you for the
15 payments? We wouldn't have known to ask.

16 We look at the rent, all we know is David was
17 making payments from a different entity other than
18 Taylor Foley, but it didn't matter to us because he
19 was making the payments and we knew they were coming
20 in.

21 We argued over the amount sometimes, but
22 there was no way we could have known and we didn't
23 know and that's exactly why the Court has created this
24 motion for us to be able to allege there's new
25 information that we did not know about, could not have

1 known about.

2 And it's just unbelievable to me as we -- and
3 I've never had this happen. I have always thought
4 about the scenario where you hear you can amend a
5 lawsuit before or after a trial. It never really
6 happens after a trial. And you never really learn of
7 information afterwards, but we did. And as soon as we
8 did, we started putting it together and trying to
9 figure it out. And we figured it out to the tune of
10 about \$400,000 that we know of and maybe more.

11 So this is all new information. And in the
12 middle of it all is the manager. And let me pull it
13 from the manager's duties, Your Honor.

14 Under the operating agreement, it expressly
15 states that the managers, which David is a manager.
16 Must hold as trustees for the company any property
17 profit or benefit derived from the manager in the
18 conduct of the company's business or derived from a
19 use by the manager of the company's property including
20 the appropriation of the company opportunity.

21 And that's what -- so what he didn't do is
22 say to John, hey, John, I'm going to sublease the
23 property and I'm going to pocket the difference.

24 You know, we always look at -- and you deal
25 with this in this court all the time. What's the

1 value of something? If the value is 10,500, you
2 should be charging 10,500. But if the value is 6,500,
3 you should be charging 6,500. You don't get to pocket
4 the difference and not tell your partner, who you have
5 an obligation to, and I think separately -- and take
6 advantage of your other partner. Well, that's not my
7 argument. That's Jamie Kahn's.

8 And that's why I think it all needs to come
9 out to fully understand what happened because of new
10 information that we did not know about and could not
11 have known about. And that's where we stand, but I'm
12 happy to address it further.

13 THE COURT: Just one second. Mr. Sanchez,
14 let me hear from you.

15 MR. SANCHEZ: Yes, Your Honor. I filed the
16 60(b)(2), and Mr. Slotchiver had pointed to some of
17 these managerial duties that are set out in the
18 operating agreement. I wanted to emphasize another
19 duty under that duty of loyalty, that 6.2,
20 specifically under 6.2(C).

21 Mr. Slotchiver went over the first half,
22 which is if you get any profits from the company,
23 you're supposed to hold it in trust for the company.
24 That's the company's money. But under the duty of
25 loyalty, it also says the manager, of which Mr. Taylor

1 is a manager individually, in his individual capacity,
2 has to refrain from competing with the company in the
3 conduct of the company's business before dissolution
4 of the company.

5 This is a company that was set up to rent
6 office space and collect rent from that office space
7 and divide those rents among the two members.

8 And what we have here is a direct competition
9 with the company -- there's no other way to look at
10 it -- to collect rent from a tenant, take half of that
11 rent and put it in your pocket and then put the other
12 half into the company without telling your partner.

13 That's something that was not known or
14 couldn't have been known before. And one of the
15 reasons was if you look at the causes of action in the
16 original complaint, they were basically complaining
17 that people were occupying rental spaces and not
18 paying their fair share.

19 And that's a fact issue. There was plenty of
20 testimony elicited at trial, which I wasn't a part of.
21 But that was the scope. We had no reason to believe
22 that money was being diverted from one entity to the
23 other. That's a completely different issue.

24 But the reason why it's important for
25 60(b)(2) is because of the standard for 60(b)(2),

1 which is does it change the result? It's not whether
2 it supports the claims that were asserted; it's does
3 it change the result?

4 And, here, we have a case where we're seeking
5 judicial expulsion of a member, judicial dissolution
6 of a company, and partitioning of the property.

7 And had we had this evidence, had we known
8 that money was coming in and it was being diverted,
9 well, that all goes to the relief sought in that
10 original complaint.

11 And I will point out one more thing that
12 Mr. Slotchiver indicated, not to belabor the point,
13 but Mr. Taylor's counsel drafted that proposed order
14 that this Court adopted.

15 And page 5 -- on page 5 of the order, it
16 expressly states that Taylor Foley, LLC is the tenant.
17 And that Taylor Foley, LLC was the one paying rent to
18 K&T Group, LLC.

19 And now that we've discovered this new
20 evidence, they have changed their tune and they say --
21 respectfully, they have changed their tune to say,
22 well, no, Taylor Tax Law was having kind of sublease
23 with the law firm.

24 That's not what the order says. That's not
25 what the proposed order says. And to the extent I

1 have been able to review the transcript, that's not
2 what was argued before Your Honor.

3 So we believe all of that culminates into
4 sufficient grounds to granting a new trial so that the
5 Court has the opportunity to hear this new evidence,
6 so that the parties have an opportunity to address the
7 issues.

8 And the last thing I will say, Your Honor,
9 which I find very interesting -- and Mr. Taylor is not
10 here today, although his prior law partners are, so I
11 don't want to beat up on him unnecessarily.

12 But what is interesting is when we filed this
13 60(b)(2) motion and they filed the return, they don't
14 deny that he took the money. That's never contested.

15 They never say, oh, this is incorrect. They
16 don't have all the facts. They misunderstand things.
17 They say -- they don't say anything about it. They
18 just say, oh, they should have discovered this a long
19 time ago. That's their excuse.

20 You can't conceal a wrongdoing, which this
21 was a concealment, and then use it as an excuse for
22 not getting the -- for the other side not getting the
23 relief that they sought. And you can't use that as an
24 excuse for not having a new trial.

25 All we're asking for -- we're not asking the

1 Court to reverse itself, at least on the 60(b)(2)
2 stage, although we are on the motion for
3 reconsideration. What we're asking for also if the
4 Court doesn't reverse itself is to grant a new trial
5 where this evidence will be fully examined by the
6 Court and all the parties, including having Mr. Taylor
7 here to answer for that.

8 THE COURT: Mr. Duffy?

9 MR. DUFFY: Your Honor, a couple fundamental
10 basic points. First of all, I know Mr. Sanchez wasn't
11 here for the trial. But if you'll remember, this
12 isn't a standard set-up where the parties just happen
13 to have fair market value leases around.

14 There are two prime offices that are the
15 biggest spaces in these areas. John doesn't want to
16 pay for his. What they ended up doing is collecting
17 other rents, and then if there's something else they
18 have to pay for, that's what they consider rent for
19 their office.

20 When David Taylor started with this, it was
21 with Taylor Tax Law by himself. Okay. So if he got
22 the benefit individually of the ownership of that
23 office, that's fine. He doesn't need to pay the other
24 entity for it.

25 But as soon as you start adding partners and

1 now this firm isn't paying the rent for David's space,
2 it makes sense that you say, okay, well, for my
3 purposes, I'm going to keep it as Taylor Tax Law,
4 which by the way, it has been forever. So you clearly
5 noticed that someone else is paying you for ten years
6 on a sublease that he has.

7 The idea that it wasn't brought up in trial,
8 because it's not material at all. Taylor Foley was
9 occupying the space that was at issue. So that's why
10 it was discussed directly that way.

11 But the point is there's nothing unfair about
12 the fact that you now are charging the law firm for
13 the space that it's using that isn't being charged by
14 K&T, because John doesn't want it that way. He didn't
15 want a fair market value lease. He doesn't want to
16 have to pay for his space, so they agreed on the
17 amount and what was owed, and that's what the whole
18 trial was about.

19 Their whole motion for a new trial, this Rule
20 60 motion, says throughout keeping rents that were due
21 to the company, rents that were owed to the company,
22 not true. The rents were decided by John, and he got
23 paid these rents.

24 The fact that David has partners and then
25 wasn't giving the economic value of being an owner in

1 K&T to his other partners, which I'm sure John
2 wouldn't if he had partners, too, charged the firm for
3 the space because it was otherwise not getting charged
4 for that space. David would have been losing out.

5 And so there's nothing wrong, nothing
6 improper, and it certainly wasn't being hidden. They
7 got paid by Taylor Tax Law for ten years.

8 If he had any question about it, he could
9 have asked. They relied exclusively on the affidavit
10 of April Shores, who was the first witness listed in
11 response to their interrogatories in 2022, was listed
12 as a trial witness. They never deposed her. Never
13 asked her a single question.

14 But now Mr. Kachmarsky comes in in his
15 affidavit saying based on her affidavit, I understand
16 we were paid by a different company. He could have
17 looked at his records. In the records they produced
18 showed checks from Taylor Tax Law.

19 So not only is not unfair, it is basic
20 business. And, number two, it was different for John
21 because he didn't have partners. He was getting the
22 benefit of that big office, not being charged rent
23 through being an owner of Taylor Tax Law, not David as
24 manager of K&T, was subleasing the space as they
25 always had. They don't have written leases, but they

1 stayed as a sub lessor and rented it to Taylor Foley
2 and charged for the office, which is perfectly
3 appropriate.

4 It wasn't rent due to K&T at all. And then
5 on top of it, it was rent that was received for ten
6 years. If somebody else is paying you something and
7 you had some concern about it, after ten years,
8 wouldn't you find out?

9 If you had any issue with finding out what
10 was going on, you ask the person who was paying it,
11 who was listed as having information for who was
12 paying rent.

13 So at the end of the day, it had nothing to
14 do with the claims they brought, and it's way too
15 late.

16 MR. SLOTCHIVER: Your Honor, in the order:
17 The party that rents space from the company and which
18 temporarily used and ultimately rented the specific
19 office at issue is the law firm of Taylor Foley.
20 Trial transcript, page 102, line 16 through 23.

21 THE COURT: Bottom of page 5? Is that where
22 you are?

23 MR. SLOTCHIVER: Yes, sir. Correct. And
24 also, once again, it's a great theory but it's not
25 correct. Because there was no sublease, and there was

1 never a sublease. There was never a talk about a
2 sublease. It's not what is in the order or the
3 argument. There's no sublease.

4 Now we're coming in after we've been caught
5 or after they have been caught saying, oh, there was a
6 sublease that allowed us to do it, which is not
7 correct. Plus, the payments weren't coming to
8 Kachmarsky Taylor from Taylor Capital is what the
9 evidence would show.

10 And if we go further in discovery, it does
11 show they were being paid from -- I don't have the
12 paperwork. From an entity to a different account from
13 David Taylor and then being paid to Kachmarsky.

14 In fact, the first time that Taylor Capital
15 wrote a check directly to Kachmarsky Taylor for
16 payment of rent did not occur until after the lawsuit
17 was filed. So the idea it was ten years ago is not
18 correct.

19 THE COURT: That was the catch up of past
20 rent?

21 MR. SLOTCHIVER: Well, the timing was
22 interesting because when it started from that point
23 forward, they started paying it directly. But once
24 again, there was no sublease. It didn't take place.

25 And the idea that he's going to charge them

1 for an office, that would mean he's not paying
2 anything. It's not consistent with the testimony.
3 Thankfully, we have testimony which creates an issue
4 of judicial estoppel.

5 How do you come in today now that you have
6 been caught and argue a completely different set of
7 facts? And once again, it's -- I think you've seen it
8 before. We're talking about a \$400,000 swing that he
9 profited from.

10 And whether the Court takes issue with claims
11 that are being made by his former law partners or
12 claims being made by John Kachmarsky, one thing is for
13 sure is that David Taylor, who I wish was here today
14 and we would ask him, but he certainly is the one who
15 pocketed this money. And as a manager, he can't.

16 THE COURT: All right. Let me just say this:
17 I came in here today thinking we were going to talk
18 about the 59(e) motion, but clearly Rule 60 motion is
19 taking precedence.

20 What I have not heard or seen y'all argue
21 which I find to be significant is what -- y'all are
22 basically alleging fraud. Okay. And I need to find
23 out whether or not it's intrinsic fraud or extrinsic
24 fraud, and I may need to have an evidentiary hearing
25 on that. I may need parties' testimony.

1 But my initial reaction is that we're getting
2 into something a little far field from what we were
3 trying when we tried this case. That is my concern
4 with your motion. Okay? And even bigger concern with
5 adding a new party.

6 Mr. Khan, I'm going to let you talk in a
7 second. I just wanted y'all to know where we are. We
8 have spent a lot of time focusing on what the -- not
9 only what the agreement said, what the LLC agreement
10 said, versus what we actually did which was not in
11 compliance with that agreement.

12 Okay. And then we talked in terms of past
13 due rent and what rent was not collected. What you're
14 presenting today to me is a whole new issue, and
15 that's really where Mr. Duffy is having a problem and
16 I am, too.

17 The cases I've read -- and y'all started me
18 on the right track. Let me tell you where I've been.
19 The Lanier case and the Southeastern Housing
20 Foundation led me to *Raby Construction versus Orr* and
21 then frankly to *Chewning versus Ford Motor*.

22 We start talking about the distinction
23 between intrinsic and extrinsic fraud, and that makes
24 my head start to spin a little bit, and I start
25 thinking what are our facts relative to what's being

1 alleged here.

2 Okay. That's what I'm looking at. So we may
3 need to come back on an evidentiary basis. What was
4 known, when it was known, and why that wasn't
5 discovered during the course of discovery in the trial
6 that we now have. Okay?

7 That's what I'm wrestling with. I picked up
8 on that because I believe that's what, if I'm not
9 mistaken, that's what Judge Simmons did in his case.
10 I think he was a trial judge in the Raby Construction
11 case.

12 Okay. And that's a 2004. I believe that's
13 the Supreme Court opinion. So these are all happening
14 about the same time. 2004, 2005, 2008. Chewning was
15 a little bit older, 2003. That's the big verdict that
16 came down in the Ford Motor Company case. That's my
17 thinking on the Rule 60 motion, just so you know.

18 I'm happy to entertain the 59(e) motion if
19 you'd like today, and I'm glad to hear from --

20 MR. SLOTCHIVER: And my only comment on that,
21 Your Honor, is we initially filed the actions under
22 the 59 motion for exactly what you're talking about.

23 We learned about things later on, and the
24 things we learned about tie in directly. For us to go
25 forward -- and we made a timely filing. We need to

1 really be able to address it because it may be that we
2 have sufficient issues under our initial motion to
3 overcome and for you to consider to reconsider. But
4 at the same time, with the new information that came
5 in, it should all be intertwined together.

6 And I think an opportunity to examine it and
7 an opportunity to take evidence and an opportunity for
8 you to find out when it came and where it came in and
9 how it came in, that helps us get to where the Court
10 wants to get to at the end, which I think every Court
11 wants to get to the truth. And that's all we want to
12 do here.

13 And if we had any indication that these
14 things existed, we would have raised all of them. And
15 it was shocking to me when we finally learned about
16 it. And, you know -- but it's -- I guess nothing
17 shocks me anymore with the law.

18 THE COURT: The more you practice, the more
19 you learn.

20 MR. SLOTCHIVER: It seems like time doesn't
21 help with morals sometimes and what we find out people
22 do nowadays.

23 I will point, Your Honor, to one more thing
24 for your consideration, which if you're looking at the
25 operating agreement, the poignant sections that were

1 violated are 6.2, 6.3, and 6.4.

2 MR. SANCHEZ: Your Honor, may I just add one
3 more sentence?

4 THE COURT: Go ahead.

5 MR. SANCHEZ: The only thing I would add,
6 Your Honor, is that Your Honor appropriately called
7 attention to those cases, and I would just call to the
8 standard in that case, which is if -- one of the
9 standards, one of the requirements is if this evidence
10 came in, would it change the result?

11 And that's what it comes down to. And the
12 result we were seeking were those judicial
13 dissolution, disassociation, and partition. And so
14 our position clearly is that had we known these
15 issues, that evidence had come in, the result for that
16 that specific action would have been different.

17 THE COURT: Okay. All right. Very good.
18 Anything further, Mr. Duffy?

19 MR. DUFFY: They're asking for a new trial
20 over a whole new case, and they could have known about
21 it clearly. The evidence they are submitting now says
22 the past ten years of records show payments were being
23 made from Taylor Tax Law for the rent. They say
24 there's no lease. Well, then, there's no lease with
25 Taylor Foley, either.

1 They didn't have written leases. David
2 always operated this way. He brought in new partners,
3 he sublet it so he would recover from his loss. All
4 of this about how improper everything is and it's
5 competing with a company is not true.

6 They each rented their own space with -- you
7 know, to the firm. And John, if he had partners, I'm
8 sure would have been giving away his space. But aside
9 from the fact that it has nothing to do with the
10 claims they brought, the fact that they allege and
11 brought to this Court was all about whether the rent
12 was being paid, which is interesting because it had
13 been and it got paid.

14 And the whole basis, if you look at the
15 motion for reconsideration -- for new trial, the whole
16 basis says -- and it would plug in to these duties is
17 rents owed to the company, but they're not rents owed
18 to the company.

19 So, Your Honor, I think that if they wanted
20 to bring a new case about new issues, we'll have at
21 it. And I think a lot of things I'm just saying will
22 come up again. But the case that was tried is over.
23 There's nothing new that's being presented about those
24 things. They restated the same arguments in Rule 59
25 and they claim that -- the claim for partition was not

1 being addressed.

2 Partition was relief being sought through the
3 dissolution and contract claims. They lost those.
4 They don't get to the partition argument. They have
5 no direct claim to partition. So the Rule 59 motion
6 goes nowhere, and I've addressed the Rule 60 motion.

7 THE COURT: Okay. Very good.

8 MR. SLOTCHIVER: Your Honor, we've got --
9 it's not just about the fees. It's about expulsion.
10 It's about partition. It's about the parties' work to
11 mutually benefit as required under the agreement.
12 It's about an allegation of fees.

13 But the reason that the motion was filed is
14 because it all goes back to the same conduct by David
15 Taylor and, in fact, more specifically David Taylor as
16 a manager.

17 So we can -- I think -- I don't know how we
18 can argue one motion without the others because that
19 would require us to bring a whole new lawsuit, and
20 that's exactly why this particular motion is allowed
21 when you learn about fraud. So maybe Jamie Khan can
22 add some more to it.

23 THE COURT: All right. Mr. Khan?

24 MR. KHAN: Your Honor, we filed a verified
25 petition for intervention last Wednesday. Okay. That

1 wasn't released by the clerk's office until this
2 morning.

3 THE COURT: Okay. That's why I didn't know
4 about it.

5 MR. KHAN: That's right. I cited Mr. Duffy
6 mid last week. But, Your Honor, I represent David
7 Foley, Brent Bullock, and their new firm Foley
8 Bullock. And we have a problem.

9 Earlier in 2024, Foley, Bullock, Taylor
10 purchased the old Pratt Thomas building on 16
11 Charlotte Street. And the genesis and goal was Taylor
12 Foley would be moving to 16 Charlotte, and everyone
13 was rowing in that direction.

14 I believe right before Thanksgiving,
15 Mr. Taylor made it known that he was no longer going
16 to practice with Taylor Foley as of January 1st, 2025
17 and that he was going to 16 Charlotte with his new
18 firm.

19 Myself and Mr. Duffy began discussing and
20 trying to put our hands around how do we get these
21 parties separated that have active law practices over
22 the holidays and taking care of clients and taking
23 care of staff and all that.

24 So we began that endeavor. And for all
25 intents and purposes, they are separated, and letters

1 have gone out to clients and clients are being taken
2 care of.

3 As part of that process, our folks needed a
4 lease for the space that's at issue in this case.
5 Okay. And that began the discussion of lease terms.

6 Got two different numbers. One from
7 Mr. Duffy, 10,500. One from Mr. Kachmarsky, I think
8 it was below 6,000.

9 So that's where the analysis began of who is
10 paying what and how much and why? And that is what
11 led us to uncover that the law firm, at the direction
12 of Mr. Taylor, was paying 10,500 to Taylor Tax Law and
13 then remitting 5,750 I believe to K&T, LLC, and hence
14 the discovery of that. I represent two partners at
15 Taylor Foley, and they didn't know that was happening.

16 So our folks and all the associates and all
17 the paralegals of the former Taylor Foley are
18 continuing to practice at the Franke space.

19 And, you know, uncertainty doesn't help our
20 folks with respect to do they have a place to go to
21 work every day. Mr. Taylor, his personal office was
22 never vacated. But my understanding is he's not been
23 back.

24 So we asked for a lease for the space that's
25 at issue here. And it's all in the verified petition,

1 Your Honor. But Mr. Kachmarsky signed a lease for our
2 firm, Foley Bullock, and they go to work every day,
3 and they're working there right now.

4 But more recently, we have been told by
5 Mr. Taylor through Mr. Duffy that Mr. Taylor's coming
6 back with his firm. That's a problem because we
7 thought he was going to 16 Charlotte Street. Now he
8 says he's coming back. We have heard February. We
9 have a lease. I know Mr. Duffy takes exception that
10 that lease was signed by Mr. Kachmarsky and not by
11 Mr. Taylor, but my understanding is that's how they've
12 always done things.

13 That is why we moved to intervene because
14 Your Honor is tackling this K&T matter. I know y'all
15 had a trial, but we feel we need some help and some
16 relief.

17 We have a signed lease by K&T. They go to
18 work there every day. Obviously Mr. Taylor and
19 Kachmarsky have other issues that are being dealt with
20 here in court. We have other issues internally of
21 those former Taylor Foley partners. Mr. Duffy and I
22 are working on that. We are mediating February 13.

23 The lease is a problem. If you -- and I know
24 Your Honor hasn't had a chance to look at our
25 petition, but the petition and the proposed dec action

1 and accounting that's attached to it is related solely
2 to our leasehold rights.

3 We have asked for Your Honor to preserve the
4 status quo first and, second, to deal with our
5 leasehold. I don't know what Mr. Taylor's intentions
6 are, but we go to work every day and we use everything
7 other than his personal office. And they're saying
8 they're coming back in February. That's why we're
9 here.

10 THE COURT: Have you initiated your own
11 action or just sought to intervene at this point?

12 MR. KHAN: At this time, we have not
13 initiated an action. On those other issues, we're
14 going to mediate those issues.

15 THE COURT: And y'all got that scheduled now?

16 MR. KHAN: We do. February 13.

17 THE COURT: Okay. All right.

18 MR. KHAN: We hope not to have to bring the
19 action. We hope to resolve it. But this issue with
20 the lease and knowing that this case -- well, for your
21 purposes was over but now there's motions being filed,
22 we felt we needed to move to intervene.

23 Our issue is the same, the premises, the
24 space. And we thought Your Honor would be the best to
25 deal with that.

1 THE COURT: I don't know if I agree with
2 that.

3 MR. KHAN: That's why we're here, Your Honor.
4 Like I said, we only filed our petition last week. It
5 hasn't been ten days, but to the extent you're
6 rescheduling all this, we'd like to be heard on it.

7 THE COURT: Yeah. Well, I've got an idea,
8 but let me hear from you, Mr. Duffy.

9 MR. DUFFY: Thank you, Your Honor. There's a
10 lot to unpack with all of that, but it's pretty clear
11 that there's no lease issue/dispute that's been tried
12 in this court that now someone needs to intervene to
13 address.

14 That's a wholly different scenario. And to
15 the extent that it does exist between us, then the
16 parties adequately represent those interests. There's
17 no need for somebody else to come in.

18 And beyond that, again, on the timeliness
19 issue, I mean, this really ought to be embarrassing
20 for people to allege they didn't know for ten years
21 what the rent was and where it was being paid.

22 They swear they discovered it by looking at
23 their own business records. So it's clearly not
24 timely that they now try at the time when we already
25 had a final order to come in here and intervene.

1 But in any event, I want to explain how
2 this -- you know, this keeps getting suggested that
3 something is so wrong that they went and got a number.
4 For these offices, there was less than if you included
5 this office.

6 Their lease that they got knowing that half
7 of K&T Group doesn't agree to it, yet they insist they
8 can rely on going to John and getting a lease. If
9 John doesn't agree to it then I'm sure they would have
10 told him we talked to David about this but he hasn't
11 agreed to it. So they have created their own problem.

12 And on top of it, there was more than just
13 this issue among the parties. David has tried to meet
14 with the other parties. They came once. He's having
15 significant health issues yet returned for travel
16 plans on another scheduled meeting that they decided
17 not to come to.

18 Those things are being worked out.
19 Meanwhile, they're going to create this issue by not
20 dealing with David and going to someone they know he's
21 in dispute with and claim they can rely on them.

22 But suffice it to say for immediate issues
23 for Your Honor, to the extent that an intervener is
24 now suggesting that there has to be some emergency
25 order raised, aside from David Taylor's own office, we

1 won't interfere with Foley Bullock using that other
2 space up until the time of the mediation.

3 And so the extent there's going to be
4 something else going on, David has every right to
5 pursue his use of the space that they own. But beyond
6 that --

7 THE COURT: He's apparently retained an
8 office there, has he not?

9 MR. DUFFY: He's never moved out of his
10 office. I mean, the point is Charlotte Street has
11 termites, leaks, everything else. So the fact that he
12 wants to work there isn't something unheard of. They
13 have known about that part, too. That isn't being
14 addressed yet among the parties.

15 And they have to come to some agreement.
16 They haven't said what David can do at 16 Charlotte.
17 They're part owners of that, too.

18 And so, anyway, the idea -- again, I'm
19 showing the points about the differences in the money
20 that they're arguing about. What they're getting is
21 way different. And I'm also saying they looked at
22 their own business records to find this out and
23 they're now saying it's all new.

24 And if they have an action, there could be
25 one coming, but it doesn't belong in a case that's

1 already over.

2 MR. SLOTCHIVER: Very briefly.

3 THE COURT: Sure.

4 MR. SLOTCHIVER: Thank you. Not true. John
5 Kachmarsky did not discover this by looking at his own
6 business records. That's not correct.

7 MR. DUFFY: My reference was to Foley Bullock
8 by their own business records found out they were
9 paying a certain amount of rent and it was going to
10 Taylor Tax Law.

11 MR. SLOTCHIVER: That's inconsistent with the
12 affidavits and documents and assertions being made at
13 this point by their filing and our filing because
14 we've learned about it and they've learned about it
15 through what took place, which is a communication with
16 John Kachmarsky about renting that office space.

17 And to the extent that we look at Kachmarsky
18 Taylor, they saw rent coming in and they trusted that
19 as a manager of Kachmarsky Taylor, David was
20 appropriately paying it and paying the amount of money
21 that he charged.

22 It's not that complicated at the end of the
23 day. I mean, it's just -- he doesn't get the benefit.
24 We go back to the same sublease argument. But it is
25 all intertwined. And if we want talk about who caused

1 it, it all falls on David Taylor because of what he
2 was doing.

3 It's the old statement that Gedney Howe used
4 to say, "The author of your own dilemma." You created
5 this. And it's just -- once again, it's amazing that
6 none of this came up until later on. And we're happy
7 to address -- if the Court wants to have a hearing to
8 address timetables, how we learned, when we learned
9 and put evidence, I think that's the right way to go.
10 Once again, we're all looking for the right, truthful
11 response as to what happened.

12 THE COURT: Well, I'm wrestling with -- I
13 don't want to interfere with what you have already set
14 up. But I am wondering if there's not a reason for
15 everybody to get into the same mediation at some point
16 in time.

17 I mean, I don't know that the legal process
18 would be as successful as potentially y'all all
19 getting in the same room and trying to work something
20 out.

21 MR. SLOTCHIVER: We're happy to do that.

22 THE COURT: It's just sort of befuddling to
23 me how we got to where we are. And I am only saying
24 that because I think I have found that cases will
25 settle at mediation that will never settle in the

1 courtroom and vice versa. I have seen it happen the
2 other way.

3 I don't know if that's going to muck it up or
4 worse or make it better, but there's going on, and
5 there's three people in the dance and they're having
6 to figure out how they're going to get in the same
7 space and change partners from time to time is what it
8 sounds like to me. I'm just thinking out loud with
9 y'all.

10 MR. DUFFY: Yeah, Your Honor. I think just
11 practically speaking, there's a lot that the partners
12 of the former Taylor Foley firm need to address at
13 mediation.

14 THE COURT: Separate and apart from space.

15 MR. DUFFY: I think it's complicated to try
16 to add something else, though, you know, we were
17 having discussions before the hearing was set on the
18 motion. So, you know, obviously open to trying to get
19 some resolution. There seems to be practical ways to
20 make that work.

21 THE COURT: I was surprised y'all got
22 mediation scheduled so quickly. I can't get you in
23 here on an evidentiary hearing in two weeks'
24 timeframe. Just not going to happen.

25 MR. SANCHEZ: If I could, can I address that,

1 Your Honor? I think it might be helpful to the
2 parties if an evidentiary hearing was set at some
3 point. Might be a good motivation for the parties to
4 all come together and see what's best.

5 MR. SLOTCHIVER: And I'm available on the
6 13th.

7 THE COURT: I think y'all got different
8 issues apparently. But it just -- somebody needs to
9 know where they're going to be practicing law. That's
10 pretty basic for the practice of law. Doesn't always
11 work to work out of your home.

12 MR. KHAN: Mr. Duffy and I can discuss it
13 along with Mr. Sanchez and Mr. Slotchiver.

14 THE COURT: Y'all got the day set aside?

15 MR. KHAN: We do. And we have a lot going
16 on. But, I mean, I don't see why this issue can't be
17 also --

18 THE COURT: I just throw it out there as a
19 potential method.

20 MR. DUFFY: I welcome them to join. Don't be
21 disappointed -- first, you'll have to separated from a
22 lot of what's being done and probably won't be talked
23 to until the end of the day.

24 THE COURT: You might want to get with Tom on
25 how you could structure that. Just a thought that

1 came to my mind. Might be able to come up with
2 something that works.

3 And you have two partners that together own
4 the space, there needs to be some relationship done
5 there. Sounds like -- that's why I say three people
6 at the dance and they got to be able to swap partners
7 and come to an agreement.

8 MR. DUFFY: I would love for it all to get
9 resolved.

10 THE COURT: I think that would work. Tom is
11 the perfect guy for it.

12 MR. SLOTCHIVER: We can coordinate that. We
13 can talk to Tom in advance and show up later. Tom is
14 well-versed. If he can wrap his hands around it
15 before you get there, it helps. I'll let you guys
16 decide.

17 MR. DUFFY: Yeah, and maybe we can just talk
18 about what options there are that you would consider
19 so you can be prepared to respond if something, you
20 know, came up in mediation. I mean, showing up and
21 being a part of the mediation is not going to happen.

22 MR. SLOTCHIVER: You can just as well tell us
23 what you're willing to provide us.

24 THE COURT: That's what I'm looking at now.
25 I would encourage y'all to try and join on that

1 mediation on the 13th.

2 I have the afternoon of the 11th of March.
3 That's a Tuesday. I could get y'all in here, and I
4 could do it that Monday the 10th.

5 MR. SLOTCHIVER: That's fine with me.

6 MR. DUFFY: And, Your Honor, tell me a little
7 bit more about what you anticipate the purpose of that
8 is.

9 THE COURT: Yeah, what I want to do at that
10 point in time is have an evidentiary hearing on the
11 issue of whether or not this information was
12 discoverable or not, and that's -- the test being is
13 it intrinsic or extrinsic fraud.

14 My understanding is intrinsic fraud does not
15 get you a new trial, and extrinsic fraud might.

16 MR. DUFFY: Right.

17 THE COURT: Okay. Rule 60(b), and we'll take
18 up the 59(e) at that time as well. All right. And
19 then depending on how you work out things in
20 mediation, let me know. I'll hold your motion in
21 abeyance. All right? Thank y'all.

22 (Off the record at 12:58 p.m. on January
23 27th, 2025.)

24

25

1 COURT REPORTER'S CERTIFICATE

2
3 I DO HEREBY CERTIFY THAT THE TESTIMONY
4 CONTAINED IN SAID HEARING WAS, BY ME, REDUCED TO
5 WRITING IN THE PRESENCE OF SAID WITNESS BY MEANS OF A
6 COMPUTERIZED TRANSCRIPTION. THE SAID HEARING IS A
7 TRUE AND ACCURATE TRANSCRIPT OF THE WHOLE OF THE
8 TESTIMONY GIVEN BY SAID WITNESS, AS AFORESAID.

9 I DO FURTHER CERTIFY THAT I AM NOT CONNECTED
10 BY BLOOD OR MARRIAGE WITH ANY OF THE PARTIES OR THEIR
11 ATTORNEYS OR AGENTS, AND THAT I AM NOT AN EMPLOYEE OF
12 EITHER OF THEM, NOR INTERESTED DIRECTLY OR INDIRECTLY
13 IN THE MATTER OF CONTROVERSY EITHER AS COUNSEL,
14 ATTORNEY, AGENT, OR OTHERWISE.

15 SIGNED THIS THE 19th DAY OF FEBRUARY 2025.

16 

17 JOSIE ALLEN BOEHM

18 My Commission Expires 10/18/32
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1 THE COURT: We are back on the record. This
2 is the Kachmarsky versus Taylor case, 2022-CP-10-2589.
3 We were last together I think it was February 20th, at
4 which time the motion to intervene came in, but I have
5 held off on that pending the Rule 60 motion.

6 I have reviewed the trial transcript as well
7 as a transcript from January 27th, which is when the
8 60(b)(2) motion came in. And at the end of that
9 hearing, I stated we probably need to have an
10 evidentiary hearing to determine if the plaintiffs can
11 establish their basis under Rule 60(b)(2) to reopen
12 the judgement.

13 The 59(e) has been filed and I haven't ruled
14 on that either, but I got that under consideration and
15 we'll talk about that. 60(b)(2) is the first one we
16 need to take up.

17 And so I reviewed the record; I have been
18 looking at your memoranda; and I did some more legal
19 research.

20 Has anything been filed? I didn't see
21 anything of record. Has anything been filed since
22 last time we were together in February? It's been 20
23 days maybe.

24 MR. SLOTCHIVER: I don't believe so, Your
25 Honor.

1 THE COURT: All right. I just want to make
2 sure. Sometimes stuff gets lost in there. So with
3 that, I think we're probably ready to start.
4 Mr. Slotchiver?

5 MR. SLOTCHIVER: Thank you, sir. We would --
6 and my understanding, Your Honor, is we were here for
7 the evidentiary hearing. I would like to call, as
8 part of the evidentiary hearing, Mr. Taylor to the
9 stand.

10 THE COURT: All right. Mr. Taylor, come on
11 up. Mr. Taylor, I will put you under oath.

12 DAVID TAYLOR, having been duly sworn to tell
13 the truth, the whole truth, and nothing but the truth,
14 was examined and testified as follows:

15 THE COURT: Please have a seat. When you get
16 comfortable, give us your full name and address for
17 the record.

18 WITNESS: David Glenn Taylor. Address is 167
19 Cooper River Drive, Mount Pleasant, South Carolina,
20 29464.

21 MR. SLOTCHIVER: This is a copy of an exhibit
22 to the trial. I printed a copy. It might make it
23 easier. It's just the operating agreement. I'm going
24 the hand one to Mr. Taylor in case he wants to refer
25 to it.

1 All right. Is it okay if I stand here, Judge?

2 THE COURT: Certainly.

3 DIRECT EXAMINATION

4 BY MR. SLOTCHIVER:

5 Q. Mr. Taylor, the document I've handed to you,
6 you have seen this document before?

7 A. Yes.

8 Q. And this is a copy of the operating agreement
9 for K&T Group?

10 A. Yes, sir.

11 Q. Would you agree with me that you are one of
12 the managers, that you individually, are one of the
13 managers of K&T Group?

14 A. Yes, sir.

15 Q. Okay. And as a manager of K&T Group, would
16 you agree with me that you're familiar with section
17 6.2 of the operating agreement requiring your duty of
18 loyalty to the company?

19 A. Yes, sir.

20 Q. Now, one of the issues that's come up since
21 we had the trial was the fact that you have charged
22 Taylor Foley Law Firm \$10,500 for rent but only
23 remitted 5,625 or 5,750 to K&T Group. Are you
24 familiar with that?

25 A. I'm familiar with those, yes.

1 Q. Okay. And is it fair to say that you never
2 disclosed this payment arrangement to John Kachmarsky?

3 A. It is not fair to say that.

4 Q. Okay. Do you have anywhere in writing, any
5 documents to support that you have disclosed this to
6 John Kachmarsky?

7 A. I have in writing? No. I have checks
8 deposited in to K&T Group from Taylor Tax Law. I have
9 the name on the door, Taylor Foley. I have his direct
10 knowledge when I was part of Taylor Foley and the
11 other members of the court were part of Taylor Foley,
12 they were a sub tenant.

13 Q. And we're not talking about the sub tenant
14 issue. We'll come to that in a few minutes.

15 A. Sure.

16 Q. We're talking about the fact that you were
17 charging Taylor Foley 10,500 and you were only
18 remitting about half of that to Kachmarsky Taylor, and
19 you were pocketing the rest.

20 A. I wasn't pocketing the rest. There were two
21 different spaces being rented from Taylor Foley. One
22 was an office that I occupied, which is a mirror image
23 of what John occupied, and the other were another
24 executive office that Taylor Tax Law had under lease
25 from K&T Group.

1 Q. So you understand that Taylor Foley was
2 remitting \$10,500 a month, correct?

3 A. Yes, for the spaces that I just said, which
4 were the big office that John and I had mirror images
5 of plus the other space in the suite.

6 Q. So there was another space in the suite that
7 Taylor Foley was using separate from that?

8 A. Of course. All the other offices that is
9 part of this trial at the beginning.

10 Q. But payment wasn't being made for those,
11 correct?

12 A. Sure, it was. Yes, sir.

13 Q. So when you received \$10,500 a month, is it
14 your testimony that you paid \$10,500 a month?

15 A. Paid to whom?

16 Q. Paid to the company.

17 A. You mean K&T Group?

18 Q. Yes.

19 A. No, it wouldn't be that I would pay K&T --
20 Taylor Tax Law had a lease for the executive office
21 spaces that Taylor Foley occupied, plus the office
22 that I occupied that's a mirror image of what John
23 occupied.

24 If you recall from prior testimony from your
25 client that we were advised by Dan Legare to charge

1 fair market value rent for, John didn't want to do
2 that, so we did not pay rent from our respective law
3 firms to K&T Group for the big offices.

4 The right income from real property is the right
5 to use it. Your client taught me that 20-something
6 years ago.

7 If a owner is using that property, that's the
8 right to use that -- the income of the property. But
9 if another party is using it, usually they pay rent.
10 But just like I didn't pay rent for my office for
11 Taylor Tax Law, your client did not pay rent for his
12 office for JK Law or whatever law -- his S corporation
13 is.

14 Q. Okay. So you're saying you're charging the
15 law firm for rent of your office but you -- correct?

16 A. I'm sorry, which law firm? Can you use the
17 entities? There's a lot of them.

18 Q. There are a lot of entities. So your
19 testimony then is that Taylor Foley was paying 10,500
20 which included payment for your personal office that
21 mirrored John's personal office?

22 A. That's right.

23 Q. Okay. But the only remittance made to K&T
24 was for the portion that did not include your personal
25 office that mirrored John's office?

1 A. Right. That was the rental -- that was the
2 rent that Taylor Tax Law had in place with K&T Group,
3 which is the exact same situation as your client had
4 for his law firm at his unilateral decision against my
5 wishes and the advice of Dan Legare, which all this
6 could have been cleared up if we just both paid for
7 our big offices, but John didn't want to do that.

8 Q. Are you familiar with the portion of this
9 agreement, the operating agreement, that talks about
10 the duty of loyalty?

11 A. I am.

12 Q. Okay. And would you agree with me that the
13 monies that you were charging for rent of your office
14 which you claim to be the mirror office to John's
15 office were not being deposited into K&T Group?

16 A. Well, they wouldn't be. It would be no
17 different then John -- John didn't pay rent for his
18 office. So if money that Taylor Foley paid to the
19 primary tenant -- K&T Group is the primary landlord
20 and Taylor Tax Law and your client for his side of the
21 firm of the office are primary tenants and then Taylor
22 Tax Law then became a sub landlord to the sub tenant,
23 Taylor Foley, which is -- this is just common
24 landlord/tenant property rentals.

25 Q. Is it common landlord --

1 A. I'm sorry. So if Taylor Foley as the sub
2 tenant paid the sub landlord, the primary tenant, for
3 spaces that the primary tenant rented from K&T Group
4 and the space that was my primary office then an equal
5 amount of that rent would be due from your client for
6 his mirror image space right next door.

7 Q. Let me ask you two questions to follow up
8 with that. Number one, where in this agreement does
9 it give you the right to sublease?

10 A. Where does it not? I don't think it's
11 addressed in the agreement. It would be addressed in
12 a lease agreement if we had lease agreements like Dan
13 Legare suggested and John decided he didn't want. In
14 fact, I'm not sure if there's leases on any of the
15 offices on the property that John manages.

16 Q. Would it surprise you to learn that your law
17 firm, Taylor Foley, other than you, was not aware of
18 the fact that this was a sublease?

19 A. Surprise me? Sure.

20 Q. Okay. You would agree with me that the
21 revenue you've drawn from this alleged sublease over
22 the years is just under \$400,000?

23 A. I don't know how much it would be. The lease
24 amounts paid from Taylor Foley for the use of the
25 entire space to Taylor Tax Law, the primary tenant and

1 sub landlord, varied over time.

2 Q. Well, we can call up some of your old law
3 firm to talk about that in a little bit. Before we
4 get there, did you delineate with your prior law firm
5 how much of the lease was for the offices outside of
6 your personal office and how much of the lease was for
7 your personal office?

8 A. Delineate?

9 Q. Yes.

10 A. Did I write it down?

11 Q. Did you tell them? Did you write it down?
12 Did you communicate it with them? Did anybody ever
13 address that prior to the time that we found out about
14 the fact that the lease was much more than we thought
15 it was?

16 A. One of the people in the room right now,
17 April Shores, was in charge of remitting rent along
18 with my bookkeeper.

19 So all of this is sitting there waiting for
20 everybody to go take a look or question it or anything
21 else. There's nothing nefarious. This is rent for
22 space. This is pretty normal.

23 And so there is more space that Taylor Foley
24 rented than Taylor Tax Law paid for because Taylor Tax
25 Law paid for the executive spaces, and John, at his

1 demand, there was no rent paid for the larger offices.

2 Each one of those larger offices is about three
3 times the size of the executive offices.

4 Q. So you have multiple executive offices then
5 you have the space where the staff used, the common
6 area. And the cost of all of that space was about
7 half of the total rent because the total rent included
8 your personal office which was equal approximately to
9 the value of the others?

10 A. Yes.

11 Q. Okay. And that determination about the value
12 was made by who?

13 A. Me and the bookkeeper.

14 Q. And when was that made?

15 A. Again, it was over time. We would review it
16 every year.

17 Q. Did you discuss that with John, with your
18 partner?

19 A. I wouldn't have discussed it with John
20 because John set the rental rates for the executive
21 offices and set the protocol for our big offices that
22 there would be no rent paid.

23 Q. Isn't it true there was rent paid on the big
24 offices?

25 A. Not to my knowledge.

1 Q. Okay. There was rent paid, and whatever was
2 left over if, there was money left over at the end of
3 the month, it would be divided per column between the
4 two of you?

5 A. If what you're saying is when there was money
6 that was needed for K&T Group because of a special
7 assessment or something that John would then send an
8 e-mail around saying we need to put more money in to
9 the executive offices to pay for the deficiencies.

10 Part of the problem here is that John did not
11 want to be locked into any kind of recurring expense
12 on the big offices and would just fill up the bucket
13 with rent based on needs of K&T Group, which again
14 would have been solved if we would have followed the
15 advice of Dan Legare. And all of this is in the trial
16 transcript of before.

17 Q. Wouldn't this have been solved if you had
18 taken that \$5,000 payment that you're now claiming is
19 related to your personal office and deposited that
20 into K&T and said, John, I'm paying \$5,000; you got to
21 pay \$5,000?

22 A. That would have been great if John would have
23 done that but John never wanted to pay rent for the
24 office.

25 Q. You never tried, did you?

1 A. No, because he wouldn't let us pay rent.

2 Q. In fact, the first time anybody has ever
3 heard about your calculation as far as the value of
4 your personal office versus dividing the other offices
5 is after it became known by everybody, by John and by
6 your former law firm, about the fact that you were
7 actually charging more money to them --

8 A. Well --

9 Q. -- than anybody knew?

10 A. -- I've read the transcripts in the last
11 hearing, and your characterization is way off the bar.

12 So there is nothing to be hidden. It was all
13 there in the financial records. It was all there in
14 the financial records in the checks that were
15 deposited. This is pretty simple.

16 When an organization that's making revenue,
17 Taylor Foley, uses space, it pays for that space. I
18 would venture to say that a large majority of the
19 Taylor Foley revenue came out of my office if you look
20 at the -- which is beyond the scope of this trial or
21 hearing.

22 But Taylor Foley pays for the space that it uses,
23 and it's all there in the financial records that
24 anybody in my old law firm could go and look at.

25 And nothing was hidden. There's nothing

1 nefarious. So that's as simple as it can be stated.

2 Q. K&T Group would not have had access to
3 whatever records that you had at Taylor Foley showing
4 where the payments came from.

5 A. It would --

6 Q. Let me finish, please.

7 A. Yes, sir.

8 Q. It would have merely had access to the money
9 coming in to K&T, correct?

10 A. Yes, sir, but you're conflating the "did
11 anybody know." I'm talking about the Taylor Foley
12 side because you brought that into an issue here.

13 On the K&T Group side, John Kachmarsky said this
14 is the amount of rent for each of these office spaces.
15 He said that, not me. He wouldn't let me say that.

16 So he set all the rent and said in an e-mail this
17 is what you owe this month, and we paid that.

18 He also set the fact or the protocol that the big
19 offices did not have recurring periodic rent. I'll
20 clarify. If you want to say that they were allocated
21 some rent because the K&T Group might have needed more
22 revenue then, yes, we would both fill up or respective
23 50 percent buckets.

24 But you can't say that Taylor Tax Law owed money
25 for a space, because if you do, you immediately say

1 John owes money for his space and you're right back
2 into the circular argument that he's breached a duty
3 of loyalty himself of not paying rent when I paid rent
4 on this space.

5 All set -- this whole standard was set by John,
6 which he testified in last time.

7 Q. How do we sit here today and know that the
8 ten-five you were charging wasn't really \$9,000 for
9 all the other space and \$1,500 for your personal
10 office?

11 A. Because you look at what John set as the rent
12 due for those other offices, and that was what was
13 paid.

14 Q. But then you profited off the other part?

15 A. Profited? No, I had -- yes, just like if
16 John Kachmarsky would have had his law firm pay the
17 exact amount for his space, he would have profited by
18 having that same set up.

19 Q. Do you remember during the trial, we talked
20 about Nancy Vavra?

21 A. I do.

22 Q. And at one point, John was upset you weren't
23 paying rent for an office. He said if you're not
24 going to pay rent for that office then I'm just going
25 to collect directly from Nancy Vavra and that will

1 make us even.

2 And you said to John, we can't do that. I won't
3 allow it. And you told Nancy not to pay rent to John
4 because you wanted to make sure you were treated
5 equally.

6 A. I'm not sure I recall telling Nancy -- that I
7 told her anything, but you're talking about an
8 executive office space, and we're talking about these
9 two mirror image offices that are in the front of the
10 building and that are primary to the space. Apples
11 and oranges.

12 Q. Is it your testimony that because you
13 generated the majority of the income that -- your
14 generating the majority of the income out of your
15 office made your office worth more money than the
16 other offices?

17 A. No. That's actually a matter between a party
18 not to this case, which is my own law firm. My point
19 is that having Taylor Foley not pay for the use of a
20 primary portion of his space that it operated out of
21 is not reasonable.

22 So, and, again, all we had to do was pay periodic
23 set scheduled rent. If both of those spaces were
24 allocated and paid rent on a periodic basis, none of
25 this is an issue. This is an issue that your client

1 caused.

2 Q. Do you remember testifying in court that the
3 purpose of the K&T Group was to collect money to pay
4 down the debt on the premises of the suite?

5 A. Yes.

6 Q. Okay. And are you familiar with the language
7 of duty of loyalty, 6.2 of article 6, page 15?

8 A. Yes. I've said that earlier, yes, sir.

9 Q. Okay. And one of the duties that you had
10 individually as a manager, not you as Taylor Law, not
11 you as Taylor Foley, but you individually was to
12 account to the company and to hold as a trustee for
13 the company any property, profits, or benefits derived
14 by the manager in the conduct of winding up of the
15 company's business or derived from the use by the
16 manager of the company's property including the
17 appropriation of the company's opportunity?

18 Do you see that under section A?

19 A. I do. You used a term I want to go back to.
20 Could you read that again, please?

21 Q. Sure. To account to the company and to hold
22 as trustee for the company --

23 A. Okay.

24 Q. -- any property, profit, or benefit derived
25 by the manager --

1 A. Okay.

2 Q. -- the conduct or winding up of the company's
3 business or derived from a use by the manager of the
4 company's property.

5 You see that language?

6 A. I do.

7 Q. And when did you account for that? When did
8 you give an accounting to John for the 5,000 you were
9 taking?

10 A. I wasn't taking -- I'll go back to what I
11 said earlier. The right to use any real property is
12 its income. So John would have, by that logic, owed
13 me an accounting for his use of his space. I say "me"
14 as manager of the K&T Group.

15 So it's the use of the space without -- and by
16 the way, before these gentlemen became partners of
17 mine, Taylor Tax Law rented executive space and did
18 not pay rent for the big office like John did not pay
19 rent for his office and used other executive space.

20 If John was ever outpacing me in his use of
21 executive spaces, he would have paid more rent like I
22 did.

23 Q. So let's look at the language. "To account
24 to the company for any property, profit, or benefit."

25 Did you receive any property, profit, or benefit?

1 A. Actually, no. That would be Taylor Tax Law
2 that did if you want to get down to the definitions.

3 What I'm trying to point out to you is you're
4 saying that cash is the only profit, and I'm saying
5 that the use of the property, which I had and John
6 had, are the exact same benefit.

7 Q. John did not collect rent for his office; you
8 did. You collected rent for your office, correct?

9 A. No, Taylor Tax Law did as the primary tenant
10 and sub landlord.

11 Q. And you as a manager had obligations and
12 duties when that happened under the duty of loyalty.

13 A. I'm telling you that I fulfilled my duties
14 just like John fulfilled his duties because he used
15 his office -- it's no different than if John had
16 rented his office to a third party. That money would
17 have not gone into K&T Group and then me sit over here
18 and not pay money into K&T Group. You can't have it
19 both ways. Either John pays rent and I pay rent or he
20 doesn't and I don't. It's very simple.

21 Q. Okay. But in this case, John didn't pay rent
22 and you received monies and you never accounted to K&T
23 for the monies you received?

24 A. I've answered this. I've answered this that
25 the sub landlord primary tenant received money from

1 use of a party that's not the primary tenant.

2 Q. I heard your answer, but you would agree with
3 me you never accounted for it?

4 A. I think the accounting for it is intuitive by
5 the fact that John accounted for his by use, and both
6 parties did not remit rent to K&T for the use of their
7 space, cash rent, at your client's direction and
8 demand.

9 Q. You would agree there's nobody that can
10 support your position but you?

11 Let me clarify. In other words, prior to coming
12 here to court today, your law firm wasn't aware of the
13 fact that they were under a sublease; John Kachmarsky
14 wasn't aware of the fact there was a sublease; and
15 even if one of them did know there was a sublease,
16 nobody knew how much you were charging for your
17 personal office versus how much you were charging for
18 the other stuff? You unilaterally made a decision on
19 that --

20 MR. DUFFY: Objection.

21 Q. -- that you told us about today.

22 MR. DUFFY: A lot of facts are not in
23 evidence.

24 THE COURT: Objection made. I'll overrule.
25 You can answer, go ahead and answer.

1 A. I'm sorry. I lost the train of thought there
2 in the objection. In your question, you stated
3 something I've already testified to the contrary.

4 I've testified -- you're shaking your head. I
5 testified that people in my old law firm did know.
6 That's what I testified.

7 Q. So your testimony is that they did know that
8 about \$5,000 per month was going to cover your
9 personal office?

10 A. No, I don't know if anybody would have ever
11 asked about the allocation. But the overall rent was
12 based on the space and the fair market value of the
13 space.

14 Q. Okay. So you would agree that nobody other
15 than you was aware of the fact that -- how the
16 allocation was set by you?

17 A. I don't know that there was an allocation.
18 The rent by Taylor Foley was for the entirety.

19 Q. Were they shocked when they learned you were
20 charging more for rent?

21 A. You're asking the wrong person. I don't know
22 if they were shocked or not.

23 Q. Are you familiar with the fact that they have
24 objected and complained to you about the fact that you
25 were charging more for the law firm for rent than

1 Kachmarsky Taylor was actually accepting and
2 receiving?

3 A. No one has complained to me, no, sir.

4 Q. So there's no writing, there's nothing that's
5 happened in the case between the old Taylor Foley Law
6 Firm, the new firm, and you?

7 Nobody has complained to you about the fact that
8 what right did you have to charge us more for rent
9 than you were actually paying for the rent?

10 A. There's more space being rented.

11 Q. That's not the question.

12 A. I don't know what the question is. I don't
13 know of anybody that's complained to me, no. I'm sure
14 it's part of their legal maneuvering on the
15 dissolution of a firm that they might have some
16 opinions, but no one has come to me and said anything.
17 Matter of fact, I haven't talked to these gentlemen in
18 weeks.

19 Q. And we can deal with that through them later.

20 A. And I will also say that any complaints could
21 have been brought up a long time ago by just looking
22 at the financial records. There's nothing hidden.

23 Q. John Kachmarsky would not have known.

24 A. I'm talking about my partners. You were
25 talking about the law firm.

1 Q. I understand. Part of the hearing today is
2 extrinsic and intrinsic. You would agree John
3 Kachmarsky could not have known? He would not have
4 known?

5 A. It wouldn't have been relevant to him because
6 he charged rent to Taylor Tax Law for the spaces that
7 we utilized and refused to charge rent for the other
8 two spaces.

9 Q. What if you had charged \$20,000 a month for
10 your personal office and you thought that was the fair
11 value; would it be the same argument?

12 A. Yes.

13 Q. If you had charged \$40,000 a month, as long
14 as they were paying it . . . the reasonable price is
15 whatever somebody is paying, correct?

16 A. No, the reasonable price is fair market
17 value.

18 Q. So what was the fair market value of your
19 personal office?

20 A. Personal office? I looked at the entirety of
21 the space. So I think we were -- I think it was like
22 \$8,000 for a long time but then it went up over a
23 period of time.

24 Q. All set by you?

25 A. And a CPA.

1 Q. Which CPA?

2 A. Julie Tillman.

3 Q. John had nothing to do with it?

4 A. He wouldn't have. He set the market rent for
5 the primary lease of the -- however much per office
6 and no rent for the big offices.

7 Q. You would agree with me that 6.2B of the
8 operating agreement requires you to refrain from
9 dealing with the company and the conduct of the
10 company's business or on behalf of a party which is
11 adverse to the company, correct?

12 A. That's what it says, yes, sir.

13 Q. I'm sorry?

14 A. That's what it says.

15 Q. Okay. But despite that, you actually did the
16 opposite by charging a law firm more rent than what
17 you remitted to K&T, correct?

18 A. I don't think that's the opposite of 6.2B,
19 not at all.

20 Q. Is it fair to say you began charging your law
21 firm more for rent than what you remitted to K&T Group
22 sometime in 2014?

23 A. I don't recall when.

24 Q. Would you agree with me that your dual role
25 as both the manager of K&T Group and the person

1 deciding how much rent to charge your law firm created
2 a conflict of interest?

3 A. No. If Taylor Foley -- Taylor Tax Law was
4 removed and Taylor Foley paid direct rent to K&T
5 Group, John would owe an amount of money that would be
6 the exact difference between what Taylor Tax Law was
7 paying for those office spaces and the big office.
8 That's what I'm having trouble understanding why it's
9 not clear.

10 Q. I'm not talking about Taylor Foley or Taylor
11 Capital. I'm talking about your duties as a manager
12 to K&T.

13 A. Okay.

14 Q. And one of your duties is to refrain from
15 competing with the company and the conduct of the
16 company's business, correct?

17 A. Yes.

18 Q. Would you agree with me that by inserting
19 Taylor Tax Law as a middleman and keeping the
20 difference in the rent payments, you were effectively
21 competing with K&T Group's rental business?

22 A. No, sir.

23 Q. K&T is in the business of charging rent for
24 office space, correct?

25 A. Except for the offices that John decided not

1 to charge rent for. Other than those, yes.

2 Q. Where in the agreement does it exclude those
3 offices?

4 A. I'm sorry?

5 Q. Where in the agreement does it say these
6 offices are separate and distinct from the obligation
7 of K&T to be in the business to charge rent for
8 offices?

9 A. It doesn't say in its agreement. It's from
10 the testimony of your client in the previous trial in
11 this matter.

12 Q. I'm asking about the agreement that you're a
13 manager of.

14 A. I've answered. It's not in the agreement.
15 That decision came from your client unilaterally.

16 Q. Would you agree with me that under section
17 6.3, a manager's duty of care to the company and the
18 members is limited to refraining from engaging in
19 grossly negligent or reckless conduct, intentional
20 misconduct or a knowing violation of the law?

21 A. Yes.

22 Q. Would you agree with me that your secret
23 rental arrangement constituted intentional misconduct?

24 A. It wasn't secret, and, no, I don't agree.

25 Q. Well, it was secret to K&T, correct?

1 A. No, sir. What was paid to K&T Group was
2 exactly what was requested and done so by your client
3 directly to the CPA on a monthly basis, which I had
4 nothing to do with. Nothing was secret.

5 Q. So as long as you paid the amount of money
6 that he was asking for, anything you got in your
7 pocket above and beyond that, it wasn't a secret, it
8 was something you would keep?

9 A. It was having the entity that was enjoying
10 the revenue pay for the expense of the property that
11 it was using to create that revenue under a sublease
12 arrangement, which is super common and normal.

13 Q. Well, did you amend the agreement to allow
14 for the sublease?

15 A. What agreement?

16 Q. The operating agreement.

17 A. No, I couldn't have amended the operating
18 agreement on my own. Like I said earlier, it doesn't
19 preclude nor speak to subleasing in this document.

20 Q. I understand you couldn't do it on your own
21 because it required 100 percent votes, correct?

22 A. Yes, sir.

23 Q. Did you ever attempt to amend the agreement
24 to allow the sublease?

25 A. It doesn't not allow me to sublease. There's

1 nothing that prevents it. It would be the Landlord
2 Tenant Act because of a lack of a lease on a primary
3 between my law firm and K&T and John's law firm and
4 K&T. There's no written document, so it's Landlord
5 Tenant Act. It wouldn't be in this agreement.

6 Q. What precluded you from saying, John, I
7 wanted you to know that I'm charging \$5,000 more a
8 month --

9 A. This document --

10 THE COURT: Let him finish.

11 Q. What prevented you from saying, John, I'm
12 going to start charging \$5,000 more in rent for my
13 office from the tenants that we have -- keep in mind,
14 the testimony of the trial was that Taylor Foley was
15 the tenant.

16 So if Taylor Foley is the tenant and Taylor Foley
17 is paying \$10,500 a month, what precluded you from
18 saying, John, listen, I'm getting \$10,500 but I'm
19 going to pocket \$5,000 because I think that's what my
20 personal office is worth.

21 A. I'm sorry. What's the question?

22 Q. Well, let's back it up then. Testimony at
23 trial was that Taylor Foley was the tenant, correct?

24 A. I believe so.

25 Q. Okay. And the order that was drafted and

1 submitted to the Court on your behalf says Taylor
2 Foley is a tenant, correct?

3 A. It is a tenant.

4 Q. It didn't say sub tenant in the order. I
5 would suggest to you that at no point until after this
6 was discovered was the word "sub tenant" ever used; do
7 you disagree with that?

8 A. I don't know. A tenant is a tenant. They
9 were occupying the space. There's a name on the door
10 of the building. John knew they were a tenant. It's
11 on the door. He dealt with us on a daily basis. The
12 law firm was operating out of that space for years.

13 Q. So if Taylor Foley is the tenant and the
14 tenant submits \$10,500 a month, right? That's what
15 happens, right?

16 A. Yes.

17 Q. Okay. Then at what point did you disclose to
18 K&T that although the tenant is giving \$10,500 a month
19 in rent, I'm going to pocket about \$5,000 a month
20 because I think that goes to my office?

21 A. You keep asking the same question, Dan. The
22 lease arrangement between the primary tenant and the
23 primary landlord was set by your client, and the
24 primary tenant, also sub landlord, leased to the sub
25 tenant. That was the arrangement.

1 Q. I heard the arrangement. My question to you,
2 though, was when did you tell anybody at K&T that you
3 were going to be pocketing \$5,000 a month?

4 Regardless of the basis, regardless of whatever
5 you perceived to be the justification or claimed to be
6 the justification, when did you tell your partner?

7 You are a managing partner of K&T. You
8 individually, David Taylor, at what point did you say
9 to K&T I'm getting paid \$10,500 a month but I'm not
10 giving all of that to K&T. I'm going to pocket and
11 hold part of it.

12 A. As I said, it was to the Taylor Tax Law. It
13 wasn't to me. But that would have been nothing to
14 discuss with John Kachmarsky or K&T Group because it
15 had a primary lease with Taylor Tax Law as the primary
16 tenant set by your client.

17 And as I mentioned, if I had gone and said, hey,
18 John there's a sublease here and now we're paying for
19 the big office so now I need you to pay -- use the
20 term 5,000. You now pay 5,000.

21 And your client has stated on multiple occasions
22 that he did not want to pay rent for his office at
23 all.

24 Q. Did you ever try?

25 A. Yeah.

1 Q. You went to John and said I'm going to pay
2 \$5,000 a month more?

3 A. No, but I tried to have rent paid on the big
4 offices. That was the whole --

5 Q. So the answer to the question is at no point
6 did you ever tell John Kachmarsky that you were
7 receiving \$10,500 a month for rent but you were going
8 to pocket the \$5,000?

9 A. It had nothing to do --

10 Q. Is that correct?

11 A. That's right. It had nothing --

12 Q. Okay. Well, let me just --

13 A. I'm finishing my answer. It had nothing to
14 do with that. There was a sublease for the entire
15 space. The primary lease was not over the entire
16 space. The big elephant in the room here nobody wants
17 to focus on is these are a bigger space.

18 So you keep talking about pocketing. The sub
19 tenant is now just paying for the space it's using to
20 generate its revenue. Commercially reasonable.
21 Happens every day. I work on these and so does your
22 client.

23 Q. But that's not what was said in court and
24 that's not what was said in the order, correct? No
25 reference to the sublease in court or in the order.

1 A. I don't think it was relevant to what we were
2 talking about in that hearing.

3 Q. Let's first agree that it was never
4 referenced in court or the order. Do you agree with
5 that?

6 A. I don't really know. I mean, the word tenant
7 there is applicable to Taylor Foley just as it would
8 be if it was --

9 Q. The record will show what it says as to the
10 fact it wasn't referenced. Okay? And so the judge
11 can look at that and see that for himself.

12 So once we get to the fact that it wasn't
13 referenced, is it fair to say the first time anybody
14 has referenced that it was a sublease to John
15 Kachmarsky or K&T was after the trial was over and
16 after the motion to reconsider was filed and after
17 John spoke with your prior law partners about renting
18 office space?

19 A. I wouldn't know that.

20 Q. Do you have any reason to dispute that? I'll
21 put them on the stand and talk about it in a few
22 minutes.

23 A. I don't have any reason to have any comments
24 about it all. The fact that the space was being paid
25 for by an organization that was deriving revenue from

1 the totality has nothing to do with the fact that K&T
2 Group, by your client's direction, charges an X amount
3 for these spaces and none for this.

4 Q. But it does have to deal with the fact that
5 you as a manager have certain duties and obligations
6 we've discussed today?

7 A. Yes. And it has nothing to do -- that I
8 fulfilled that. I never breached any duty in this
9 organization or any other.

10 Q. Okay. Well, I guess that will be up for the
11 Court to decide. Give me one moment.

12 Would you agree with me that your affiliation
13 with Taylor Tax Law does not eliminate your duty of
14 loyalty and not to compete that you owe as a manager
15 for K&T?

16 A. It does not.

17 Q. So you would agree?

18 A. I would agree.

19 MR. SLOTCHIVER: Okay. I've got nothing
20 further.

21 CROSS EXAMINATION

22 BY MR. DUFFY:

23 Q. All right. Thank you for, I think many
24 times, explaining how you and John treated through K&T
25 Group the primary office space that you each had.

1 Do you recall that testimony?

2 A. Yes, sir.

3 Q. Okay. Isn't it true that -- do you recall
4 from the first trial that there was testimony about
5 Mr. Kachmarsky not wanting to have to pay fair market
6 value for that space?

7 A. Yes, sir.

8 Q. And that he refused to have written leases
9 for that reason?

10 A. Yes.

11 Q. Okay. And you in fact would prefer to have
12 paid fair market value?

13 A. Yes.

14 Q. Now, you and Mr. Kachmarsky treated that
15 space -- used it somewhat differently; is that fair?

16 A. Yes.

17 Q. Around 2014 Mr. Slotchiver said was the
18 approximate date where Taylor Tax Law started to pay a
19 different amount than Taylor Foley paid to Taylor Tax
20 Law. Do you recall that being the date?

21 A. Can you say that again?

22 Q. Around 2014 was the timeframe that was
23 referenced where Taylor Tax Law around then started to
24 pay a different amount to K&T Group than it was
25 actually collecting from Taylor Foley.

1 A. Yes.

2 Q. Okay. And isn't 2014 around when David Foley
3 became a partner?

4 A. Yes, sir.

5 Q. And so that became Taylor Foley at that time?

6 A. Yes.

7 Q. And before that, who was paying K&T Group?

8 A. Taylor Tax Law.

9 Q. Right. And that was Taylor Tax Law
10 practicing law?

11 A. Yes, sir.

12 Q. Okay. So you added a partner and a new
13 entity, Taylor Foley, was now getting the benefit of
14 space, correct?

15 A. Yes, sir.

16 Q. Were you going to give away your ownership to
17 this new entity, Taylor Foley?

18 A. No. As an accountant, you match revenues and
19 expenses. So you -- when the revenues are generated,
20 you have to match the expenses.

21 Q. The law firm was getting the benefit of the
22 space you owned, correct?

23 A. Correct.

24 Q. As you and John owned the together?

25 A. Yes, sir. Matching principal.

1 Q. Does John have any partners in his law firm?

2 A. Not to my knowledge.

3 Q. Do you think if John had partners that he
4 would give away the benefit of his ownership in K&T
5 Group and not charge rent for the big law --

6 MR. SLOTCHIVER: Objection. Speculation. He
7 can't answer that.

8 Q. You practiced with John for years --

9 MR. SLOTCHIVER: That doesn't change the --

10 THE COURT: Overruled. Go ahead.

11 Q. Do you think that John would give away the
12 use of his big primary office to his law firm and his
13 partners if he had partners?

14 A. I do not.

15 Q. Do you think it is reasonable for a law firm
16 to pay for the space that it uses?

17 A. Absolutely.

18 Q. Okay. So in 2014, you continued the practice
19 of having Taylor Tax Law pay K&T Group; is that right?

20 A. Yes, sir.

21 Q. Now I'm going to hand you a series of things
22 here. Take me just a second to get them straight.

23 Exhibits 1, 2. I have copies. 3, 4, 5, 6.

24 While I sort these out, I want you to take a look at
25 each of them and I will ask questions.

1 Okay. While I'm sorting through these other
2 ones, let's look at the first one. Can you tell me
3 what Exhibit 1 is?

4 (DEFENDANT EXHIBIT NUMBERS 1 THROUGH 6 WERE
5 ADMITTED INTO EVIDENCE.)

6 A. It is a rent check from Taylor Tax Law to K&T
7 Group for August of 2022.

8 Q. So that's August of 2022. And do you recall,
9 was the suit filed in 2022?

10 A. I don't remember.

11 Q. It certainly didn't end in 2022, did it?

12 A. No, sir.

13 Q. And do you know off the top of your head
14 where our firm got these checks from?

15 A. I believe the staff at Taylor Foley.

16 Q. Now, they don't have Bates labels, but I will
17 represent to you these were produced by the
18 plaintiffs.

19 THE COURT: All of these ones you're going
20 through here?

21 MR. DUFFY: Yes, sir. They're payments from
22 Taylor Tax Law to K&T Group produced by the
23 plaintiffs. The plaintiffs have them. There's no
24 question that they're receiving money from Taylor Tax
25 Law for years.

1 THE COURT: Okay.

2 Q. David, you were talking about the operating
3 agreement a little bit. And, you know, there were a
4 lot of discussions about different entities and
5 different people, this and that. But you personally
6 are a manager of K&T Group, right?

7 A. One of them, yes.

8 Q. Okay. And so if Taylor Tax Law is paying the
9 rent that is due and also gets funding for the
10 property where no rent is due, that is not you as a
11 manager profiting from company's property, right?

12 A. That's correct.

13 Q. Okay. And, now, there were questions about
14 competing with a company. I thought this was just a
15 perfect example because when Mr. Slotchiver was asking
16 you if you were competing by -- Taylor Tax Law and
17 getting rent for the space Taylor Foley used, you said
18 no; is that right?

19 A. Yes.

20 Q. So you had a different question when
21 Mr. Kachmarsky years ago wanted to rent out a wholly
22 different office to a third party and keep that money.
23 Do you remember that testimony?

24 A. Yes, sir.

25 Q. Because that whole other office could be used

1 by a different person and pay money to K&T Group,
2 right?

3 A. Yes.

4 Q. And if John were profiting that money, that
5 would be K&T Group's money, right?

6 A. Correct.

7 Q. So you were never going to be renting a
8 different office in your own personal --

9 MR. SLOTCHIVER: Your Honor, I want to state
10 an objection. And just for the record, the
11 clarification with the Nancy Vavra office was the
12 allegation that David had already taken another office
13 and John was saying since you took an office and
14 aren't paying for it, why don't I just get her to pay
15 me directly for this office and then we will equal
16 out.

17 It's a different scenario completely. I want
18 to make sure the Court is following that.

19 THE COURT: Noted.

20 Q. If John were to pocket money from a different
21 person using K&T's offices, a different office where
22 rent could actually be collected, you would regard
23 that as competing with K&T; is that right?

24 A. I would, because that was space that could be
25 rented to third parties versus the two offices that

1 John and I occupied.

2 Q. Okay. Now, there were general references to
3 what was testified about at trial and who -- I didn't
4 hear anything about who said anything in particular,
5 but the sublease issue did not come up at trial,
6 correct?

7 A. No, sir.

8 Q. And why did you not bring up a sublease?

9 A. It wasn't relevant to anything being
10 discussed.

11 Q. Okay. There were concerns about whether a
12 third party, Taylor Foley, was using space that wasn't
13 being paid for. Do you recall that being an issue?

14 A. Say that again.

15 Q. Whether Taylor Foley was using space that
16 wasn't being paid for?

17 A. Yes.

18 Q. Was that the primary issue at trial?

19 A. Yes.

20 Q. And going to the point, we saw that, you
21 know, it was apparent that Taylor Tax Law was paying
22 the rent to K&T Group.

23 MR. SLOTCHIVER: Objection to that.

24 Q. Do Exhibits 1 through 6 where Taylor Tax Law
25 is making rental payments by check to K&T Group

1 demonstrate that Taylor Tax Law was paying the rent to
2 K&T Group?

3 A. Yes.

4 Q. Okay. And I want to make some points about
5 how this was out in the open. Anybody could have
6 found out anything they wanted.

7 So I'm going to go beyond just the checks. I'm
8 going to hand you what's marked as Exhibit 9. This is
9 an excerpt from your deposition of July 7 of 2023.

10 (DEFENDANT EXHIBIT NUMBER 9 WAS ADMITTED INTO
11 EVIDENCE.)

12 If you turn with me to the page that at the top
13 says page 56. I'm going to read the question, which
14 is a question from Mr. Slotchiver, and ask you to read
15 the excerpt.

16 A. Okay.

17 Q. "Who would have documents supporting where
18 the rent would have been paid from? Would it have
19 come from your law firm or individually from you? Is
20 there a separate account?"

21 And what did you say?

22 MR. SLOTCHIVER: I'm sorry. What page are we
23 on?

24 THE COURT: Page 56 starting line 15.

25 Q. Your answer was?

1 A. "It would come from my S corporation to our
2 joint LLC, K&T Group."

3 Q. Okay. And what's your S corporation?

4 A. Taylor Tax Law.

5 Q. Okay. And would Mr. Kachmarsky have any
6 reason to know what your S corporation was?

7 A. Absolutely. It was partners in Kachmarsky
8 Taylor as long as his S corporation for a number of
9 years.

10 Q. And that's Taylor Tax Law?

11 A. Yes, sir.

12 Q. And was Mr. Kachmarsky present at the
13 deposition?

14 A. Yes.

15 Q. Did Mr. Slotchiver ask you any other
16 questions about your S corp that was paying rent to
17 K&T Group?

18 A. No, sir.

19 Q. If he had asked you why is your S corp paying
20 rent to K&T Group, what would you have said?

21 A. Because it's the primary tenant and it has
22 been since we bought the property.

23 Q. Okay. Now, Exhibit 8 is the affidavit of
24 Mr. Kachmarsky that was filed in this court. Do you
25 see that?

1 A. Yes, sir.

2 (DEFENDANT EXHIBIT NUMBER 8 WAS ADMITTED INTO
3 EVIDENCE.)

4 Q. Do you see on paragraph 3, he contends that
5 based on the affidavit of April Shores, he has learned
6 that Taylor Foley, LLC has not always been paying rent
7 directly to K&T Group, LLC but rather to other
8 entities owned by David Glenn Taylor.

9 Do you see that?

10 A. Yes, sir.

11 Q. Okay. And do you see that in paragraph 4,
12 also it says that his knowledge is based on the
13 affidavit of April Shores?

14 A. Yes.

15 Q. And 5 indicates that it's based on
16 examination of records of the K&T Group, LLC? Do you
17 see that?

18 A. Yes, sir.

19 Q. Now, Mr. Kachmarsky always had access to the
20 records of K&T Group; is that right?

21 A. Yes.

22 Q. Okay. And, in fact, paragraph 7 says it's
23 based on his examination of records of K&T Group; do
24 you see that?

25 A. I do.

1 Q. And 6 is based on an affidavit of April
2 Shores; is that right?

3 A. Yes.

4 Q. Okay. Now, I would like to turn to the other
5 affidavit file, which is marked as Exhibit 7 here of
6 Ms. Shores.

7 (DEFENDANT EXHIBIT NUMBER 7 WAS ADMITTED INTO
8 EVIDENCE.)

9 Q. Do you see, Mr. Taylor, on paragraph 6 and
10 paragraph 7, Ms. Shores described that she has learned
11 things from examining the business records of Taylor
12 Foley; do you see that?

13 A. Yes, sir.

14 Q. Did Ms. Shores, for a long time, have access
15 to records of Taylor Foley --

16 MR. SLOTCHIVER: Objection to the relevancy,
17 Your Honor. What information Ms. Shores knew on
18 behalf of the new law firm does not impugn itself to
19 John Kachmarsky.

20 So this is about a managing partner and John
21 Kachmarsky saying I didn't know. I couldn't have
22 known. You didn't tell me. I wasn't aware.

23 MR. DUFFY: Your Honor, they have to prove --

24 MR. SLOTCHIVER: So now what's happening is
25 they're trying to put in evidence about what Bullock

1 Foley knew or what they could have known or what April
2 Shores could have known.

3 But April Shores did not work for John
4 Kachmarsky. She would not have had access to that
5 information, so it's irrelevant unless they can show
6 it otherwise.

7 THE COURT: This is your affidavit that you
8 put in the record in support of your motion?

9 MR. SLOTCHIVER: It went to the issue of the
10 fact that we weren't aware. And it also went to --

11 THE COURT: I'm with you.

12 MR. SLOTCHIVER: -- the issue on damages that
13 were created but not to the issue of supporting their
14 claim that we could have known.

15 THE COURT: Okay. I'm going to overrule your
16 objection.

17 MR. DUFFY: If I could just respond directly,
18 because these arguments keep coming.

19 Their evidence they say is based on learning
20 so from April Shores. And April Shores says I learned
21 it from the Taylor Foley records.

22 She's always had access to Taylor Foley
23 records. And I'm about to show she was disclosed as a
24 first witness who said she had access to these
25 records.

1 And the whole point is just like he didn't
2 ask a question about it in the deposition, he could
3 have taken that testimony there, and if that's the
4 basis for your motion and you could have done it, you
5 lose. And that's exactly what I am going to show.

6 MR. SLOTCHIVER: And, Your Honor, if I may,
7 what the Exhibit C shows, which is the affidavit of
8 John Kachmarsky, is that when he totaled up the amount
9 of rent paid, it was around \$400,000 less than what
10 April Shores totaled it up to be.

11 So it doesn't go to what -- the
12 extrinsic/intrinsic doesn't apply to what John didn't
13 know. In fact, it goes to extrinsic because he didn't
14 know.

15 This evidence doesn't support he knows. It
16 may support that April Shores could have known but not
17 that John Kachmarsky could have known.

18 Understanding your ruling, I just wanted to
19 be clear on the record.

20 THE COURT: All right.

21 Q. Okay. Mr. Taylor, I'm going to hand you --

22 THE COURT: Did you finish with Exhibit 7,
23 then?

24 MR. DUFFY: Yeah. Well, let me make sure I
25 made the point.

1 Q. So, Mr. Taylor, you see in paragraph 6 and 7
2 that Ms. Shores bases her testimony presented here on
3 the examination of the business records of Taylor
4 Foley, LLC?

5 A. Yes, sir.

6 Q. And were you agreeing that Ms. Shores had
7 access to those business records for a long time?

8 A. She did.

9 Q. And I'm going to hand you Exhibit Number 10.

10 (DEFENDANT EXHIBIT NUMBER 10 WAS ADMITTED
11 INTO EVIDENCE.)

12 Q. Mr. Taylor, can you tell me what Exhibit 10
13 is?

14 A. It appears to be a log audit for QuickBooks
15 for Taylor Foley, LLC.

16 MR. SLOTCHIVER: Same objection as before,
17 Your Honor. This doesn't go to what John Kachmarsky
18 or what K&T would have known. This may go to what
19 Taylor Foley would have known. It's not something
20 that John Kachmarsky had access to.

21 MR. DUFFY: The motion is based on learning
22 something from a witness. This is how she learned it.
23 She was available to be deposed, and that's the whole
24 point. It's not -- there aren't too many steps to get
25 there.

1 THE COURT: It's not whether it's discovered;
2 it's whether it could have been discovered.

3 MR. DUFFY: Absolutely.

4 MR. SLOTCHIVER: And, Your Honor, she may
5 have been available to be deposed, but based on
6 Mr. Taylor's own testimony, there was no reason for
7 John Kachmarsky to have any idea that he was charging
8 money separately. There was no information --

9 MR. DUFFY: Are you going to argue in the
10 middle of this examination?

11 MR. SLOTCHIVER: It goes both ways. I'm
12 responding to --

13 THE COURT: I'm going to let you argue that
14 later. Let's get through this.

15 Okay. Go ahead, Mr. Duffy.

16 Q. So does Exhibit 10 reflect, Mr. Taylor, that
17 Ms. Shores was accessing the QuickBooks of Taylor
18 Foley as early as 2022 in this printout?

19 A. Yes, sir.

20 Q. Mr. Taylor, I'm going to show you Defendant's
21 Exhibit 12.

22 (DEFENDANT EXHIBIT NUMBER 12 WAS ADMITTED
23 INTO EVIDENCE.)

24 Q. Now, you see here in November of 2022, the
25 responses on your behalf are being sent to

1 interrogatories?

2 A. Yes.

3 Q. And if you look with me on page 2 of the
4 interrogatories, third page of the exhibit, the very
5 first interrogatory is asking for witnesses. Do you
6 see that?

7 A. Yes, sir.

8 Q. Who is the first witness indicated in the
9 answer?

10 A. April M. Shores.

11 Q. Okay. And is that the same Ms. Shores whose
12 declaration was the basis for Mr. Kachmarsky's
13 discoveries?

14 A. Yes, sir.

15 Q. And tell me who else is listed there.

16 A. David M. Foley, Katie McConathy, and Brent
17 Bullock.

18 Q. The subsequent description, do you see where
19 it says what they would know? It says they're
20 expected to have knowledge of the parties' use of the
21 office space in Suite 330 and the payment of rents to
22 K&T Group as well as Kachmarsky's conduct?

23 A. Yes, sir.

24 Q. Okay. Do you know whether any of these
25 people were deposed in a lawsuit?

1 A. I don't think any were.

2 Q. I'm going to present Exhibit 15. Just to
3 start on the bottom right, do you see a Bates label
4 number on Exhibit 15?

5 (DEFENDANT EXHIBIT NUMBER 15 WAS ADMITTED
6 INTO EVIDENCE.)

7 A. Yes, sir.

8 Q. And what is it?

9 A. 56.

10 Q. Right. By defendants, correct?

11 A. Defendants, yes.

12 Q. So your entities as defendants produced this
13 document during the litigation; is that fair?

14 A. Yes.

15 Q. Okay. Now, at the bottom, you see it's an
16 e-mail from April Shores to you on January 4th of
17 2022?

18 A. Yes.

19 Q. And do you see a reference to John coming to
20 talk with her about the monthly payment?

21 A. Yes, sir.

22 Q. Okay. And then the subject, tell me what the
23 subject line of the e-mail is.

24 A. "K&T Group rent."

25 Q. Okay. And you had some questions about the

1 numbers that were being presented; is that fair?

2 A. Yes.

3 Q. And your e-mail in the middle, do you
4 reference any payments that would go to K&T Group?

5 A. Yes.

6 Q. And tell me what you say in that.

7 A. I ask if it is a payment from Taylor Tax Law
8 to K&T Group.

9 Q. Okay. So you produced those documents
10 talking about Taylor Tax Law making payments to K&T
11 Group?

12 A. Yes, sir.

13 Q. Okay. Is it fair to say that this whole
14 issue that we're here today about is how K&T Group is
15 going to treat the two mirror image spaces, these
16 offices?

17 A. Yes.

18 Q. Okay. And whose idea was it to treat it so
19 that it's not fair market value use?

20 A. John's.

21 Q. Okay. And do you believe it's fair for
22 Taylor Tax Law and for we'll just say you generally
23 not to have to give away your ownership rights in that
24 space to a different entity?

25 A. I do.

1 Q. And there's been no objection -- are you
2 aware of any objection to Taylor Foley having rented
3 that space including your big office?

4 A. None.

5 MR. DUFFY: All right. Okay. That's all the
6 questions I have. Thank you.

7 MR. SLOTCHIVER: Just a few follow-ups, Your
8 Honor.

9 REDIRECT EXAMINATION

10 BY MR. SLOTCHIVER:

11 Q. Mr. Taylor, just because Taylor Foley knows
12 something, it doesn't mean that John Kachmarsky knows
13 the same thing.

14 A. Is it fair to say that? Is that what you're
15 asking? That would be a conclusion, yes.

16 Q. Is that a fair statement?

17 A. I don't know what fair statement means
18 but . . .

19 Q. Is that a correct statement?

20 A. It's correct.

21 Q. Okay. John Kachmarsky would not have used
22 QuickBooks in Taylor Foley, correct?

23 A. Not unless he asked the people that he put on
24 a witness list or prepared for this case or anything
25 else, no.

1 Q. Do you remember -- I know you remember the
2 trial. The trial was about you using spaces and not
3 paying for them and John claiming that that was part
4 of the breach of your duties under the operating
5 agreement, correct?

6 A. My characterization of the trial would be
7 that I had questions about the calculations that John
8 made and asked for clarification, and once we got on
9 the same page, that rents were paid in the amount that
10 were due.

11 Q. The allegations in the lawsuit were you that
12 you were operating outside and breaching your duties
13 under the operating agreement, correct?

14 A. That was the allegation.

15 Q. Okay. And the allegations were that you were
16 not timely making payments and John was essentially
17 always chasing you down to try to make the payments or
18 arguing with you about whether or not the payments
19 were even due for the offices that you were utilizing.

20 A. That would be his characterization. My
21 characterization would be that we had -- because of
22 his management style and his decisions that we always
23 had to check and make sure that the amounts were
24 accurate.

25 Q. I think we already covered the fact that John

1 could not have known and did not know that you were
2 charging and collecting monies for your personal
3 office space from your prior law firm.

4 MR. DUFFY: Object to the form.

5 Q. Correct?

6 A. He could have known very easily. Whether he
7 did or not --

8 Q. You never told him, correct? We've
9 established that, correct?

10 A. I don't recall us ever talking about the
11 sublease. The only thing I can say is he knew Taylor
12 Foley was in there operating. It would be reasonable
13 to understand that the operating company -- he's an
14 accountant like I am training.

15 The name is on the door. Taylor Foley is going
16 to be paying the rent. He gets checks every month
17 from Taylor Tax Law. He could have very easily known
18 that.

19 Did we have that direct conversation? I don't
20 recall having that direct conversation.

21 Q. Okay. So from what you have said, I want to
22 make sure I have this correct. John would have known
23 that the tenants was Taylor Foley in the space,
24 correct?

25 A. Yes.

1 Q. And John would have known that he's receiving
2 the rent or not, the 5,725 or 5,750 every month,
3 correct?

4 A. Yes.

5 Q. Except for those times when he complained it
6 didn't come in on time, correct?

7 A. He was complaining about it not coming in in
8 excess of that amount because he changed it based on
9 periodic determinations that he was making.

10 Q. But he did not know and had no reason to know
11 that you were charging them an amount different,
12 correct?

13 A. Whether he knew or not, I don't know. It
14 would be reasonable for him to know that I was paying
15 rent on space that were executive office spaces but
16 utilizing for Taylor Foley the entirety of it.

17 Q. Would it be reasonable for him to expect you
18 to follow the terms of the operating agreement?

19 A. It would be reasonable, and I did.

20 Q. And one of the terms is that you had an
21 express written duty to hold any property, profit, or
22 benefit derived by the rent, correct? That's one of
23 your duties, right?

24 A. It's one of the duties he and I both had.

25 Q. Okay. But you haven't held it or told

1 Kachmarsky Taylor about it? We've established that.

2 A. I don't --

3 Q. Because you believe that you didn't have to
4 because you were renting it for your own personal
5 office?

6 A. I don't think we've established that. My
7 characterization was that his use of his space is a
8 benefit as well.

9 Did he hold that in account in his role of
10 manager? That's what we're talking about, the role of
11 manager being breached in a fiduciary duty of loyalty.

12 Q. Has he derived --

13 A. Excuse me. His space and my space, they are
14 mirror image. It's a very easy comparison to make.
15 Money was going to come in to K&T Group here, use
16 here, use here. Both of us are managers. Mirror
17 image there, too. If you characterize mine as a
18 breach, then his is, too.

19 Q. Except John wasn't collecting money and you
20 were.

21 A. John was using the space, as was I.

22 Q. John wasn't collecting about \$400,000 and you
23 did, correct?

24 A. Money coming in on sublease is not due -- a
25 sub landlord, primary sub -- a sub tenant primary -- a

1 primary tenant sub landlord can either lose money or
2 make money or break even. And that's as zero impact
3 on the primary lease, which John set some amount of
4 money per office. We're not paying rent on these two
5 primary spaces.

6 Q. So John --

7 A. We both used those primary spaces. That's
8 the benefit. Which you -- 66.2, I think it was A,
9 says derived benefit. He derived benefit from use of
10 his space and so did I. They're the same.

11 Q. The difference is that you were charging
12 \$5,000 a month more under a sublease that you arguably
13 had no right to do, and you certainly didn't disclose
14 to him.

15 A. I certainly don't agree with your
16 characterization. And whether it was disclosed to him
17 or not explicitly or whether he should have known by
18 all the things in front of him is on the record.

19 Q. So just to be very clear, and I will stop
20 asking questions, you decided -- your testimony is
21 that you decided you were going to sublease it to
22 Taylor Foley, correct?

23 A. My testimony is that David Foley became a
24 partner. The operating company of that space was no
25 longer Taylor Tax Law. It was Taylor Foley. And that