

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

John Hayes, III, Circuit Court Judge

Case No. 2013-001062

RECEIVED
DEC 30 2013
SC Court of Appeals

James H. Bailey, Jr.

Respondent,

v.

Development
International, LLC, David Auterson, John R.
Curtis, James P. LaRose, Robert C.
MacConnell and Sandra M. Morkel, of whom
David Auterson, John R. Curtis, James P.
LaRose, Robert C. MacConnell, and Sandra
Morkel

Appellants.

RECORD OF APPEAL

George E. Graham
McIver & Graham, P.A.
P O Box 915
Conway, SC 29528
Phone: (843) 248-4615
Facsimile: (843) 248-6479
Attorneys for the Appellants

Audra M. Byrd
Turner Padgett Graham & Laney, P.A.
P O Box 2116
Myrtle Beach, SC 29578
Phone: (843) 213-5500
Facsimile: (843) 213-5500
Attorneys for the Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

John Hayes, III, Circuit Court Judge

Case No. 2013-001062

James H. Bailey, Jr.

Respondent,

v.

Development
International, LLC, David Auterson, John R.
Curtis, James P. LaRose, Robert C.
MacConnell and Sandra M. Morkel, of whom
David Auterson, John R. Curtis, James P.
LaRose, Robert C. MacConnell, and Sandra
Morkel

Appellants.

RECORD OF APPEAL

George E. Graham
McIver & Graham, P.A.
P O Box 915
Conway, SC 29528
Phone: (843) 248-4615
Facsimile: (843) 248-6479
Attorneys for the Appellants

Audra M. Byrd
Turner Padgett Graham & Laney, P.A.
P O Box 2116
Myrtle Beach, SC 29578
Phone: (843) 213-5500
Facsimile: (843) 213-5500
Attorneys for the Respondent

INDEX

Order of Judge Hayes dated April 11, 2013	1
Order of Judge John. dated February 1, 2013.....	12
Order of Judge Hyman dated January 9, 2013.....	15
Notice of Motion to set aside Judgment.....	17
Affidavit of John Curtis.....	18
Transcript of Record before Judge John January 14, 2013.....	20
Affidavit of Fees and Costs by Plaintiff.....	30
Summons and Complaint.....	33
Transcript of Record on April 8, 2013.....	80
Direct Examination Testimony of James H. Bailey.....	90
Cross Examination Testimony of James H. Bailey.....	96
Certificate of Council.....	124

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
Civil Action No. 2011-CP-26-07558

James H. Bailey Jr.,

Plaintiff,

vs.

Development Systems International, LLC,
David W. Auterson, John R. Curtis, Dianne
N. LaRose, James P. LaRose, Robert C.
MacConnell, and Sandra M. Morckel,

Defendants.

**ORDER DENYING MOTION TO SET
ASIDE ORDER OF DEFAULT
AND
GRANTING DEFAULT JUDGMENT
AGAINST DEFENDANTS DAVID W.
AUTERSON, JAMES P. LAROSE, ROBERT
C. MACCONNELL, AND SANDRA M.
MORCKEL**

The Court considered two matters in the above case during a hearing on April 8, 2013, at the Horry County Courthouse in Conway, South Carolina. First, the Court considered a Motion to Set Aside Order of Default filed by Defendants David W. Auterson, John R. Curtis, Dianne N. LaRose, James P. LaRose, Robert C. MacConnell, and Sandra M. Morckel, wherein Defendants seek an Order setting aside the Court's previous Order of Default as to those Defendants.

The second matter came before the Court upon a previous Order of Default entered by the Honorable Judge Larry B. Hyman, Jr. in favor of Plaintiff James H. Bailey, Jr. and against Defendants David W. Auterson, John R. Curtis, Dianne N. LaRose, James P. LaRose, Robert C. MacConnell, and Sandra M. Morckel. In the Order of Default, Judge Hyman ruled that a damages hearing be conducted by the Court to determine the amount of damages to which Plaintiff is entitled. After hearing arguments of counsel on the Motion to Set Aside Order of Default and taking the matter under advisement for further consideration, the Court proceeded with the damages hearing and took testimony from Plaintiff James H. Bailey, Jr.

Present at the hearing were Plaintiff James H. Bailey, Jr. and his counsel, Audra M. Byrd of Turner Padget Graham & Laney P.A. Attorney George E. Graham appeared at the hearing on behalf of Defendants David W. Auterson, John R. Curtis, Dianne N. LaRose, James P. LaRose, Robert C. MacConnell, and Sandra M. Morckel.

Prior to the hearing, counsel for the parties advised the Court that on January 31, 2013, Defendant Dianne N. LaRose filed for bankruptcy under Chapter 7 of the United States Bankruptcy Code. As a result of her filing, the Motion and damages hearing with regard to Defendant Dianne LaRose were stayed, and the Court did not address any matters related to Defendant Dianne LaRose. The Court proceeded only with the Motion and damages hearing as they pertain to the remaining, individual Defendants, who are currently in default.

After hearing arguments of counsel, receiving testimony from Plaintiff, and carefully reviewing the Court's file, the evidence presented and the applicable case law, the Court makes the following findings of fact and conclusions of law:

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

1. The Summons and Complaint were filed in this case on September 12, 2011.
2. The Summons and Complaint were served on Defendant John R. Curtis on September 15, 2011, by certified mail, return-receipt requested, restricted delivery, and an Affidavit of Service, with the attached PS Form 3811, bearing Defendant Curtis' signature was filed with the Court on September 21, 2011.
3. The Summons and Complaint were served on Defendant Sandra M. Morckel on September 19, 2011, by certified mail, return-receipt requested, restricted delivery, and an Affidavit of Service, with the attached PS Form 3811, bearing Defendant Morckel's signature was filed with the Court on September 27, 2011.

4. The Summons and Complaint were served on Defendant David W. Auterson on September 22, 2011, by certified mail, return-receipt requested, restricted delivery, and an Affidavit of Service, with the attached PS Form 3811, bearing Defendant Auterson's signature was filed with the Court on September 27, 2011.
5. The Summons and Complaint were served on Defendant Robert C. MacConnell on October 11, 2011, by a process server who personally delivered copies of the same to his home, and an Affidavit of Service was filed with the Court on October 18, 2011.
6. The Summons and Complaint were served on Defendant James P. LaRose on October 12, 2011, by a process server who personally delivered copies of the same to his home, and an Affidavit of Service was filed with the Court on October 18, 2011.
7. The above-named Defendants failed to file or serve a response to the Summons and Complaint within the time allowed under the South Carolina Rules of Civil Procedure, and on November 15, 2011, Plaintiff's counsel filed with the Court a Motion and Affidavit of Default as to these defendants. An entry of default was entered by the Clerk on the same date.
8. Thereafter, on January 9, 2012, the Honorable Judge Larry B. Hyman, Jr. executed an Order of Default as to Defendants Auterson, Curtis, Morckel, LaRose, and MacConnell. In his Order, Judge Hyman ruled that a hearing would be held to determine the amount of Plaintiff's damages. The Order was filed with the Clerk of Court on January 12, 2012.
9. A damages hearing was scheduled by the Court to take place on January 14, 2013. Plaintiff's counsel mailed a Notice of Hearing to Defendants on January 3, 2013, advising Defendants that the default damages hearing was scheduled for January 14, 2013. Defendants do not dispute having received notice of the hearing.

10. On January 11, 2013, Defendants, through their counsel, George E. Graham, filed a Motion seeking to set aside the Court's previous Order of Default pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure.
11. As a result, at the January 14, 2013 damages hearing, the Court orally granted a thirty-day continuance of the hearing so as to allow Defendants additional time in which to file affidavits or other materials in support of their Motion. The Honorable Steven H. John entered a written Order to this effect on February 4, 2013.
12. In his Order, Judge John ruled that if Defendants were not successful in setting aside the Order of Default, Plaintiff and his counsel would be entitled to reimbursement of attorneys' fees and costs incurred as a result of the continuance requested by Defendants. He further ordered that Plaintiff or his counsel submit an affidavit of all such fees and costs prior to the next scheduled damages hearing.
13. On February 14, 2013, Defendant John R. Curtis filed an affidavit with the Court in support of the Motion to Set Aside Order of Default. No other Defendant has filed an affidavit or any other material in support of their request that the previously-entered Order of Default be set aside by this Court.
14. The damages hearing, previously continued, was scheduled for hearing on April 8, 2013, and written notice of the hearing was sent by the Clerk of Court to all parties, through their attorneys, on February 26, 2013. Again, Defendants do not dispute having received notice of the damages hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

As an initial matter, the Court finds that Defendants David W. Auterson, John R. Curtis, James P. LaRose, Robert C. MacConnell and Sandra M. Morckel have been properly served with

the Summons and Complaint pursuant to Rule 4(d)(1) and (d)(8) of the South Carolina Rules of Civil Procedure. Further, the Court finds that the Order of Default entered against Defendants Auterson, Curtis, Morckel, LaRose, and MacConnell on January 12, 2012, was proper pursuant to Rule 55(b)(2) of the South Carolina Rules of Civil Procedure.

I. MOTION TO SET ASIDE ORDER OF DEFAULT

Legal Standard for Relief

After an Order of Default has been entered, a party seeking to be relieved from the Order must do so under Rule 60(b) of the South Carolina Rules of Civil Procedure. Rule 60(b) provides, in relevant part, that a party seeking relief must establish mistake, inadvertence, surprise, excusable neglect, newly discovered evidence . . . fraud, misrepresentation, or other misconduct of an adverse party." Rule 60(b)(1) - (3).

"The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the 'good cause' standard established in Rule 55(c)." Sundown Operating Co., Inc. v. Intedger Indus., Inc., 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009) (citing Ricks v. Weinrauch, 293 S.C. 372, 374, 360 S.E.2d 535, 536 (Ct. App. 1987)). The differing standards for relief under Rules 55 and 60 evince a clear intent to make it more difficult for a party to set aside an order of default, as opposed to an entry of default, which generally occurs earlier and carries less finality. Id. at 608, 681 S.E.2d at 888-889. Under Rule 60(b), the moving party "has the burden of presenting evidence proving the facts essential to entitle him to relief." Bowers v. Bowers, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct. App. 1991); see also, 46 Am. Jur. 2d Judgments § 780, at 940 (1969) ("The general rule is that no court has authority to open or vacate a judgment without some material evidence to support the claims on which the application for relief depends.").

A. Defendants Auterson, LaRose, MacConnell and Morckel

In this case, Defendants seek relief under Rule 60(b)(1) of the South Carolina Rules of Civil Procedure and allege they are entitled to relief based upon mistake, inadvertence, surprise, or excusable neglect. However, no Defendant, with the exception of Defendant Curtis, has submitted any evidence whatsoever in support of their Motion.¹ As a result, the Court finds that Defendants David W. Auterson, James P. LaRose, Robert C. MacConnell and Sandra M. Morckel have failed to carry their burden of proof, and therefore, their Motion to Set Aside Order of Default must be denied. See McCall v. A-T-O, Inc., 276 S.C. 143, 147, 276 S.E.2d 529, 530-531 (1981) (holding the trial court abused its discretion in vacating a default judgment where the trial court's finding of excusable neglect was without evidentiary basis).

B. Defendant John R. Curtis

As noted above, Defendant Curtis submitted an affidavit in support of Defendants' Motion to Set Aside Order of Default. In his Affidavit, Defendant Curtis admits that all Defendants were served with the Summons and Complaint, and he alleges that they took the documents to Drake Kaiser, Esquire, the corporate attorney for their company, Development Systems International, LLC. Affidavit of John R. Curtis, January 14, 2013, at ¶ 5. According to his Affidavit, unbeknownst to the individual Defendants, Attorney Kaiser answered only on behalf of the company. Curtis Aff. at ¶ 5 - 6. Defendant Curtis alleges that he and the remaining Defendants "were ignorant and did not realize that Mr. Drake [Kaiser] had not answered on behalf of the non corporate Defendants." Curtis Aff. at ¶ 6. This assertion is the sole basis upon which Defendant Curtis relies in seeking relief from the Order of Default.

¹ Defendant John R. Curtis filed an affidavit in support of the Motion to Set Aside Order of Default, purportedly on behalf of the remaining Defendants. However, the Court finds that Defendant Curtis cannot properly submit an affidavit on behalf of these Defendants, and the Court will consider the affidavit only as to Defendant Curtis' Motion.

The facts presented in this case are similar to those presented in the case of Little v. Orkin Exterminating Co., Inc., 270 S.C. 305, 241 S.E.2d 909 (1978). In Little, Orkin Exterminating Company sought relief from default based upon mistake and excusable neglect when its branch manager mailed copies of the Summons and Complaint to the company's corporate counsel but failed to take any further action or make any inquiry to determine whether the company's counsel had received or responded to the pleadings. Id. at 307-308, 241 S.E.2d at 910. In this case, Defendant Curtis did even less than the manager in Little. He failed to confirm that the company's corporate counsel would be representing him, individually, in this action, and nowhere in the record before this Court does it appear that Defendant Curtis ever made any inquiry as to the status of his representation or the case itself. Quite simply, the record reveals that Defendant Curtis merely provided copies of the Summons and Complaint to the corporate attorney for Development Systems International and took no further action to ensure that a timely response would be filed on his behalf with the Court.

It is well established that "a party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney." Goodson v. Am. Bankers Ins. Co., 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988). When a defendant is properly served with a summons and complaint, it is his duty to answer the complaint, and if he fails to do so, "he must suffer the consequence of his failure to answer." Williams v. Ray, 232 S.C. 373, 383-84, 102 S.E.2d 368, 373 (1958). Even assuming it was the negligence or inadvertence of Development Systems International's corporate counsel that resulted in Defendant Curtis' default, our courts have consistently held that an attorney's negligence in failing to answer is imputable to the defaulting Defendant. Sundown Operating Co., Inc., 383 S.C. at 609, 681 S.E.2d at 889; Williams v.

Vanvolkenburg, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994); Roberts v. Peterson, 292 S.C. 149, 151, 355 S.E.2d 280, 281 (Ct. App. 1987).

Based upon the foregoing, the Court finds that Defendant Curtis has failed to carry his burden of proof for relief under Rule 60 of the South Carolina Rules of Civil Procedure. Defendant Curtis' affidavit evinces a lack of diligence which negates any allegation of mistake, inadvertence, surprise or excusable neglect. The affidavit establishes that Defendant Curtis, who from the documents on file in this case is an astute businessman, simply took the Summons and Complaint to an attorney without confirming that the attorney would represent him in this action. The Court finds that this inattention is not inexcusable, and Defendant Curtis should not be surprised that he did not have representation in this matter.

Finally, Defendant Curtis has failed to present any evidence, or even to assert, that he has a meritorious defense which would entitle him to relief from default. The existence of a meritorious defense is a requirement for relief from default. See Mitchell Supply Co., Inc. v. Gaffney, 297 S.C. 160, 163, 375 S.E.2d 321, 323 (Ct. App. 1988) (holding that the adoption of the South Carolina Rules of Civil Procedure did not change the requirement that a meritorious defense exist for relief from default to be granted); Square Constr. Co. v. Washington Metro. Area Transit Auth., 657 F.2d 68, 71 (4th Cir. 1981) (holding that in considering a Rule 60(b)(3) motion the threshold matter is whether the movant has demonstrated the existence of a meritorious claim or defense).

For all of the reasons above, Defendant John R. Curtis has failed to meet his burden of proof for relief from default, and therefore, his Motion to Set Aside Order of Default must be denied.

II. AWARD OF DAMAGES TO PLAINTIFF

"It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability." Roche v. Young Bros., 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998) (citing Howard v. Holiday Inns Inc., 271 S.C. 238, 246 S.E.2d 880 (1978); Schenk v. National Health Care, Inc., 322 S.C. 316, 471 S.E.2d 736 (Ct. App. 1996); State ex rel. Medlock v. Love Shop, Ltd., 286 S.C. 486, 334 S.E.2d 528 (Ct. App. 1985)). Therefore, as a preliminary matter, the Court notes that for purposes of the damages hearing conducted pursuant to Rule 55(b)(2) of the South Carolina Rules of Civil Procedure, the allegations of Plaintiff's Complaint are deemed admitted, and although the defaulting Defendants are entitled to notice of the damages hearing, these Defendants are "limited to cross-examining witnesses and objecting to evidence." Id. at 81-82, 504 S.E.2d at 314.

During the hearing, the Court permitted Plaintiff James H. Bailey, Jr. to testify as to the damages he has sustained as a result of the conduct of Defendants, as alleged in his Complaint. Counsel for Defendants was permitted to cross-examine Plaintiff on the issue of damages. During his testimony, Plaintiff established that as a result of Defendants' conduct, he incurred lost wages and commissions in the amount of \$401,000.00. However, Plaintiff conceded that of this amount, he had received \$6000.00 for his employment in 2010. Additionally, Plaintiff testified that as a result of Defendants' actions, including his wrongful termination, he was forced to obtain loans in the amount of \$120,000.00 to cover his daily living expenses. Further, Plaintiff established that he had incurred costs in prosecuting this action, including service and filing fees, in the amount of \$748.35. Finally, pursuant to the Order of Judge Steven H. John, Plaintiff's counsel filed with the Court an affidavit of fees and costs incurred as a result of the

continuance of the January 14, 2013 damages hearing. The affidavit contains an itemized statement of fees and costs, and the total amount claimed in the affidavit is \$4269.10.

While Plaintiff requested an award of punitive damages and attorney's fees (beyond those specifically authorized in Judge John's previous Order), the Court finds that Plaintiff has not presented the Court with clear and convincing evidence to support such an award at this point in the litigation. Similarly, Plaintiff requested additional damages in the amount of \$40,000.00, representing his capital contribution to Development Systems International, LLC. However, the Court finds an award of these damages is not proper because Plaintiff maintains an equity position with the company.

Therefore, based upon the documents filed with the Court, as well as the testimony of Plaintiff, the Court finds that Plaintiff is entitled to the following damages:

<u>Description</u>	<u>Amount</u>
Salary and Commissions (less the amount received, \$6000.00)	\$395,000.00
Loans	\$120,000.00
Costs	\$748.35
Attorney's Fees and Costs (Pursuant to the Order of Judge John)	\$4269.10
TOTAL	\$520,017.45

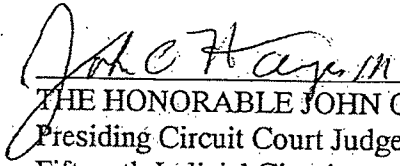
CONCLUSION AND ORDER

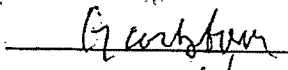
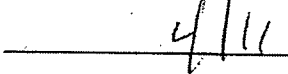
Based upon the foregoing,

It is hereby **ADJUDGED, ORDERED AND DECREED**, that the Motion to Set Aside Order of Default filed by Defendants David W. Auterson, John R. Curtis, James P. LaRose, Robert C. MacConnell and Sandra M. Morckel is hereby DENIED;

It is further ADJUDGED, ORDERED AND DECREED, that Plaintiff is entitled to a judgment against Defendants David W. Auterson, John R. Curtis, James P. LaRose, Robert C. MacConnell and Sandra M. Morckel, in the amount of Five Hundred Twenty Thousand Seventeen and 45/100 Dollars (\$520,017.45).

AND IT IS SO ORDERED.


THE HONORABLE JOHN C. HAYES, III
Presiding Circuit Court Judge
Fifteenth Judicial Circuit #11

, South Carolina
, 2013

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

James H. Bailey, Jr.

PLAINTIFF,

VS.

Development Systems International, LLC,
David W. Auterson, John R. Curtis,
Dianne N. LaRose, James P. LaRose,
Robert C. MacConnell and Sandra M.
Morckel

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-26-7558

ORDER OF CONTINUANCE

FILED
HORRY COUNTY
13 FEB -4 PM 12:32
MELANIE HUGGINS-WARD
CLERK OF COURT

HEARING DATE : JANUARY 14, 2013
JUDGE : STEVEN H. JOHN
COURT REPORTER : DIXIE EUBANK
PLAINTIFF'S ATTORNEY : AUDRA M. BYRD
DEFENDANTS' ATTORNEY : DRAKE HUNTER KAISER

This matter was before me for hearing on damages pursuant to an Order of Default against Defendants, David W. Auterson, John R. Curtis, Dianne N. LaRose, James P. LaRose, Robert C. MacConnell and Sandra M. Morckel, by the Honorable Larry Hyman. The Plaintiff and his attorney were present. The Defendant, Development Systems International, LLC's, attorney also appeared. George E. Graham, Esquire, appeared on behalf of the aforementioned defaulting Defendants, and asked for a Continuance based on the fact that he filed a Motion to set aside the Default Order against his clients pursuant to Rule 60(b) of the SCRCF.

[Handwritten signature]

FINDING OF FACTS

Based upon the pleadings and argument of counsel, the court makes the following findings of fact.

1. A Default Order was executed by the Honorable Larry B. Hyman, Jr., on January 9, 2012, against the Defendants, David W. Auterson, John R. Curtis, Dianne N. LaRose, James P. LaRose, Robert C. MacConnell and Sandra M. Morckel. The Order of Default was filed with the Clerk of Court on January 12, 2012.
2. Notice of this hearing was mailed to the Defendants on January 3, 2013 by the attorney for the Plaintiff.
3. The defaulting Defendants filed a Motion to set aside the Order of Default on January 11, 2013.
4. The Plaintiff and his attorney were present and ready to proceed. Additionally, the Plaintiff's counsel indicated that because of the continuance requested by Defendants, the Plaintiff has incurred and will incur additional attorney's fees and costs, including travel costs, lost wages, and other expenses in traveling to Conway, South Carolina for the hearing, for which she would like to be reimbursed.

CONCLUSIONS OF LAW

Based upon the findings of fact the court concludes as a matter of law:

1. The defaulting Defendants have filed a timely Motion to set aside the Order of Default within the one-year time limit contained in Rule 60 of the South Rules of Civil Procedure, and the damage hearing cannot proceed until this Motion is heard.
2. The Continuance in this matter should be granted.

258
11.11

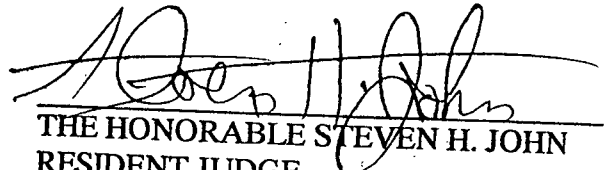
3. The Plaintiff should be allowed to recover fees and costs if the Motion of the defaulting Defendants is not granted.

ORDER

IT IS HEREBY ORDERED this matter is continued until the Defendants' Motion to Set Aside the Order of Default is heard by the Court. It is further

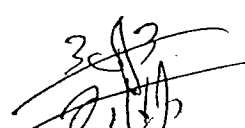
ORDERED that the defaulting Defendants shall, within thirty (30) days from the date of the hearing, file any additional pleadings to support the Motion to set aside the default judgment in this case. It is further

ORDERED that if the Defendants' relief from judgment is not granted, the Plaintiff shall, prior to the damages hearing in this case, file any pleading regarding attorney's fees, costs and other related expenses if he desires the Court to consider the same.


THE HONORABLE STEVEN H. JOHN
RESIDENT JUDGE
FIFTEENTH JUDICIAL CIRCUIT

February 1, 2013
Conway, South Carolina

^{cl}
2011-DK-26-7558



STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
James H. Bailey Jr.,)
)
Plaintiff,)
)
vs.)
)
Development Systems International, LLC,)
David W. Auterson, John R. Curtis, Dianne)
N. LaRose, James P. LaRose, Robert C.)
MacConnell, and Sandra M. Morckel,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-26-07558

**ORDER OF DEFAULT AS TO
DEFENDANTS DAVID W. AUTERSON,
JOHN R. CURTIS, DIANNE N. LAROSE,
JAMES P. LAROSE, ROBERT C.
MACCONNELL, AND SANDRA M.
MORCKEL**

FILED
HORRY COUNTY
JAN 12 2011
12 JAN 12 2011
12 JAN 12 2011

This matter comes before the Court upon the Motion of Plaintiff James H. Bailey, Jr. seeking an Order of Default as to Defendants David W. Auterson, John R. Curtis, Dianne N. LaRose, James P. LaRose, Robert C. MacConnell, and Sandra M. Morckel.

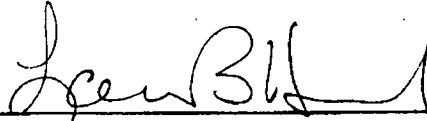
IT APPEARING from the Affidavits of Audra M. Byrd, attorney for the plaintiff, that Defendants David W. Auterson, John R. Curtis, Dianne N. LaRose, James P. LaRose, Robert C. MacConnell and Sandra M. Morckel have been duly served with the Summons and Complaint, and that more than thirty (30) days have elapsed during which no responsive pleadings were filed by Defendants; and

IT FURTHER APPEARING that a hearing to ascertain damages pursuant to Rule 55 of the South Carolina Rules of Civil Procedure should be held to determine the amount owed the plaintiff, along with the costs and disbursements of collection in this action and attorneys' fees;

It is hereby **ADJUDGED, ORDERED AND DECREED**, that Defendants David W. Auterson, John R. Curtis, Dianne N. LaRose, James P. LaRose, Robert C. MacConnell and

Sandra M. Morckel are hereby in default, and a judgment in an amount to be determined at a hearing to be held, shall be filed in favor of Plaintiff James H. Bailey, Jr.

AND IT IS SO ORDERED.



THE HONORABLE LARRY B. HYMAN, JR.
CHIEF ADMINISTRATIVE JUDGE,
FIFTEENTH JUDICIAL CIRCUIT

Conway, South Carolina
1-9-, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
JAMES H. BAILEY, JR.)
PLAINTIFF)
VS.)
DEVELOPMENT SYSTEMS)
INTERNATIONAL, LLC, et. al)
_____)

IN THE COURT OF COMMON PLEAS
15th JUDICIAL CIRCUIT
CASE NO. 2011 - CP - 26 - 07558

AFFIDAVIT OF JOHN R. CURTIS

FILED
CLERK OF COURT
2013 FEB 14 PM 4:59

AFTER BEING DULY SWORN:

1. I am one of the non corporate Defendants in this action and I file this affidavit on behalf of myself and the other non-corporate Defendants.
2. The Corporate Defendant, Development Systems International, LLC is a Limited Liability Company organized by the non corporate Defendants and the Plaintiff.
3. All of the Non corporate Defendants are members and/ or officers of Development Systems International, LLC.
4. Plaintiff has filed a lawsuit against the non corporate Defendants and the Limited Liability Company.
5. We were served with the Summons and Complaint and took the documents to our Corporate Counsel, Drake Kaiser Esq. who only answered on behalf of the Corporation.
6. The Non Corporate Defendants were ignorant and did not realize that Mr. Drake had not answered on behalf of the non corporate Defendants.
7. All of the correspondences concerning the default were handled by the Plaintiff's lawyer and corporate counsel who technically was not the representative of the Non Corporate Defendants.
8. The Non Corporate Defendants did not know of the default until we received notices of the Damages Hearing via letter addressed to each Non Corporate Defendants on January 3, 2013.

9. The Non Corporate Defendants would respectively ask the court to set aside the Default Judgment against them.

FURTHER, the affiant sayeth not.

SWORN before me this
14th day of January 2013

Richard M. Khan

NOTARY FOR THE STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES: June 14, 2015

John R. Curtis
JOHN R. CURTIS

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS NON-JURY
COUNTY OF HORRY	)	(2011-CP-26-07558)
	)	
JAMES H. BAILEY, JR.	)	
	)	
VERSUS	)	TRANSCRIPT OF RECORD
	)	
DEVELOPMENT SYSTEMS INTER-	)	January 14, 2013
NATIONAL, LLC, et al	)	Conway, S. C.
	)	
	)	

B E F O R E:

HONORABLE STEVEN H. JOHN, Judge.

A P P E A R A N C E S:

AUDRA M. BYRD, ESQ.
ATTORNEY FOR PLAINTIFF

GEORGE E. GRAHAM, ESQ.
ATTORNEY FOR DEFENDANTS
(David Auterson, John R. Curtis,
Dianne LaRose, James LaRose,
Robert MacConnell, Sandra Mockel)

DIXIE COX EUBANK
CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

1 (THE FOLLOWING TAKES PLACE ON JANUARY 14, 2013.)

2 THE COURT: All right. James H. Bailey versus Development
3 Systems International, LLC. Audra Byrd, Drake Kiser.

4 All right. Whose motion is it?

5 MS. BYRD: Your Honor, this is a damages hearing on behalf
6 of the Plaintiff.

7 THE COURT: All right.

8 MR. GRAHAM: And Your Honor, I'm involved because I've
9 just been recently retained to represented the parties that are
10 in default, and I filed a motion under Rule 60(B) to have the
11 Judgment of Default and Order that was signed. I just filed that
12 on January 11th, of 2013.

13 THE COURT: Okay. All right.

14 Well, Ms. Byrd, how can I go forward with the damage hearing
15 without the motion being heard? Are you prepared to respond to
16 the Motion to Set Aside the Default at this time?

17 MS. BYRD: Absolutely, Your Honor.

18 THE COURT: All right. Are you prepared to go forward?

19 MR. GRAHAM: No sir, Your Honor. I don't have an
20 affidavit. As I indicated to the Court, I filed this on Friday,
21 and I'm still waiting for the original of my Affidavit from my
22 client.

23 THE COURT: For some reason you didn't attach it to the
24 motion at the time you filed the -- you filed your -- your motion
25 to -- for relief. The reason you didn't attach an affidavit at

1 that time?

2 **MR. GRAHAM:** The reason, Your Honor, is my client is out
3 of state, and basically the time frame was that I needed -- I
4 had to have that filed by this past Friday.

5 **THE COURT:** All right. Who do you represent, again, Mr.
6 Graham?

7 **MR. GRAHAM:** I represent all the non-corporate Defendants,
8 Your Honor.

9 **THE COURT:** So David Auterson, John R. Curtis, Dianne
10 LaRose, James LaRose, Robert MacConnell, and Sandra M. Morckel?

11 **MR. GRAHAM:** Yes sir.

12 **THE COURT:** All right. And when were you retained by all
13 of these individuals?

14 **MR. GRAHAM:** On Friday, Your Honor.

15 **THE COURT:** Affidavits of Default were filed on January
16 12th, 2012. Let's see. The Order of Default, as to the
17 Defendants David Auterson, John Curtis, Dianne LaRose, James
18 LaRose, Robert MacConnell, Sandra Morckel, was issued by Judge
19 Hyman on January 9th, 2012. All right. Some reason for a delay
20 in a year?

21 **MR. GRAHAM:** Yes sir. If you look at the -- the
22 Certificate of Service in the file, Your Honor, you will find
23 that the Plaintiff's lawyer mailed all of the information
24 regarding the default, the Motion, the Proposed Order, and the
25 Affidavit, to the counsel for the LLC, not my clients. The first

1 time my clients had notice that they were in default was when
2 she wrote them and sent them, individually, a letter advising
3 them of the damages hearing on today.

4 **THE COURT:** All right. And what's the date of that letter?

5 **MR. GRAHAM:** The date of that letter is January 3rd, 2013.

6 **THE COURT:** Ms. Byrd.

7 **MS. BYRD:** Your Honor, the Clerk's file will indicate that,
8 in fact, all the individual Defendants were served a copy of the
9 Order of Default on ---

10 **THE COURT:** Okay. Where is that? I was looking for that?

11 **MS. BYRD:** It's dated -- I saw it on-line, but it's dated
12 February the 21st.

13 **THE COURT:** February 21st, 2012?

14 **MS. BYRD:** Yes sir, Your Honor.

15 **THE COURT:** Okay.

16 **MS. BYRD:** We would also note that the -- as the Court
17 noted, the Order of Default was signed on January the 9th, under
18 Rule 60(B), which is what the Defendants have moved under to set
19 aside the default. It requires that the motion be made within
20 a year, which it was not, Your Honor.

21 **THE COURT:** Okay. Let's ---

22 **MR. GRAHAM:** Of course, Your Honor, we take the position
23 that it was actually entered on the 12th of January.

24 **THE COURT:** It was entered by the Clerk of Court on January
25 12th. That's when it was filed with the Clerk of Court. That's

1 no question about that..

2 **MR. GRAHAM:** Your Honor, I believe the Affidavit I'm
3 referring to was served on January 12th, 2012, to Reddick and
4 Kiser, LLC, which Mr. Drake Kiser is corporate counsel.

5 **THE COURT:** All right. Again, I was -- I'm looking for
6 a notice to the individual Defendants. The Judge issued his
7 Order, and it was filed with the Clerk of Court on January 12,
8 2012. I'm looking for - I haven't yet found it - any information,
9 or any documentation showing that Order of Judge Hyman was served
10 on the individuals.

11 Now Ms. Byrd you said it ---

12 **MS. BYRD:** Your Honor, on-line - which I don't have the
13 document, Your Honor - but it appears that on February the 21st,
14 2012, copies of the Order were served by the Clerk of Court, as
15 they were served upon us. But I would also note, Your Honor ---

16 **THE COURT:** Does it say where they went, or who they went
17 to, because there's nothing in the file that indicates that at
18 all. Okay. There's nothing in the Clerk of Court's file that
19 says there was anything mailed, or anything like that, so, does
20 it say who it went to?

21 **MS. BYRD:** No sir, it does not.

22 **THE COURT:** All right.

23 **MS. BYRD:** Your Honor ---

24 **THE COURT:** Did you send anything ---

25 **MS. BYRD:** I did not send ---

1 THE COURT: ---To the individual Defendants?
2 MS. BYRD: No sir, Your Honor.
3 THE COURT: All right.
4 MS. BYRD: It's my understanding that under Rule 55 I'm
5 not required to do so if they did not appear, however, I am required
6 to send them notice of the hearing, which I did do, Your Honor.
7 THE COURT: Right. Okay. All right.
8 And I'm sorry. You told me. When did you file your motion,
9 which you also stated, apparently hasn't yet made it to the Clerk
10 of Court's file, Mr. Graham. When did you file your motion?
11 MR. GRAHAM: On Friday.
12 THE COURT: Friday is -- was what? The 11th?
13 MR. GRAHAM: Yes sir.
14 THE COURT: Friday was the 11th?
15 MR. GRAHAM: Yes sir.
16 THE COURT: All right. Very good. All right. Well, it
17 would appear - and it's not a part of the Clerk's records, and
18 not a judgment as against anyone until the Clerk of Court files
19 it. The Clerk of Court didn't file the Order of Default until
20 January 12th, 2012 at 10:29 AM, so it's not of record until January
21 12th.
22 Mr. Graham indicates, again -- and it -- just tell me, what's
23 the clock in date on it?
24 MR. GRAHAM: 13 January at 4:25.
25 THE COURT: Okay.

1 MS. BYRD: It's actually January 11.

2 THE COURT: January 11, 2013.

3 MR. GRAHAM: I read it ---

4 THE COURT: January 11, 2013, at what time?

5 MR. GRAHAM: 4:25.

6 THE COURT: 4:25. All right. It appears that the Motion
7 was filed within one year of the matter being of record in the
8 Clerk of Court's Office, and therefore would be proper. I
9 understand the necessity of having filed that Motion within one
10 year because there is no -- it doesn't say within one year of
11 notice; it says within one year of the date of the -- I'm sorry,
12 one year within -- after the judgment, was entered or taken, and
13 it wasn't entered until January 12th, so it's within one year
14 of that.

15 So, I understand, Ms. Bailey, (sic) you are here ready,
16 willing and able to go forward. Based upon the circumstances,
17 again, the Clerk of Court's file doesn't indicate that anybody
18 but the corporation got notice of Judge Hyman's Order. Counsel
19 indicates they found out about it because, as you are required
20 to do so, you gave them notice of the damage hearing, and that's
21 how they found out about it.

22 Mr. Graham has filed a proper motion; it deserves to be
23 heard. He indicates that he is not prepared at this point in
24 time to go forward because he does not have the supporting
25 affidavit to go forward with his arguments.

1 Now, I don't know that -- anyway, that's -- be that as it
2 may, I understand your objection to it. I'm going to continue
3 the matter for thirty days from today's date for you to get those
4 affidavits, Mr. Graham, after which the hearing on damages will
5 be rescheduled, so that's thirty days from today's date, and within
6 that time, Mr. Graham, you've got to file whatever affidavits,
7 or get whatever affidavits, your response that you want to attach
8 to your Motion. You fail to do so, then there -- you won't be
9 able to argue them at the time of the damage hearing. All right.
10 Well, not damage hearing, but -- I'm sorry -- your motion hearing
11 on your relief from the judgment, and the damage hearing,
12 obviously, is continued until the -- the Motion for Relief from
13 Judgment is heard.

14 MS. BYRD: Your Honor ---

15 THE COURT: Yes Ma'am.

16 MS. BYRD: ---May I ask one question? My client has
17 traveled about five hours to get here, and this is the second
18 time it's been continued and ---

19 THE COURT: I'll be glad for you to file an Affidavit with
20 the Court detailing the attorney's fees, cost of your client,
21 and they will be heard at the time of the Motion for Relief from
22 the Judgment. If the relief from the judgment is not granted
23 then the Court may certainly consider awarding you the attorney's
24 fees and the cost at that point in time. Obviously if relief
25 from judgment is granted, then the cost would not be properly

1 awarded.

2 MS. BYRD: Yes sir, Your Honor.

3 THE COURT: All right. But you are granted relief to file
4 that, and obviously serve a copy on Mr. Graham.

5 MS. BYRD: Yes sir, Your Honor. Thank you.

6 THE COURT: All right. That needs to be reflected in some
7 way. I don't want to rely solely upon a form order.

8 Mr. Graham, you requested the continuance. I'm going to
9 have you do an order granting your request for a continuance,
10 setting forth the time frame which you have to file your supporting
11 documentation, and also putting in there that opposing counsel
12 has that same period of time to file an affidavit of fees and
13 cost.

14 MR. GRAHAM: Yes sir.

15 THE COURT: All right.

16 MS. BYRD: Thank you, Your Honor.

17 THE COURT: Thank you, Mr. Graham.

18 MR. GRAHAM: Thank you, Your Honor.

19 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

20 C E R T I F I C A T E

21

22 I, the undersigned, DIXIE COX EUBANK, Official Court
23 Reporter for the Fifteenth Judicial Circuit of the State of South
24 Carolina, do hereby certify that the foregoing is a true, accurate
25 and complete Transcript of Record of all the proceedings had and

1 evidence introduced in the MOTION HEARING of the captioned case,
2 relative to appeal, in the COURT OF COMMON PLEAS NON-JURY for
3 HORRY COUNTY, SOUTH CAROLINA, on the 14th day of January, 2013.

4 I DO FURTHER CERTIFY that I am neither of kin, counsel nor
5 interest to any party hereto.

6 September 29, 2013

7
8 DIXIE COX EUBANK

9 CIRCUIT COURT REPORTER

10 FIFTEENTH JUDICIAL CIRCUIT
11
12
13
14

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

James H. Bailey Jr.,

Plaintiff,

vs.

Development Systems International, LLC,
David W. Auterson, John R. Curtis, Dianne
N. LaRose, James P. LaRose, Robert C.
MacConnell, and Sandra M. Morckel,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-26-07558

**AFFIDAVIT OF FEES AND COSTS
SUBMITTED ON BEHALF OF THE
PLAINTIFF**

HORRY COUNTY
13 APR -8 PM 1:16
MELANIE HUGGINS-WARD
CLERK OF COURT

The undersigned, having been duly sworn, deposes and says as follows:

1. I am one of the attorneys for Plaintiff James H. Bailey, Jr. in the above action.
2. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.
3. Turner Padgett Graham & Laney P.A. was retained to prosecute the claims filed by Plaintiff against Defendants in the above matter. I have actively represented Plaintiff since August of 2011.
4. The Court scheduled a hearing on Plaintiff's damages, which was to take place on January 14, 2013, before the Honorable Judge Steven H. John.
5. Just days before the damages hearing, the individual Defendants, who were in default, filed a Motion to Set Aside the Order of Default. However, no affidavits or supporting materials were included with the Motion.
6. As a result of this filing, during the hearing on January 14, 2013, Judge John ordered that the damages hearing be continued for thirty days so as to allow the individual Defendants

to submit affidavits or other documents in support of their Motion to Set Aside Order of Default.

7. Judge John further ordered that because Plaintiff and his counsel had traveled and prepared for the purpose of attending the damages hearing, both Plaintiff and his counsel were entitled to their costs and fees associated with the January 14, 2013 hearing if they were successful in defending the Motion to Set Aside Order of Default. Judge John ordered that prior to the next hearing, Plaintiff and his counsel were to submit an accounting of their costs and fees.
8. In order to prepare for and attend to the previous damages hearing in this case, I expended 13.3 hours, which includes travel time.
9. My normal and customary hourly rate is \$250.00 per hour, and Plaintiff engaged my law firm to represent him in this matter based upon an engagement letter wherein Plaintiff agreed to pay this amount for my work. This rate is reasonable and comparable to the rates charged by other attorneys in this area with similar experience.
10. The total attorney's fees incurred in preparing for and attending to the January 14, 2013 damages hearing are Three Thousand Three Hundred Twenty Five and no/100 Dollars (\$3,325.00), and Plaintiff is entitled to be reimbursed for the same.
11. The fees are also reasonable given the professional standing of counsel and experience in handling these types of cases. The fees provided herein are further reasonable given the fees customarily awarded by this Court for similar services in this locality. Moreover, the efforts of Plaintiff's counsel obtained beneficial results during counsel's representation of Plaintiff in this action.

12. In addition to the fees of counsel, Plaintiff has personally incurred costs associated with his travel and attendance at the January 14, 2013 hearing, including the following:

a. Travel (762 miles x \$0.55)	=	\$419.10
b. Lodging	=	\$125.00
c. Lost Wages	=	\$375.00
d. Daily Witness Fee	=	\$25.00
TOTAL	=	\$944.10

13. Based upon the foregoing, Plaintiff and his counsel have incurred a total of Four Thousand Two Hundred Sixty Nine and 10/100 Dollars (\$4,269.10) in fees and costs associated with the previously-scheduled damages hearing, and Plaintiff is entitled to be reimbursed for these costs pursuant to the Order of Judge John.

AND FURTHER THE AFFIANT SAITH NOT.

SWORN to before me this)
8th day of April, 2013.)
Cynthia D. Scott, L.S.)
Notary Public for South Carolina)
My Commission Expires: 5-15-2022)

Audra M. Byrd
Audra M. Byrd

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

James H. Bailey Jr.,)

Plaintiff,)

vs.)

Development Systems International, LLC,)

David W. Auterson, John R. Curtis, Dianne)

N. LaRose, James P. LaRose, Robert C.)

MacConnell, and Sandra M. Morckel,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-26-7558

SUMMONS

CLERK OF COURT
JUL 12 2 14 PM '11
COUNTY

TO: THE DEFENDANT NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon its subscribers at Turner Padget Graham & Laney, P.A., Post Office Box 2116, Myrtle Beach, South Carolina, 29578 within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

TURNER PADGET GRAHAM & LANEY P.A.

By:

Audra M. Byrd

R. Wayne Byrd (S.C. Bar #1068)

WByrd@TurnerPadget.com

Audra M. Byrd (S.C. Bar #76719)

AByrd@TurnerPadget.com

Post Office Box 2116

Myrtle Beach, South Carolina 29578

Telephone: (843) 213-5500

ATTORNEYS FOR PLAINTIFF JAMES H.
BAILEY, JR.

September 12, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

James H. Bailey Jr.,)

Plaintiff,)

vs.)

Development Systems International, LLC,)

David W. Auterson, John R. Curtis, Dianne)

N. LaRose, James P. LaRose, Robert C.)

MacConnell, and Sandra M. Morckel,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-26- 7558

COMPLAINT

(JURY TRIAL DEMANDED)

FILED
CLERK OF COURT
2011 SEP 12 PM 4:06
RICHLAND COUNTY

Plaintiff, complaining of Defendants named above, would allege and show unto this Honorable Court as follows:

JURISDICTION AND VENUE

1. Plaintiff James H. Bailey Jr. ("Bailey") is a citizen and resident of the State of North Carolina and is a member of the defendant, Development Systems International, LLC ("the Company").
2. The Company is a limited liability company, organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County.
3. Defendant David W. Auterson is a member and officer of the Company and, upon information and belief, Auterson is a citizen and resident of the State of New Jersey.
4. Defendant John R. Curtis is a member and officer of the Company and, upon information and belief, Curtis is a citizen and resident of the State of North Carolina.

5. Defendant Dianne N. LaRose is a member and officer of the Company and, upon information and belief, Mrs. LaRose is a citizen and resident of the State of South Carolina, County of Richland.
6. James P. LaRose is the Chief Executive Officer of the Company and, upon information and belief, LaRose is a citizen and resident of the State of South Carolina, County of Richland.
7. Robert C. MacConnell is a member and officer of the Company and, upon information and belief, MacConnell is a citizen and resident of the State of South Carolina, County of Horry.
8. Sandra M. Morckel is a member and officer of the Company and, upon information and belief, Morckel is a citizen and resident of the State of North Carolina.
9. Venue is proper in this Court pursuant to S.C. Code Ann. §§ 15-7-30 (B) and (C)(1).
10. This Court has subject matter jurisdiction over the claims set forth herein.

FACTUAL ALLEGATIONS

11. For many years, James P. LaRose has acted as a fundraising consultant to non-profit organizations, assisting executives and boards of directors in their fundraising efforts. LaRose is the founder of James P. LaRose Companies, which is a conglomerate of companies specializing in non-profit fundraising; the Company is a member of the conglomerate.
12. In 2010, LaRose approached the plaintiff about joining him in the formation of the Company. Thereafter, in October of 2010, the plaintiff and Defendants LaRose, Morckel, and Auterson attempted to form a corporation to be known as Development Systems International, Inc.

13. Plaintiff, Defendant Dianne LaRose (the wife of James P. LaRose), Morckel, and Auterson were to be the original shareholders of the corporation, each owning 25% of the shares of the corporation.
14. However, for unknown reasons, the Articles of Incorporation were not filed with the South Carolina Secretary of State, and the corporation was never officially incorporated. Nonetheless, the parties executed an agreement among themselves, outlining the management of the corporation and the manner in which shareholders would be compensated. The agreement was dated October 2, 2010, and was signed by all parties.
15. The agreement among the original shareholders was that each shareholder would work as a Counselor for the Company and would receive monthly compensation for their employment with the Company. If working part time, the shareholder would receive a monthly income of \$3000.00, and if working full-time, the shareholder would receive \$4000.00 per month.
16. In addition, the shareholders were promised consulting opportunities with the Company whereby they would be paid a "Counselor Retainer" fee (or a percentage of the commission fees paid to the Company).
17. Plaintiff was required to pay \$40,000.00 for his shares in the corporation, and he did so in or about October of 2010.
18. At the time of the parties' original agreement, Plaintiff was working full-time at the University of North Carolina, Wilmington. In October of 2010, Plaintiff began working part time for the Company while maintaining his employment at UNC – Wilmington.
19. In reliance upon the representations of the defendants, Plaintiff quit his job at UNC – Wilmington to go to work for the Company.

20. In January of 2011, Plaintiff, Defendants Dianne LaRose, James P. LaRose, Morckel, and Auterson again attempted to formally organize the Company. This time, the Company was formed as a limited liability company, and as a part of the transaction, the parties executed an Operating Agreement dated January 4, 2011. A true and accurate copy of the Operating Agreement is attached hereto and incorporated herein by reference as **Exhibit A**.
21. Like the prior agreement of the parties, each member of the Company held a 25% ownership interest. However, the Operating Agreement included a separate provision regarding the "Invested Membership Interest" of the members. Ex. A, at § 3.2.
22. The Operating Agreement also provided for a new system of compensation whereby members of the Company would share in the profits of the Company based on their percentage of ownership. Ex. A, at § 3.1.
23. Defendants assured the plaintiff that the new agreement was in the best interest of the Company and the members and that the plaintiff would continue to be employed and compensated by the Company.
24. Beginning in February of 2011, the plaintiff was working full time as an active partner in the Company. The plaintiff served as an officer of the Company, and he devoted his entire time and endeavor to the business enterprise, working full-time. The plaintiff dedicated his time, money and endeavor to grow and build the business into a profitable enterprise which would provide to the plaintiff and the other members of the Company, a salary, a significant place in management, and economic security for their families.
25. In April of 2011, two additional members were admitted to the Company, Defendants Curtis and MacConnell, and the members executed a document entitled "Amendments to

Operating Agreement of Development Systems International, LLC." A true and accurate copy of the Amendments to Operating Agreement is attached hereto and incorporated herein by reference as **Exhibit B**.

26. As a result of this transaction, the respective general ownership interest of each member of the Company was reduced to 16.6%. Additionally, the "Invested Membership Interest" of the members was further reduced.
27. As a part of the April 1, 2011 transaction, the members of the Company also executed an Employment Agreement whereby the Company agreed to pay Defendant James P. LaRose a monthly salary of \$18,329.00 to act as the Chief Executive Officer of the Company. A true and accurate copy of the Member Profit Sharing and Compensation Agreement is attached hereto and incorporated herein by reference as **Exhibit C**.
28. Again, Defendants assured the plaintiff that the agreements and change in ownership interest were in the best interest of the Company and the members and that the plaintiff would continue to be employed and compensated by the Company.
29. After the April 1, 2011 transaction, the plaintiff continued to serve as an officer and employee of the Company until May 12, 2011.
30. LaRose and the members of DSI, through a course of conduct, actions and words, induced the plaintiff to make a significant commitment of time, money, energy and efforts with the reasonable expectation of financial rewards, continuous employment, and beneficial co-ownership of the cooperative business enterprise.
31. The plaintiff worked in the business full-time with the reasonable expectation and assurance that he would be permanently employed by the Company and would enjoy the financial benefits as a co-partner of the enterprise for the rest of his productive life.

32. On May 12, 2011, the plaintiff traveled to Columbia, South Carolina to meet with Defendant James P. LaRose regarding Company business. While in Columbia, the plaintiff and Defendant LaRose were scheduled to meet with a banking official regarding increasing the Company's credit line to further expand the Company's business.
33. The plaintiff had no idea or prior notice that Defendant LaRose's true purpose in calling the plaintiff to Columbia was to fire him. However, during a lunch meeting with the plaintiff and the Company's chaplain, Defendant LaRose informed the plaintiff that he was being dismissed. According to Defendant LaRose, the plaintiff was being terminated from his employment with the Company because he was not able to perform adequately his duties and was not meeting client expectations.
34. Prior to the day of his firing, the plaintiff had never received any complaints regarding his job performance, and the clients that he serviced for the Company always expressed extreme satisfaction with his work. Additionally, prior to his termination, the plaintiff recruited the counselor who the Company ultimately hired to replace him.
35. The plaintiff believes his termination from the Company was motivated by a personal vendetta against him and was not the result of a valid business judgment.
36. Since his termination, the plaintiff has received no compensation or distribution from the Company, and as a result, he and his family have been forced to borrow a significant amount of money for ordinary living expenses.
37. Pursuant to the terms of the Amended Operating Agreement, the plaintiff has requested the Company purchase back his ownership interest, but the defendants have failed and refused to do so. The defendants have likewise failed to engage in good faith efforts to

negotiate a purchase of the plaintiff's interest. Instead, the defendants have ostracized the plaintiff and prevented him from any meaningful participation in the Company.

38. As the controlling members and/or officers of the Company, the defendants, David W. Auterson, John R. Curtis, Dianne N. LaRose, James P. LaRose, Robert C. MacConnell, and Sandra M. Morckel, owe the plaintiff the highest fiduciary duty of utmost good faith and fair dealing.

39. The defendants have breached their fiduciary duties, abused their control, grossly mismanaged the Company, and wasted the Company's assets.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

40. The plaintiff reiterates and realleges all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.

41. In May of 2011, after the plaintiff had faithfully devoted his full-time efforts and attention to the affairs of the Company for over eight months and after he made a substantial capital contribution, the Company, through its Chief Executive Officer, James P. LaRose, maliciously and in bad faith terminated the plaintiff's employment in breach of the express and implied agreements between the plaintiff and the defendants.

42. The defendant, James P. LaRose, as Chief Executive Officer, along with the remaining defendants, orchestrated the plaintiff's wrongful termination and expulsion so that the defendants would enjoy the financial fruits and rewards of the enterprise to the exclusion of the plaintiff. The defendants' conduct and actions were, and continue to be, a breach of their express and implied promises and agreements with the plaintiff.

43. After the plaintiff was wrongfully removed from his position as officer of the Company, the defendants, David W. Auterson, John R. Curtis, Dianne N. LaRose, James P. LaRose,

Robert C. MacConnell, and Sandra M. Morckel, have continued as Members and/or officers of the Company.

44. As a proximate result of such wrongful acts by the defendants and the Company under their control, the plaintiff has suffered significant damages, including but not limited to the following:

- a. The plaintiff has been deprived of his employment with the Company and the appropriate salary and bonuses associated therewith;
- b. The plaintiff has been deprived of consulting opportunities with the Company for which he was to receive substantial commissions; and
- c. The plaintiff has been deprived of the fair market value of his ownership interest in the Company.

45. As a result of the defendants' unjustified, willful and malicious breach of contract, the plaintiff has sustained actual damages in an amount to be proven at trial and for which the plaintiff is entitled to recover, due to the actions of the defendants.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract Accompanied by Fraud)

46. The plaintiff reiterates and realleges all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.

47. As set forth above in greater detail, Defendants have breached their agreement with Plaintiff by deliberately and intentionally refusing to perform as required by the terms of the agreements, and they did so with a fraudulent intent.

48. Pursuant to the terms of the agreement, conversations and negotiations by and among Plaintiff and Defendants, Defendants made the following representations, among others, to Plaintiff:

- a. The plaintiff would be permanently employed by the Company and would enjoy the financial benefits as a co-partner of the enterprise for the rest of his productive life;
 - b. The plaintiff would be given opportunities to advance his career in non-profit fundraising and receive a salary and significant commissions for his work with the Company;
 - c. The agreements drafted by attorneys for the defendants, including the Amendments to Operating Agreement and Profit Sharing Agreement, were in the best interests of all Members of the Company, including the plaintiff; and
 - d. Defendants would discharge their duties and obligations under the agreements with the utmost good faith and fair dealing;
49. Defendants have caused a breach of these agreements by terminating Plaintiff from his employment with the Company and withholding any valid explanation or justification for the termination. Additionally, the defendants have failed and refused to make any distribution to the plaintiff since his firing and have likewise failed and refused to purchase back the plaintiff's ownership interest or compensate him for the work he has performed for the Company.
50. Moreover, while they have not allowed the plaintiff to take any role in the management or operation of the Company, the defendants have retained the money Plaintiff contributed to the Company and continued to use his name on credit applications and financial documents to obtain funding for the Company's operations.

51. These separate acts constitute fraudulent conduct, and the aforementioned conduct constitutes a breach of contract accompanied by fraudulent acts.
52. Defendants' conduct is willful and in reckless disregard of the rights of Plaintiff.
53. Based on the foregoing, Plaintiff is informed and believes he is entitled to judgment against Defendants for actual and punitive damages in an amount as determined by this Court sufficient to punish Defendants and deter such conduct in the future.

FOR A THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty)

54. The plaintiff reiterates and realleges all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.
55. The Company is controlled by the defendants, David W. Auterson, John R. Curtis, Dianne N. LaRose, James P. LaRose, Robert C. MacConnell, and Sandra M. Morckel, who have the sole power to appoint the Company's officers and hire its employees. The defendants owed a fiduciary duty and a duty of trust, loyalty, good faith, and due care to the Company and its Members to appoint and/or hire competent and independent individuals to serve as officers and employees of the Company. The defendants are required to act in the best interests of the Company and its Members, including the plaintiff.
56. In their positions as officers and controlling Members of the Company, the defendants owed and owe a fiduciary duty and a duty of trust, loyalty, good faith, fair dealing, and due care to the Company and its Members, including the plaintiff, and were obligated and required to use their utmost ability to operate and manage the Company in a fair, just, honest, and equitable manner pursuant to the South Carolina Uniform Limited Liability Company Act of 1996, specifically S.C. Code Ann. § 33-44-409. They were and are

required to act in furtherance of the best interests of the Company and its Members so as to benefit all Members equally and not in furtherance of their personal interests or benefits.

57. The defendants owe to the Company and its Members the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets, and the highest obligation of fair dealing.
58. The defendants have breached their fiduciary duties to the Company and its Members in numerous respects including, but not limited to, refusing to take appropriate steps to rectify problems and terminate employees when those employees acted to the detriment of the Company and its Members; failing to properly manage, oversee, safeguard, and protect the Company; utilizing corporate assets for personal monetary gain; failing to properly account; utilizing or allowing the utilization of Company assets for the payment of personal debts owed by Defendants James P. LaRose, Dianne LaRose, and Morckel; and depriving the plaintiff of his ability to protect his investment.
59. The conduct of the defendants is willful and malicious and detrimental to the Company and its Members, including the plaintiff.
60. The plaintiff is entitled to compensatory and punitive damages, costs, and attorneys' fees as a direct and proximate result of these breaches of fiduciary duties to the Company and its Members.

FOR A FOURTH CAUSE OF ACTION
(Fraud/Misrepresentation)

61. The plaintiff reiterates and realleges all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.

62. Plaintiff is informed and believes that Defendants committed the act of fraud upon Plaintiff by falsely representing to Plaintiff that he would be permanently employed by the Company and would enjoy the financial benefits as a co-partner of the business for the rest of his productive life. Defendants further represented that the plaintiff would be given opportunities to advance his career in non-profit fundraising and receive a salary and significant commissions for his work with the Company.
63. When Plaintiff inquired about his compensation and opportunities for advancement, Plaintiff was informed by Defendants that he would be compensated in an amount more than sufficient to cover his family expenses, in excess of that which he was making in his position with UNC – Wilmington.
64. In addition, to induce the plaintiff to agree to the addition of two new Members to the Company and a commiserate reduction in his ownership interest, the defendants represented to the plaintiff that the Company was developing certain software for global distribution. According to the defendants, once the software was released, the Company and the plaintiff would receive a substantial amount of money.
65. These representations were clearly material to the subject matter of the agreements and clearly false.
66. Plaintiff relied on Defendants' representations in good faith, and Plaintiff's reliance was reasonable.
67. At the time such representations were made, Defendants either knew they were false or recklessly disregarded the possibility that they were false. Defendants had a pecuniary interest in making these false statements in that they wanted to secure Plaintiff's capital

contribution of \$40,000.00 and his reputation and services as a Counselor for the Company.

68. Defendants made these representations to Plaintiff with the intent that they be relied upon and acted upon by Plaintiff.
69. Plaintiff was ignorant of the falsity of Defendants' representations and could not have learned of their falsity.
70. Defendants reinforced Plaintiff's belief in the truth of Defendants' misrepresentations with continued assurances throughout Plaintiff's employment with the Company.
71. As a direct and proximate result of Plaintiff's reliance upon Defendants' actions and misrepresentations, Plaintiff has been damaged in an amount to be determined at trial. In addition, Plaintiff is informed and believes he is entitled to punitive damages in an amount to be determined at trial sufficient to punish Defendants and deter such conduct in the future.

FOR A FIFTH CAUSE OF ACTION
(Negligent Misrepresentation)

72. The plaintiff reiterates and realleges all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.
73. As set forth above, Plaintiff is informed and believes that Defendants committed the act of fraud upon Plaintiff by intentionally and maliciously making material, false representations of fact. Alternatively, the representations described above were made negligently.
74. The representations were material to the subject matter of the agreements and were false.
75. Plaintiff relied on Defendants' representations in good faith, and Plaintiff's reliance was reasonable.

76. Defendants, as Members and officers of the Company, owed a duty of care to the plaintiff to see that truthful information was communicated to him, and the defendants breached their duty by failing to exercise due care.
77. Defendants had a pecuniary interest in making these false statements in that they wanted to secure Plaintiff's capital contribution of \$40,000.00 and his reputation and services as a counselor for the Company.
78. As a direct and proximate result of Plaintiff's reliance upon Defendants' actions and representations, Plaintiff has suffered pecuniary damages in an amount to be determined at trial.

FOR A SIXTH CAUSE OF ACTION
(Civil Conspiracy)

79. The plaintiff reiterates and realleges all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.
80. The defendants have combined together and have conspired with the purpose of injuring the plaintiff. In furtherance of the conspiracy, the defendants set out upon a course of conduct with the purpose being to deprive the plaintiff of his employment with the Company, to wrongfully retain the monetary and time contributions made by the Plaintiff to the Company, and to cause the plaintiff harm.
81. The defendants have conspired to cause special damage to the plaintiff in such a way that the plaintiff will not receive the fair value of his ownership interest in the Company or the opportunity to effectively manage the business affairs of the Company.
82. As a result of the defendants' conspiracy, the plaintiff has suffered special damages, including but not limited to: loss of his business reputation in the community, loss of

valuable client and business relationships, and loss of income and benefits resulting from his resignation at UNC – Wilmington.

83. The plaintiff has suffered additional and significant damages as a result of the defendants' willful, wanton, and reckless conduct committed in the furtherance of the conspiracy, and the plaintiff is entitled to recover punitive damages, as well as actual damages as hereinabove alleged.

FOR A SEVENTH CAUSE OF ACTION
(Relief Pursuant to S.C. Code Ann. § 33-44-801 *et seq.*)

84. The plaintiff reiterates and realleges all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.
85. In accordance with the Uniform Limited Liability Company Act of 1996, this Court may dissolve a company where "the economic purpose of the company is likely to be unreasonably frustrated." S.C. Code Ann. § 33-44-801 (4)(a).
86. In accordance with the Uniform Limited Liability Company Act of 1996, this Court may dissolve a company where "a 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." S.C. Code Ann. § 33-44-801 (4)(b).
87. In accordance with the Uniform Limited Liability Company Act of 1996, this Court may dissolve a company where "it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement." S.C. Code Ann. § 33-44-801 (4)(c).
88. In accordance with the Uniform Limited Liability Company Act of 1996, this Court may dissolve a company where "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.” S.C. Code Ann. § 33-44-801 (4)(e).

89. Dissolution is appropriate in this case because Defendants have willfully and persistently breached the Operating Agreement, employment agreement, and Profit Sharing Agreement by terminating the plaintiff’s employment in breach of the Company’s express and implied contractual obligations, preventing the plaintiff from participating in the operation and management of the company, failing to make distributions when due, refusing to negotiate with the plaintiff in good faith regarding the purchase of his ownership interest in the Company, and acting contrary to the best interests of the Company and its Members, including the plaintiff.
90. Accordingly, the plaintiff respectfully requests that the Company be dissolved.

FOR AN EIGHTH CAUSE OF ACTION
(Wrongful Termination of Employment)

91. The plaintiff reiterates and realleges all of the allegations of the foregoing paragraphs contained in this Complaint as if fully set forth herein.
92. The plaintiff was employed by the Company as an officer until May 12, 2011, when he was fired without justification or cause.
93. The Company has an employment policy, as outlined in its various corporate agreements with its Members, which specifies certain conditions that must be met by Company employees. In exchange for complying with those conditions, the employee is assured continued employment with the Company.
94. There is no effective disclaimer in the employment agreements, and the plaintiff did not sign an acknowledgement of any such disclaimer, which is required by statute.

95. The termination of the plaintiff's employment by the Company was a breach of the plaintiff's contract of employment and was a wrongful termination.
96. As a result of such wrongful termination, the plaintiff is entitled to an award of actual damages resulting from such wrongful termination.

PRAYER FOR RELIEF

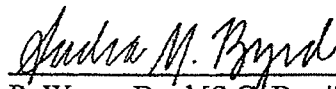
WHEREFORE, Plaintiff James H. Bailey Jr. prays of this Court as follows:

- A. That the Court enter a judgment in favor of Plaintiff and against Defendants in accordance with the above-stated causes of action and award general and special damages in amounts to be proven at trial, including an award of attorneys' fees and punitive damages;
- B. That the Court award Plaintiff prejudgment interest on all sums due to Plaintiff;
- C. That the Court grant Plaintiff a jury trial on all issues so triable; and
- D. That the Court grant Plaintiff such other and further relief as this Court deems just and proper.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

By:



R. Wayne Byrd [S.C. Bar # 1068]

WByrd@TurnerPadget.com

Audra M. Byrd [S.C. Bar # 76719]

ABByrd@TurnerPadget.com

P.O. Box 2116

Myrtle Beach, South Carolina 29578

Telephone: (843) 213-5500

ATTORNEYS FOR PLAINTIFF

JAMES H. BAILEY JR.

September 12, 2011

Page 17 of 17

Exhibit A

Exhibit A

OPERATING AGREEMENT
OF
DEVELOPMENT SYSTEMS INTERNATIONAL, LLC

THIS OPERATING AGREEMENT, with an effective date of January 4, 2011, is between and adopted by the Members (as defined below). The provisions herein below are agreed to, for good and valuable consideration, by said Members.

ARTICLE 1
DEFINITIONS

The terms listed herein below in Article 1, when used in this Operating Agreement, will be capitalized and will have the following meanings:

- 1.1 Act - means the South Carolina Limited Liability Company Act, Title 33, Chapter 44 of the Code of Laws of South Carolina 1976, as amended.
- 1.2 Capital Contribution - means any contribution by a Member to the capital of the Company.
- 1.3 Company - means Development Systems International, LLC, A South Carolina Limited Liability Company.
- 1.4 Dispose, Disposing, or Disposition - means a sale, assignment, transfer, mortgage, pledge, grant of a security interest, or other disposition or encumbrance.
- 1.5 Operating Agreement - has the meaning given to that term in the introductory paragraph to this agreement.
- 1.6 Member - shall mean each of the parties who execute this Operating Agreement as a Member and each of the parties who may hereafter become Members.
- 1.7 Membership Interest - means any Member's interest in the Company, including, without limitation, rights to distributions (liquidating or otherwise), allocations, information, and to consent or approve an action to be taken for and/or by the Company as set forth in Article 3, Section 3.
- 1.8 Person - includes an individual, partnership, limited partnership, limited liability company (whether foreign or domestic), trust, estate, corporation (whether foreign or domestic), custodian, trustee, executor, administrator, or nominee, or any other entity.

ARTICLE 2 ORGANIZATION

2.1 Formation.

This Operating Agreement is for a Limited Liability Company that has been converted from Development Systems International, Inc. to Développement Systems International, LLC. On January 4, 2011 Dianne N. LaRose, Sandra M. Morckel, J. Herb Bailey, and David W. Auterson converted the corporation to a South Carolina Limited Liability Company by executing, and delivering the Conversion of a Corporation to a Limited Liability Company Articles of Organization to the South Carolina Secretary of State for filing on January 4, 2011, in accordance with and pursuant to the South Carolina Limited Liability Company Act, Title 33, Chapter 44 of the Code of Laws of South Carolina, 1976, as amended.

2.2 Name.

The name of the Company is Development Systems International, LLC.

2.3 Registered Office and Registered Agent.

The Registered Office of the Company within the State of South Carolina shall be: 711 E. Main Street, Lexington, SC 29072 and the Company's initial registered agent at such address shall be Ouidette Gasque-Carter. The registered office and registered agent may be changed from time to time by filing the address of the new registered office and/or the name of the new registered agent with the South Carolina Secretary of State pursuant to the Act.

2.4 Term.

The term of the Company shall be thirty (30) years from the date of filing of the Articles of Organization with the Secretary of State of the State of South Carolina, unless the Company is earlier dissolved in accordance with either the provisions of this Operating Agreement or the Act.

2.5 Purpose of the Company.

The Company shall function as a consulting firm for nonprofit organizations.

ARTICLE 3 MEMBERSHIP INTEREST

3.1 General Membership Interest.

The respective General Membership Interests of the Members in the Company as to the general allocation of profits and losses shared between the Members shall be as follows:

<u>MEMBER</u>	<u>OWNERSHIP%</u>
Dianne N. LaRose	25%
Sandra M. Morckel	25%
J. Herb Bailey	25%
David W. Auterson	25%

Profits shall be distributed semi-annually after the records are reconciled following the June 30 and December 31 reporting periods (with profit sharing distributed within a month, by July 31 and January 31, respectively, of each year).

3.2 Invested Membership Interest

3.2.1 The respective Invested Membership Interest of the Members in the Company as to the years and experience invested into the Company shall be initially divided between the Members for the first year as follows:

Dianne N. LaRose	80%
Sandra M. Morckel	10%
J. Herb Bailey	5%
David W. Auterson	5%

3.2.2 The reason the Invested Membership Interest is depicted differently from the General Membership Interest, is that upon the sale of the Company, due to the numbers of years invested and experience brought into the Company by certain Members, some Members will receive a higher share of the proceeds from the sale than others. The Invested Membership Interest for Sandra M. Morckel, J. Herb Bailey and David W. Auterson shall increase by 5% on each of September 1, 2011 and September 1, 2012 provided they are still Members and are actively working with the Company on each respective date. The Invested Membership Interest for Dianne N. LaRose shall decrease by an amount equal to the increases to the Invested Membership interests of the other Members. Therefore, at the end of the third year from the date of this agreement, it is anticipated that the final Invested Membership Interest will be as follows:

Dianne N. LaRose	50%
Sandra M. Morckel	20%
J. Herb Bailey	15%
David W. Auterson	15%

3.2.3 If the Company shall be sold, each member shall receive the proceeds from the sale equal to their percentage of Invested Membership Interest in the Company during the time of the sale

3.2.4 At the death of an individual Member, upon the purchase of the deceased Member's interest in the Company his or her Invested Membership Interest shall be divided between the remaining Members equal to their pro-rata share of the remaining Invested Membership Interest in the Company

3.2.5 The determination whether a new Member of the Company shall be qualified for Invested Membership Interest shall be determined by a unanimous, unequivocal vote of the current Members

3.2.6 Any future change in the Invested Membership Interest of a Member other than as set forth in Section 3.2.2 shall be determined by the amount of capital contributions, number of years in the Company, and other non-monetary investments made to the Company. Any such change must be approved by the unanimous consent of all Members.

ARTICLE 4 CAPITAL CONTRIBUTIONS

4.1 Capital Contributions – Initial.

Upon the execution of this Operating Agreement, each Member shall contribute or shall be deemed to have contributed as capital to the Company the following assets and/or consideration which the Members agreed have the value set forth below at the date of contribution:

<u>MEMBER</u>	<u>DESCRIPTION/VALUE</u>
Dianne N. LaRose	\$40,000.00
Sandra M. Morckel	\$40,000.00
J. Herb Bailey	\$40,000.00
David W. Auterson	\$40,000.00

4.2 Capital Accounts.

- A. A separate capital account shall be maintained for each Member beginning with the date hereof in accordance with the requirements of 1.704-1(b) of the Regulations of

the United States Treasury. The capital account either Member, as of any given date, shall consist of:

1. the cumulative amount of cash and the agreed value of any other property that has been contributed to the Company by such Member as of such date; plus
 2. the cumulative amount of the Company's Net Profit, as hereinafter defined, that has been allocated to such Member as of such date; less
 3. the cumulative amount of the Company's Net Loss, as hereinafter defined, that has been allocated to such Member as of such date; less
 4. the cumulative amount of cash and the agreed value of any Company property other than cash that has been distributed to such Member by the Company as of such date.
- B. The capital accounts of the Members (or their successors in interest) shall not be adjusted by the amount of any adjustments to the tax basis of Company assets under IRC 743(b). Similarly, a termination of the Company under IRC 708(b) (1) (B) shall not result in an adjustment to the Members' capital accounts. In the event of such a tax termination, Members' capital accounts, Company Net Profits, and Net Loss, shall hereafter be computed and allocated as if (a) the Company has been formed on the date of such termination, (b) the net value of the Company's assets on such day equaled the aggregate balances standing in the Member's capital accounts on such day, and each Member contributed an undivided interest in such assets having a value equal to its capital account on such day;
- C. In the event of a permitted sale or exchange of a General Membership Interest or an Invested Membership Interest in the Company, the capital account of the transferor shall become the capital account of the transferee to the extent it relates to the transferred General Membership Interest or Invested Membership Interest in accordance with section 1.704-1() (2) (iv) of the Treasury Regulations.

The manner in which capital accounts are to be maintained pursuant to this section is intended to comply with the requirements of the Code and the Treasury Regulations promulgated thereunder. If, in the opinion of the Company's accountants, the manner in which capital accounts are to be maintained pursuant to the preceding provisions of this section should be modified in order to comply with the Code and the Treasury Regulations thereunder, then notwithstanding anything to the contrary contained in the preceding provisions of this section, the method in which capital accounts are maintained shall be so modified; provided, however, that any change in the manner of maintaining capital accounts shall not materially alter the economic agreement between or among the Members.

4.4 Interest on and Return of Capital.

None of the members shall be entitled to any interest on their capital account or their Capital Contributions to the capital of the Company after the date hereof, and except as otherwise provided herein, none of the Members shall have the right to demand or receive the return of all or any portion of their capital account or their Capital Contributions to the capital of the Company.

ARTICLE 5 RIGHTS AND OBLIGATIONS OF MEMBERS

5.1 **Right to Original Work**

Except as otherwise specifically set forth herein, each Member and James P. LaRose (Founder) shall be entitled to the right and ownership of all original work brought to the Company, either before or after the date of this Agreement or developed by the Member or James P. LaRose (Founder) during the Company's term, including, but not limited to, rights to all correspondence, photographs, client work product, web domains, brands, logos, product concepts, marketing strategies, copyrights, tradenames and trademarks, and any work produced by other parties based on original work, and all similar property (hereinafter collectively referred to as "Property Rights"). In the event that a Member terminates his or her interest in the Company or ceases to be actively involved with the Company, except as otherwise provided herein, the Member and James P. LaRose (Founder) shall have the ownership and right to his or her Property Rights and the Company shall also have the right to use the Property Rights without any cost to the Company but the Company shall have no right to license or allow any other Person to use any such Property Right. Notwithstanding the foregoing, the right to the names Development Systems International, Pax Global, Polaris Fundraising Worldwide, eMedia, FIRMware and Certified Nonprofit Consultant shall be deemed to be the Property Rights of James P. LaRose who shall have the exclusive right to the use of such names unless James P. LaRose is no longer actively working with the Company and the Company and/or the Members other than Dianne N. LaRose have purchased Dianne N. LaRose's entire Membership Interest in the Company including both her General Membership Interest and Invested Membership Interest pursuant to the provisions hereinafter set forth. For all purposes under this Agreement, the Property Rights of James P. LaRose shall be deemed to include the rights to all correspondence, photographs, client work product, web domains, brands, logos, product concepts, marketing strategies, copyrights, tradenames and trademarks and all similar property heretofore and hereafter developed and/or produced by James P. LaRose. Each Member specifically acknowledges and agrees that all Members and James P. LaRose (Founder) shall have continuing rights in such property and work developed by them as set forth herein whether the work is legally owned by them or it is determined it is owned by the Company. The names James P. LaRose and Jimmy LaRose are the property of James P. LaRose and cannot continue to be used by the Company if Dianne N. LaRose is no longer a Member or James P. LaRose is no longer employed by the Company.

5.2 Admission of Additional Members.

Regardless of any sale, gift, bequest, or other transfer of an interest in the Company hereunder, no person or entity or other transferee shall be admitted to the Company as a Member or have any voting or management control without the prior unanimous approval of the Members. Provided, however, that if a Member shall purchase or acquire the General Membership Interest of another Member, the acquiring Member shall have all the rights of a Member with respect to such purchased or otherwise acquired General Membership Interest. An individual's Invested Membership Interest shall not be sold, exchanged or purchased; it shall only be earned depending on the credentials of the individual.

5.3 Restrictions on Transfer.

Except as specifically allowed in this Agreement, 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 Interest to any Person without the prior written consent of the remaining Members of the Company. If such consent is obtained, none of the following provisions of this Article 5 shall apply. With regard to all other transfers, the following provisions of this Article 5 shall control, and any attempted conveyance or encumbrance of all or a portion of a Membership Interest in contravention of this Article 5 shall be null, void and without effect.

The Person to become a new Member as well as the Member effecting a Disposition in connection therewith shall pay, to the Company, all costs incurred by the Company associated with said Disposition including, but not limited to, reasonable attorney's fees incurred by the Company in connection therewith. The Person to become a new Member will not attain a General Membership Interest and/or become a Member until all costs and reasonable attorney's fees are paid to the Company in connection with the Disposition.

5.4 Right to Buy.

(a) Wrongful Dissociation of a Member. If a Member wrongfully dissociates from the Company within the meaning of Section 5.14 (the "Withdrawing Member"), they shall be deemed to have immediately offered to sell, and the Company shall thereafter have the option to purchase all of the Withdrawing Member's Membership Interest at the price determined under Section 5.5 as modified in this Section 5.4, and on the terms contained in Section 5.6. The purchase price as determined in Section 5.5 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, in no event will the purchase price to be paid for a wrongfully dissociating Member's Membership Interest exceed seventy (70%) percent of the "Appraised Value" of such Member's Membership Interest as determined pursuant to Section 5.5. 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 Interest shall be offered in writing to the other Members

(the "Remaining Members"). If the Company and/or the Remaining Members accept the offer, then all of the Membership Interest offered for sale must be purchased by the Company and/or said Remaining Members. In the event more than one offeree accepts the offer, those accepting shall purchase in proportion to their Membership Interest, unless they agree otherwise.

If the Remaining Members do not purchase the Dissolving Member's Membership Interest within sixty (60) days after receipt of such offer in writing, then a Dissolving Member may offer his Membership Interest for sale to any other Person, provided that such Membership Interest 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 Interest shall be determined in accordance with the terms of this Agreement.

In the event any sale of a Membership Interest to a third person shall not be consummated within ninety (90) days after the expiration of the Remaining Members' option to purchase, the Dissolving Member shall have no right to sell said Membership Interest 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 herein provided. No amount of the purchase price shall be due to the Withdrawing Member, however, unless and until he gives written notice of his dissociation to the Company.

(b) Transfers Other Than Death or Disability. If a Member attempts to transfer all or a portion of his Membership Interest without obtaining the other Members' consent as required in Section 5.3, or if a Member properly dissociates other than by reason of death from the Company (the "Dissolving Member"), such Member is deemed to have offered to the Company all of his Membership Interest at the price determined in accordance with Section 5.5 and upon the terms contained in Section 5.6. 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 Interest shall be offered in writing to the other Members (the "Remaining Members"). If the Company and/or the Remaining Members accept the offer, then all of the Membership Interest offered for sale must be purchased by the Company and/or said Remaining Members. In the event more than one offeree accepts the offer, those accepting shall purchase in proportion to their Membership Interest, unless they agree otherwise.

If the Remaining Members do not purchase the Dissolving Member's Membership Interest within sixty (60) days after receipt of such offer in writing, then a Dissolving Member may offer his Membership Interest for sale to any other Person, provided that such Membership Interest 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 Interest shall be determined in accordance with the terms of this Agreement.

In the event any sale of a Membership Interest to a third person shall not be consummated within ninety (90) days after the expiration of the Remaining Members' option to purchase, the Dissolving Member shall have no right to sell said Membership Interest 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 herein provided.

(c) Death. Notwithstanding anything herein to the contrary, upon the death of a Member (or in the case of Dianne N. LaRose, upon the death of James P. LaRose), the Company shall purchase, and the estate of the decedent (or in the case of death of James P. LaRose, Dianne N. LaRose), or his or her successor in interest by operation of law shall sell all of the decedent's (or Dianne N. LaRose's) Membership Interest in the Company now owned or hereafter acquired. The purchase price of such Membership Interest shall be computed in accordance with the provisions of Section 5.5 and paid in accordance with the provisions of Section 5.6.

5.5 Purchase Price.

Subject to Section 5.4 (a), the price to be paid for a Withdrawing or Dissolving Member's Membership Interest 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 Interest within thirty (30) days following the death, 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 Interest. 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 Remaining Members or a majority of the Remaining Members who wish to purchase the offered Membership Interest and who have not previously agreed upon the purchase price, and one appointed by the Withdrawing or Dissolving Member or their representative. Both appraisers must have at least five (5) years experience valuing businesses similar to the business of the Company. If the two (2) appraisers cannot agree on an Appraised Value within thirty (30) days after they have both been selected, they shall appoint a third appraiser. The third appraiser shall determine the Appraised Value within thirty (30) days after his appointment. Appraised Value shall 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 (1/2) 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. If any party fails to appoint an appraiser within the time required herein, the purchase price determined by the appraiser appointed by the other party shall be conclusive and binding upon the seller and purchaser(s), their personal representatives, legal representatives, heirs, successors, and assigns.

5.6 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. 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, 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 at the prime rate as published in the Wall Street Journal at the date of the sale plus two (2 %) percent. 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 Interest (or any portion thereof) shall be conveyed to the purchaser(s). Until the purchase price is paid in full, the seller's Membership Interest shall be held by the seller as collateral security for payment of the note.

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 Interest. 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 Interest 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 Interest 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 Interest.

5.7 Limitation of Liabilities.

Each Member's liability shall be limited as set forth in this Operating Agreement, the Act, and other applicable law.

5.8 Company Debt Liability.

A Member will not be personally liable for any debts or losses of the Company beyond his respective Capital Contributions and any obligation under Article 4 to make Capital Contributions.

5.9 Liability to Company.

A Member shall not be liable or accountable in damages or otherwise to the Company or to the other member for any error of judgment or any mistake of fact or law or for anything that such Members may do or refrain from doing hereafter, in their capacity as a member, for and on behalf of the Company and in furtherance of its interest, except in the case of their willful misconduct or their bad faith in performing or failing to perform their duties hereunder.

5.10 Indemnity.

The Company and the Members do hereby indemnify and agree to hold each Member wholly harmless from and against any loss, expense, or damage (including reasonable attorney's fees) incurred by it by reason of anything with such Member may do or refrain from doing hereafter, in his capacity as a Member, for and on behalf of the Company and in furtherance of its interest; provided, however, that the Company and the Members shall not be required to indemnify any Member for any loss, expense or damage which he may suffer as a result of his willful breach of this Operating Agreement, his willful misconduct, gross negligence, or bad faith in performing or failing to perform his duties hereunder.

5.11 List of Members

Upon the written request of any Member, the Company shall provide a list showing the names, addresses, and General Membership Interests and Invested Membership Interest of all members.

5.12 Company Books

Upon reasonable request, each Member shall have the right, during ordinary business hours, to inspect and copy the Company books and accounting records at the requesting Member's expense.

5.13 Other Activities of Members.

Each Member, in his individual capacity or otherwise, shall be free to engage in conduct, or to participate in any business or activity whatsoever without any accountability, liability, or obligation whatsoever to the Company or to any other Member, unless such business or activity directly competes with the business of the Company.

5.14 Wrongful Dissociation by Member

In the event of the wrongful dissociation of a Member as defined in the Act, the wrongfully dissociating Member is liable to the Company and the other Member for damages caused by the dissociation including, but not limited to, the reasonable costs of obtaining replacement of the services the withdrawn Member was obligated to perform. The

Company may offset the damages against the amount otherwise distributable to the wrongfully disassociating Member in addition to pursuing any remedies provided for in this Operating Agreement or otherwise available under applicable law. Notwithstanding the foregoing or the provisions of the Act, if a Member ceases to be actively involved with the Company of his or her own accord, such dissociation shall not be wrongful so as to subject him or her to damages as set forth above..

5.15 Fiduciary Duty and Duty of Confidentiality

Each Member 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 other Members. A Member shall use his reasonable best efforts in fulfilling his duties and obligations to the Company and the other Members. A Member does not violate a duty or obligation to the Company merely because the Member's conduct furthers the Member's own interest. A Member may lend money to and transact other business with the Company. As to each loan or transaction, the rights and obligations of the Member are the same as those of a Person who is not a Member, subject to other applicable law. The duty of loyalty, duty of care and fiduciary duties set forth in this Agreement shall apply to any Person winding up the Company's business and the personal or legal representative of the last surviving Member as if such Person were a Member. Except as may be customary in the ordinary course of business or as may be otherwise allowed in this Agreement, each Member 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, future plans, accounting, marketing, financial data, or contract information.

ARTICLE 6

NET PROFITS, NEW LOSS AND DISTRIBUTIVE SHARES OF TAX ITEMS

6.1 Net Profit; Net Loss.

For the purposes of this Agreement, the Net Profit or Net Loss, as the case may be, of the Company for a fiscal period shall be determined by the Members and shall be an amount equal to:

- A. The Company's taxable income or taxable loss for such year, determined in accordance with IRC 703(a) and Treasury Regulation 1.703(a)(1).
- B. The amount, if any, of the Company's tax-exempt income for such year or other items which, although excluded from the computation of such income, are taken into account under IRC 705(a) (1) (B) in computing a Member's basis; minus .
- C. The amount, if any, of the Company's expenditures for such year, as described in IRC 705 (a) (2) (B), that are neither deductible nor chargeable to capital account in computing a Member's basis..

If the algebraic sum of items 6.1, 6.1.A, 6.1.B, and 6.1.C is a positive amount, such amount shall be the Company's Net profit for such year; if negative, such amount shall be the Company's Net Loss for such year.

6.2 Allocation of Net Loss or Net Profit.

Company Net Loss or Net Profit shall be computed by the Company for each fiscal year and shall be allocated to the Members in proportion to their respective General Membership Interest.

The existing debt of the Company is as listed as below:

1. Amex Monthly Operation Account with account number 37178492331002
2. Federal & State Taxes in the amount of \$20,639.01.
3. Dooley & Company in the current amount of \$3,210.00

Debt liability shall be paid from the cash flow of the Company. To the extent the cash flow is not sufficient to pay all Company debt liabilities the remainder of the debt liability shall be absorbed by all members of the Company in proportion to their respective General Membership Interest. Item # 1 is an operating account used for the expenses of the current Company and any and all monthly statements that cannot be satisfied by the cash flow of the Company shall be the responsibility of each Member in proportion to their respective General Membership Interest.. Items # 1 and Item # 2 are personally in the name of Dianne N. LaRose, however, all amounts that are not satisfied by the cash flow of the Company shall be the obligation of each individual member in proportion to their respective General Membership Interest. Dianne N. LaRose and Development Systems International, Inc. warrant and represent that the above debts are the only past debts associated with the Company and the amounts represented therein are accurate as of September 24, 2010.

6.3 Tax Items.

- A. The amount of any taxable gain recognized by the Company upon the sale or exchange of property contributed to the Company (or property whose basis is determined by reference to the basis of such contributed property) shall be allocated to the contributing Member or to his successor in interest to the extent that the agreed value of the contributed property shall exceed the basis at the time of contribution.

- B. The amount of any gain realized on the sale of the Company or substantially all of its assets shall be allocated to the Members based on their Invested Membership Interests.
- C. Except as otherwise provided herein for income tax purposes, all other items of income, gain, loss, deduction, and credit recognized during a fiscal year shall be allocated to the Members in proportion to their respective General Membership Interests.

ARTICLE 7 DISTRIBUTIONS TO MEMBERS

- 7.1 Distributions of Company assets may be made from time to time as decided upon by the Members. Except as otherwise provided herein, all distributions by the Company to the Members (after repayment of any debts or liabilities of the Company to any of the Members) shall be made in proportion to the Member's respective General Membership Interest.

ARTICLE 8 MANAGEMENT

- 8.1 Member.

The power to control the Company business is vested exclusively in the Members. The Members shall have all powers necessary to manage the Company business including, but not limited to, the power to administer the day to day affairs of the Company; purchase, sell or otherwise transfer real property; borrow funds and to grant mortgages and security interests in Company property; and to require any additional Capital Contributions of the Members, and to make any decision outside of the ordinary course of business of the Company. Unless otherwise provided in this Operating Agreement, any action of the Company shall require approval of all Members. Members may authorize any action with, or without a meeting.

- 8.2 Unanimous Approval.

All major decisions are made with each member having an equal vote. The following acts shall require unanimous approval of all Members:

- A. amendment to this Operating Agreement,
- B. amendment of the Articles of Organization,
- C. admission of a new member,

- D. sale of all, or part of the assets of the Company,
- E. voluntary dissolution of the Company,
- F. borrowing funds, or pledge of the Company's assets as collateral, and
- G. changing the compensation of any Member. The initial compensation of each Member shall be designated in a separate writing which has been agreed to by all Members contemporaneously with the execution of this Agreement.

8.3 Manager.

The Members may from time to time by unanimous decision appoint a Manager to which they may delegate the authority to carry out the day to day affairs of the Company. Unless otherwise directed by the Members, any act outside of the day to day affairs of the Company shall require unanimous approval of all Members.

ARTICLE 9
BANK

- 9.1 The funds of the Company shall be kept in a separate account in the name of the Company in such bank, banks, or other federally insured depositories as may be designated by the Members, or shall otherwise be invested in the name of the Company in such manner and upon such terms and conditions as the Members deem appropriate.

ARTICLE 10
ACCOUNTING

10.1 Fiscal Year

The fiscal year of the Company shall end on the last day of December.

10.2 Books of Account.

The Company shall maintain true and accurate office records and books of account at its principal office, and each Member and its duly authorized agency or representatives shall have access thereto at all reasonable times in accordance with the terms of the Act.

10.3 Financial and Operating Statements.

At its expense, the Company shall prepare and distribute to the Members annual financial statements reflecting the results of the operations of the Company for such fiscal year, the unpaid balance due on all obligations of the Company, and each Member's share of the Net Profits or Net Loss of the Company each year

At the request of any Member and at the expense of such Member, the annual financial statements of the Company may be audited by (i) a firm of independent certified public accountants chosen by such Member, or (ii) any other employees or designees of such

Member and/or of any affiliate of such Member. The other Member shall cooperate fully with such Member in completing any such audit.

10.4 Tax Information.

Promptly after the close of each fiscal year of the Company, the Company shall have prepared and delivered to the Members, at the expense of the Company, sufficient information to enable each Member to prepare their federal, state, and local income tax returns in accordance with all then applicable laws, rules, and regulations. The Members shall also file, at the expense of the Company, all federal, state, and local income tax returns required of the Company.

ARTICLE 11 LIQUIDATION AND DISSOLUTION OF COMPANY

11.1 Dissolving Events.

The Company shall be dissolved, liquidated, and terminated in the manner hereinafter provided upon the happening of any of the following events:

- A. Term: Upon the expiration of the term of this Operating Agreement.
- B. Unanimous Agreement: The unanimous decision of the Members to terminate the Company.
- C. Sale of Assets: The sale by the Company of all or substantially all of its assets and the collection of all amounts derived from any such sale or sales; or
- D. Event of Dissolution: The occurrence of an event of dissociation as defined in the Act of any Member.

11.2 Liability for Negative Capital Account

Except as otherwise required in the Act (and subject to Article 4, Section 4.3), none of the Members shall have any liability to restore all or any portion of a deficit balance in such Members' Capital Account.

11.3 Method of Liquidation.

Upon the happening of a Dissolving Event as described herein, the Company's activities shall be strictly limited to winding up its affairs by converting its assets to cash in an orderly manner and within a reasonable time so as to avoid the loss normally associated with forced sales, and applying and distributing such cash in the following manner and in the following order of priority

- A. Debts and Liabilities. To the payment of the debts and liabilities of the Company (other than the debts to the Members) and to the expenses of liquidation in the order of priorities as provided by law; then
- B. Reserve. To the establishment of any reserves deemed necessary by the Members for any contingent or unforeseen unliquidated liabilities or obligations of the Company, the balance of such reserves, at the expiration of such period as the Members deem advisable, to be distributed in the manner provided below; and then
- C. Member Debts or Liabilities. To the repayment of any debts or liabilities of the Company to the Members: then to the Members in satisfaction of its respective positive capital account balances, and then to the Members in proportion to their respective Invested Membership Interest.

11.4 Date of Dissolution.

At the discretion of all the Members, the Company shall be terminated and dissolved when all of its assets have been converted into cash, and/or distributed.

11.5 In-Kind Distributions.

Notwithstanding the foregoing, within six (6) months after the occurrence of a dissolving event the Members may elect not to sell any portion of the Company's property; if the Members reach an agreement within said six (6) months period as to the value of such property it shall be restated on the Company's books to its agreed value as of the date of such election, and the Members' capital accounts shall be adjusted as if such property had been sold and as if the Company has recognized a gain or loss, as the case may be. Any such property distributed in liquidation shall be distributed among the Members pursuant to this section in such proportions as may be agreed to by the Members.

ARTICLE 12 INVESTMENT REPRESENTATIONS

- 12.1 The undersigned Members understand (1) that the General Membership Interest and Invested Membership Interest evidenced by this Operating Agreement have not been registered under the Securities Act of 1933, the South Carolina securities as or any other state securities laws (the "Securities Acts") because the Company is issuing these Membership Interest in reliance upon the exemptions from the registrations requirements of the Securities Acts providing for issuance of securities not involving a public offering, (2) that the Company has relied upon the fact that the General Membership Interest and Invested Membership Interest are to be held by each Member for investment, and (3) that exemption from registrations under the Securities Acts would not be available if the General Membership Interest and Invested Membership Interest were acquired by a Member with a view to distribution.

Accordingly, each Member hereby confirms to the Company that such Member is acquiring the General Membership Interests and/or Invested Membership Interest for such own Member's account, for investment and not with a view to the resale or distribution thereof. Each Member agrees not to transfer, sell or offer for sale any portion of the General Membership Interest or Invested Membership Interest unless there is an effective registration or other qualification relating thereto under the Securities Act of 1933 and under any applicable state securities laws or unless the holder of General Membership Interest or Invested Membership Interest delivers to the Company an opinion of counsel, satisfactory to the Company, that such registration or other qualification under such Act and applicable state securities laws is not required in connection with such transfer, offer or sale. Each Member understands that the Company is under no obligation to register the General Membership Interests or Invested Membership Interest or to assist such Member with complying with any exemption from registration under the Acts if such Member should at a later date, wish to dispose of the General Membership Interest or Invested Membership Interest. Furthermore, each Member realizes that the General Membership Interest and Invested Membership Interest are unlikely to qualify for disposition under Rule 144 of the Securities and Exchange Commission unless such Member is not an "affiliate" of the Company and the General Membership Interest or Invested Membership Interest has been beneficially owned and fully paid for by such Member for at least three years

Prior to acquiring the General Membership Interest and Invested Membership Interest, each Member has made an investigation of the Company and its business and have had made available to each such Member all information with respect thereto which such Member needed to make an informed decision to acquire the General Membership Interest or Invested Membership Interest. Each Member considers himself or itself to be a person possessing experience and sophistication as an investor which are adequate for the evaluation of the merits and risks of such Member's investment in the General Membership Interest or Invested Membership Interest.

ARTICLE 13 GENERAL PROVISIONS

13.1 Notices.

Any notice provided for or required by this Agreement shall be in writing and shall be given in accordance with the Act.

13.2 Entire Agreement.

This writing represents the entire agreement between the parties hereto and no change or modification of this Operating Agreement shall be valid or binding upon the Members, nor shall any waiver of any term or condition in the future, unless signed by all Members.

13.3 Binding Effect.

This Operating Agreement shall inure to the benefit of and be binding upon the Members and their respective heirs, legal representatives, transferees, successors, and assigns, subject to the limitations otherwise set forth in this Operating Agreement.

13.4 Construction.

This Operating Agreement shall be interpreted and construed in accordance with the laws of the State of South Carolina.

13.5 Company Not a Partnership.

The Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member shall be a partner or joint venturer of any other Member, for any purposes other than federal and state tax purposes, and this Operating Agreement may not be construed to suggest otherwise.

13.6 Gender and Number.

Words of any gender or of numbers used in the Operating Agreement shall be deemed to include the other gender or the numbers, and words in the singular shall be deemed to include the plural and the plural to include the singular when the tense requires.

13.7 Time of the Essence.

Time is of the essence with respect to this Agreement.

13.8 Severability.

If any provision of this Operating Agreement or the application thereof to any party or circumstance shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Operating Agreement or the application of such provision to such person or circumstance, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

13.9 Third Party Beneficiaries.

Nothing in this Operating Agreement shall be construed to create any rights or benefits in any Entity, other than the Members, and their respective legal representatives, transferees, successors, and assigns, subject to the limitations on transfer contained herein.

13.10 Counterparts.

This Operating Agreement may be executed simultaneously in multiple counterparts, anyone of which shall be deemed an original.

13.11 Headings.

The headings used in this Operating Agreement have been inserted for convenience only and do not constitute terms or provisions to be construed in interpretation of this Operating Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Operating Agreement under seal as of the date and year first above written.

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF:

DEVELOPMENT SYSTEMS
INTERNATIONAL, LLC

Quidette Gasque Carter

Dianne N. LaRose 1-3-11
Member: Dianne N. LaRose

Quidette Gasque Carter

Sandra M. Morckel
Member: Sandra M. Morckel

Quidette Gasque Carter

J. Herb Bailey
Member: J. Herb Bailey

Quidette Gasque Carter

David W. Auterson
Member: David W. Auterson

Exhibit B

Exhibit B

AMENDMENTS TO OPERATING AGREEMENT OF
DEVELOPMENT SYSTEMS INTERNATIONAL, LLC

THIS AMENDED OPERATING AGREEMENT, with an effective date of April 1, 2011, is between and adopted by the Members (as defined below). The provisions herein below are agreed to, for good and valuable consideration, by said Members.

New Members & Capital Contributions

WHEREAS, the existing members unanimously agreed to add new members in the persons of Robert C. MacConnell and John R. Curtis under terms designated in a separate writing which has been agreed to by all Members contemporaneously with the execution of these amendments. Robert C. MacConnell and John R. Curtis shall contribute or shall be deemed to have contributed as capital to the Company the following assets and/or consideration which the Members agreed have the value set forth below at the date of contribution:

<u>MEMBER</u>	<u>DESCRIPTION/VALUE</u>
Robert C. MacConnell	\$40,000.00
John R. Curtis	\$50,000.00

General Membership Interest - NEW

The respective General Membership Interests of the Members in the Company as to the general allocation of profits and losses shared between the Members shall be as follows:

MEMBER OWNERSHIP %

Dianne N. LaRose	16.6%
Sandra M. Morckel	16.6%
J. Herb Bailey	16.6%
David W. Auterson	16.6%
Robert C. MacConnell	16.6%
John R. Curtis	16.6%

Invested Membership Interest - NEW

The respective Invested Membership Interest of the Members in the Company as to the years and experience invested into the Company shall be initially divided between the Members for the first year as follows:

Dianne N. LaRose	76.25%
Sandra M. Morckel	5%
J. Herb Bailey	5%
David W. Auterson	1.25%
Robert C. MacConnell	5%
John R. Curtis	7.5%

The reason the Invested Membership Interest is depicted differently from the General Membership Interest, is that upon the sale of the Company, due to the numbers of years invested and experience brought into the Company by certain Members, some Members will receive a higher share of the proceeds from the sale than others. The Invested Membership Interest for Sandra M. Morckel, J. Herb Bailey and David W. Auterson shall increase by 5% on September 1, 2011 and September 1, 2012 provided they are still Members and are actively working with the Company on each respective date.

In that, John R. Curtis purchased outright from David W. Auterson and Dianne N. LaRose 7.5% of Invested Membership Interest for a sum of \$50,000 his Invested Membership Interest shall be 7.5% upon the signing of this document.

The Invested Membership Interest for Dianne N. LaRose shall decrease by an amount equal to the increases to the Invested Membership interests of the other Members. Therefore, by September 1, 2012 it is anticipated that the final Invested Membership Interest will be as follows:

Dianne N. LaRose	46.25%
Sandra M. Morckel	15%
J. Herb Bailey	15%
David W. Auterson	11.25%
Robert C. MacConnell	5%
John R. Curtis	7.5%

IN WITNESS WHEREOF, the parties hereto have executed this Operating Agreement under seal as of the date and year first above written.

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF:

DEVELOPMENT SYSTEMS
INTERNATIONAL, LLC

Quidette Masque-Carter 3/31/11

Dianne N. LaRose 3/31/11
Member: Dianne N. LaRose

Quidette Masque-Carter 3/31/11

Sandra M. Morckel
Member: Sandra M. Morckel

Quidette Masque-Carter 3/31/11

J. Herb Bailey
Member: J. Herb Bailey

Quidette Masque-Carter 3/31/11

David W. Auterson
Member: David W. Auterson

Quidette Masque-Carter 3/31/11

Robert C. MacConnell
Member: Robert C. MacConnell

Quidette Masque-Carter 3/31/11

John R. Curtis
Member: John R. Curtis

Exhibit C

Exhibit C

DEVELOPMENT SYSTEMS INTERNATIONAL, LLC
MEMBER PROFIT SHARING AND COMPENSATION AGREEMENT

WHEREAS, Sandra M. Morckel, J. Herb Bailey and David W. Auterson, Robert C. MacConnell, and John R. Curtis and Dianne N. LaRose, being all of the members of DEVELOPMENT SYSTEMS INTERNATIONAL, LLC together with James P. LaRose desire to set forth their common understanding concerning the compensation and or payments by Development Systems, International, LLC to Dianne N. LaRose, Sandra M. Morckel, J. Herb Bailey, David W. Auterson, Robert C. MacConnell, John R. Curtis and James P. LaRose.

NOW, THEREFORE, the parties to this agreement hereby agree as follows:

IT IS MUTUALLY AGREED upon that the partners described in the Operating Agreement of DEVELOPMENT SYSTEMS INTERNATIONAL, LLC hereby acknowledge the following schedule for financial distribution of funds with its members and within its company.

1. QUALIFYING MEMBER – A Qualifying Member is a person or people authorized by the Officers of Development Systems, International, LLC to be eligible in payouts. The six (6) Officers of Development Systems, International, LLC are Sandra M. Morckel, J. Herb Bailey and David W. Auterson, Robert C. MacConnell, John R. Curtis and Dianne N. LaRose,.
2. RETAINER – Retainer fees will be paid to each qualifying member for clients assigned to that member for work performed by that member according to DSI's existing retainer payment policy. DSI administrative staff will forward payment of retainer compensation and travel reimbursement to the member within (5) business days of receipt in the DSI administrative office.
3. PROFIT SHARING – Net income and gains and losses of the Company shall be shared among the members of the Company as set forth in that certain operating agreement of Development Systems International, LLC entered into contemporaneously with the execution of this compensation agreement by the six (6) members of the Company. Any and all profits after expenses are eligible for profit sharing whereas each member can choose to receive profits on a monthly, quarterly, bi-annual or annual basis. The existence of and amount of net profit will be agreed upon unanimously by the members and can be evaluated at any time by unilateral request of any member. If net profit is determined to exist a member's profits accrue in the partnership's

operating account until remitted on a monthly, quarterly, bi-annual, or annual basis as determined by the individual member in receipt of net profit.

4. RESPONSIBILITIES - Below is the standard responsibility of the company to be performed in exchange for payouts and profit sharing. No payouts will be given if there are no profits or if a partner has not satisfied the performance expectations of his or her responsibility.

MEMBER RESPONSIBILITIES

Service, Recruitment, & Fundraising	Sandra M. Morckel
Prospecting & Fundraising	J. Herb Bailey
Sales, Education, & Fundraising	Robert C. MacConnell
Organizational Development & Fundraising	John R. Curtis
Research, Development, & Fundraising	David W. Auterson
Advise & Consent	Dianne N. LaRose

5. FOUNDER/CEO - In that, James P. LaRose is not eligible for retainer compensation and performs responsibilities beyond that of members as corporate CEO, James P. LaRose shall continue to be employed by Development Systems, International, LLC, as an employee and be paid a salary of \$18,329.00 per month. Responsibilities shall include but not be limited to oversight of operations of Development Systems, International, LLC. Additional responsibilities shall include but not be limited to product & services development, marketing, and fundraising.

6. MODIFICATIONS - This instrument may not be changed orally. Any modifications of this agreement must be by written supplemental agreement executed by all parties thereto.

7. PREVIOUS ITERATIONS - This instrument makes null and void the previous compensation agreement signed by Dianne N. LaRose, Sandra M. Morckel, J. Herb Bailey, David W. Auterson, and James P. LaRose executed October 20, 2010.

IN WITNESS WHEREOF, the parties have hereunto signed this Member Profit Sharing and Compensation Agreement this 31st day of March, 2011.

DEVELOPMENT SYSTEMS INTERNATIONAL, LLC

1. J. P. LaRose
CEO/Founder: James P. LaRose

3/31/11
Date

1. Quidette Gargue-Carter
Witness:

3/31/11
Date

2. Dianne N. LaRose
Member: Dianne N. LaRose

3/31/11
Date

2. Quidette Gargue-Carter
Witness

3/31/11
Date

3. David W. Auterson
Member: David W. Auterson

3/31/11
Date

3. Quidette Gargue-Carter
Witness

3/31/11
Date

4. J. Herb Bailey
Member: J. Herb Bailey

3/31/11
Date

4. Quidette Gargue-Carter
Witness

3/31/11
Date

5. John Curtis
Member: John Curtis

3/31/11
Date

5. John Curtis
Witness

3/31/11
Date

6. Robert MacConnell
Member: Robert MacConnell

3/31/11
Date

6. Quidette Gargue-Carter
Witness:

3/31/11
Date

7. Sandra M. Morckel
Member: Sandra M. Morckel

3/31/11
Date

7. Quidette Gargue-Carter
Witness:

3/31/11
Date

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

2011-CP-26-07558

James H. Bailey, Jr.,)

Plaintiff,)

Transcript of Record

vs.)

April 8, 2013

Development Systems)

International LLC,)

et al.,)

Defendants.)

B E F O R E :

Honorable John C. Hayes
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Audra Byrd, Esquire
Attorney for Plaintiff

George E. Graham, Esquire
Attorney for Defendants,
David W. Auterson, John R. Curtis,
Dianne N. LaRose, James P. LaRose,
Robert C. MacConnell and Sandra M. Morckel

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

1 (There were no exhibits marked during the hearing.)

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (On the record, April 8, 2013.)

2 THE COURT: All right, the next thing is a damages
3 hearing James Bailey versus Development Systems.

4 Are you Ms. Byrd?

5 MS. BYRD: Yes, sir, Your Honor.

6 THE COURT: All right, and you Mr. Kaiser?

7 MR. GRAHAM: I'm Graham, Your Honor.

8 THE COURT: You're Mr. Graham.

9 MR. GRAHAM: Yes, sir.

10 THE COURT: I've got Defendants' attorney is Drake.

11 MS. BYRD: Yes, sir, Your Honor, we - I represent the
12 Plaintiff, James Bailey.

13 THE COURT: Right.

14 MS. BYRD: And Mr. Kaiser represents DSI, the
15 corporate Defendant who's not in default. Mr. Graham
16 represents the Defendants, the individually named Defendants
17 who are in default.

18 THE COURT: Auterson, Curtis, LaRose twice, MacConnell
19 and Morckel or Morckel.

20 MR. GRAHAM: Yes, sir.

21 THE COURT: Okay, all right, and this is a damages
22 hearing? What sort of ---

23 MR. GRAHAM: Your Honor ---

24 THE COURT: Yes.

25 MR. GRAHAM: --- before we get to the damage hearing I

1 got a motion that's scheduled right after this to set aside
2 the, the default order.

3 THE COURT: All right.

4 MS. BYRD: Yes, sir, Your Honor, and we were here in
5 January for the damages hearing and that was January the 14th.
6 January the 12th the individual Defendants filed a motion to
7 set aside an order of default that was entered January the 12th
8 of 2011 and Judge John continued the damages hearing in
9 January so that Mr. Graham could file affidavits in support of
10 the motion to set aside, and so we agree that his motion to
11 set aside should probably go first, Your Honor.

12 THE COURT: Well, probably, this is the second one of
13 these I've heard today and I've heard a lot in my career,
14 probably that's going to mean that the damages hearing because
15 I might have to take a look at that, that motion which means
16 we can't have the damages hearing until I confirm or disaffirm
17 his being in default.

18 MS. BYRD: Yes, sir, Your Honor, and we - this is
19 sort of the position we were in at the last hearing and my
20 client has traveled eight hours to be here, and the reason why
21 it was continued the last time was to allow for additional
22 documents to be filed in support of the motion. We think that
23 Your Honor will easily dispose the motion to set aside, Your
24 Honor. It was - the complaint and summons were filed and
25 served on the Defendants in 2011, in October of 2011 and the

1 first response that we ever received was in January of this
2 year, Your Honor.

3 THE COURT: All right, and he was served individually?

4 MS. BYRD: Yes, sir, Your Honor, and the Defendants
5 have - one Defendant, Mr. Curtis, has filed an affidavit with
6 the Court that simply says, "We took the summons and
7 complaint," we on, by we he's speaking for all of the
8 individual Defendants, "We took the summons and complaint to
9 our corporate counsel," who is Mr. Kaiser, "and we thought he
10 was going to answer for all of us and he only answered for the
11 corporate Defendant."

12 THE COURT: Okay.

13 MS. BYRD: And Your Honor, we think the case law on
14 that is clear that an attorney's acts are imputed to his
15 clients.

16 THE COURT: Yeah, and I actually heard one of these
17 this morning and actually been doing some research over lunch.
18 So, Mr. Graham, I'll be glad to hear from you.

19 MR. GRAHAM: Well, if he had been their attorney, Your
20 Honor, we - for the individual members we would agree. This
21 is a situation to where the LLC got sued and the members got
22 sued and everything is all intertwined and mixed up together
23 and what they did was they took what they had and they sent it
24 to their corporate counsel, and of course, he answered on
25 behalf of the LLC and didn't do anything, didn't say anything.

1 to the individual Defendants and the first time they heard -
2 they thought everything had been taken care of. The first
3 time they heard about it was when they got notice of the
4 damage hearing indicating that they were, they were in default
5 and I think that's sufficient mistake and neglect and surprise
6 because this Court has a lot of jurisdiction to make sure that
7 everything is just.

8 In addition to that these things are so mixed up with the
9 corporation or the LLC until I don't know how we can have a
10 damage hearing against the members of the LLC without really
11 dealing with the LCC itself. The operating agreement controls
12 a lot of what we're going to be fussing about or arguing about
13 with respect to damages and that sort of thing. So I just
14 don't know how we can go forward having a fair and a just
15 adjudication of what's going on without us being heard or they
16 being heard on the liability portion. It's just, it's just
17 mixed up, and before I, before I go any further, Your Honor,
18 just let me, let me make a, let me make a statement to the
19 Court concerning one of the Defendants. One of the Defendants
20 has, in fact, filed bankruptcy or filed bankruptcy. So I
21 don't how that affects the proceeding before the Court here.

22 THE COURT: Well, that would stay it as to that
23 Defendant but not, not to the rest of the crowd.

24 Go ahead, anything else?

25 MR. GRAHAM: And if you look at the complaint the

1 complaint clearly is about what went down with the LLC and not
2 what went down with these, these members. The members got
3 sued, I think, for breach of fiduciary duty involving not
4 cleaning up or not doing anything with their LLC because his
5 basic complaint is about what happened with the LLC, not with
6 the members, and I just don't know how we're going to be able
7 to fashion damages that are not speculative in that respect.

8 THE COURT: Well, how does Mr. Curtis enter an
9 affidavit in support of anybody other than himself?

10 MR. GRAHAM: Your Honor, I think ---

11 THE COURT: I mean, he's not - is Mr. Davis an
12 attorney, I mean, Mr. Curtis an attorney?

13 MR. GRAHAM: No, sir, he just represents the group at
14 this point.

15 THE COURT: Well, when you say represents them they're
16 independent individuals, they're not any, they're not a
17 collective entity. They're just individuals. I don't see how
18 Mr. Curtis can file an affidavit saying what the others - "We
19 were served," let's see, he says, "We were ignorant and did
20 not realize," and he can't say that for all of them. I mean,
21 they'd have to file their own. Maybe, maybe one of them knew
22 something and just didn't tell the others. I mean, I don't
23 see how Mr. Curtis can file an affidavit for a group of
24 people.

25 MR. GRAHAM: Yes, sir.

1 THE COURT: So here's what I'm going to do, I'll take
2 the motion into consideration as to Mr. Curtis's motion to set
3 aside without ruling on it, but I find that he cannot - his
4 affidavit is not enough to support the - even the basis for
5 the motion as to the other named individual Defendants, and so
6 I will certainly not grant them Rule 60 relief and go ahead
7 with the damages hearing then as and take under consideration
8 whether or not to let Mr. Curtis out of default and hold the
9 others in default and go forward with the damages hearing.

10 MR. GRAHAM: And that's with the exception of the ---

11 THE COURT: And staying the bankruptcy, I mean, that
12 one I can't do anything about.

13 MR. GRAHAM: Yes, sir.

14 THE COURT: That's just somebody needs to file
15 something so that the - that'll be of record.

16 All right.

17 MS. BYRD: Yes, sir, Your Honor, if it please the
18 Court if I may just summarize the allegations as stated in the
19 complaint.

20 THE COURT: Yeah, please.

21 MS. BYRD: In 2010 the individual Defendant, Mr.
22 James LaRose approached Mr. Bailey, the Plaintiff, about
23 forming Development Systems International or DSI for short,
24 and the company was to be a consultant to non-profit
25 organizations for fundraising purposes. At the time Mr.

1 Bailey was the director of gifts at the University of North
2 Carolina Wilmington and Mr. LaRose and the other individual
3 Defendants knew his reputation. He was the only one in the
4 group that had any experience in fundraising and they
5 approached him because of that experience and his reputation.
6 He at the time, again, was the director of gifts, making
7 \$125,000 a year. Mr. LaRose and the remaining Defendants came
8 to an agreement with regard to compensation of all of the
9 members and what they agreed was that if a member was working,
10 this is all in writing, and of course, attached to the
11 complaint, Your Honor, that if a member was working part time
12 for the company they would make \$3,000 a month, plus a
13 percentage of the commissions made by the company, and if the
14 member was working full time they would make \$4,000 a month
15 plus a commission, a percentage of the commission made by the
16 company.

17 In October of 2010 Mr. Bailey made a capital contribution
18 to join the LLC of \$40,000, and in reliance upon their - the
19 remaining Defendants' representations that he would have full
20 time employment and based on the numbers that they provided
21 him in a pro forma he quit his job at UNC Wilmington and began
22 working full time for Development Systems International in
23 January or February the 1st, 2011.

24 In January of 2011 Mr. LaRose, one of the individual
25 Defendants who is also the CEO of the company but not a member

1 of the company, approached Mr. Bailey and asked him to
2 accompany him to the bank to sign a personal guarantee for a
3 loan made to the company, which he did, and the loan was for
4 \$50,000 made to Development Systems International and Mr.
5 Bailey signed a personal guarantee.

6 A few months later in May of 2011 Mr. LaRose calls Mr.
7 Bailey to Columbia. He takes him to lunch and tells him he's
8 firing him as the director of sales and senior vice president
9 of their business acquisition arm. At that time the
10 Defendant, Mr. LaRose, was taking a monthly salary from DSI in
11 the amount of approximately \$19,000 per month. The company
12 was paying the personal credit card debts of he and his wife,
13 Ms. Dianne LaRose, as well as the personal, federal and state
14 income taxes owed by Ms. LaRose.

15 After Mr. Bailey was terminated he was locked out of the
16 software system that he had procured while he was employed
17 there. He was completely cut off from any communication from
18 the company despite the operating agreement which provides
19 that the members shall govern the affairs of the company. He
20 had - he never received any financial statements from the
21 company at any time after he was terminated without cause,
22 even though the operating agreement provides that they are to
23 receive, all the members are to receive financial statements
24 at least on a quarterly basis.

25 After his termination Mr. Bailey attempted to negotiate

1 with the remaining members of the company for a buy-back of
2 his interest. After that failed, that stretch from May until
3 October, I'm sorry, September of 2011, those negotiations
4 extended, and when the parties could not reach an agreement
5 Mr. Bailey filed the present summons and complaint on
6 September the 12th, 2011, and he alleges causes of action for
7 breach of contract, breach of contract with fraud, breach of
8 fiduciary duty, fraud and misrepresentation, negligent
9 misrepresentation, civil conspiracy and wrongful termination.
10 Mr. Bailey in his complaint seeks actual and punitive damages
11 as well as attorney's fees and costs pursuant to South
12 Carolina Code 41-10-80(C), and Your Honor, that's the summary
13 of the complaint and if you would like for me to call Mr.
14 Bailey now for his testimony.

15 THE COURT: You may.

16 MS. BYRD: Thank you, Your Honor.

17 We'd call - the Plaintiff calls Mr. James H. Bailey.

18 Whereupon, James H. Bailey, Jr., was called to the stand,
19 duly sworn by the clerk and testified as follows:

20 THE CLERK: Please state your name and spell your
21 last name for the record.

22 MR. BAILEY: James Herbert Bailey, Jr., B-A-I-L-E-Y.

23 DIRECT EXAMINATION

24 BY MS. BYRD:

25 Q Mr. Bailey, you've heard the recitation of the facts that

1 I just gave the Court. Is there anything that I have stated
2 to the Court that is inaccurate?

3 A No, ma'am.

4 Q In 2010, were you employed as the director of gifts at
5 the University of North Carolina Wilmington?

6 A Yes.

7 Q And in 2010 did Mr. LaRose approach you about forming the
8 limited liability company, DSI?

9 A Yes.

10 Q And in May of 2011 did - I'm sorry, in January of 2011,
11 did you sign a personal guarantee of a loan made to
12 Development Systems International?

13 A Yes.

14 Q And was the amount - has capital - what was - was the
15 name of that bank Capital Bank NA?

16 A Correct, yes.

17 Q And has Capital Bank NA filed a lawsuit against you based
18 on your signing of the personal guarantee?

19 A Yes.

20 Q And is the amount that Capital Bank seeks against you
21 \$50,970.03?

22 A Yes.

23 Q And has the company DSI indemnified you in any way in
24 that action?

25 A Yes.

1 Q Have they paid for your ---

2 A Oh, no, they have not paid, no, it's all me.

3 Q And so are you responsible for that \$50,970?

4 A I am, yes.

5 Q And, and to your knowledge has the company responded to
6 that complaint at all?

7 A No.

8 Q Now I want to ask you about what other damages in
9 monetary terms that you have sustained. Did you, in fact,
10 make a capital contribution to DSI in the amount of \$40,000?

11 A Yes.

12 Q And has that been repaid to you?

13 A No, it has not.

14 Q Have you earned any income or money at all from DSI?

15 A They did pay me \$3,000 in the months of October and
16 November and that ceased.

17 Q And that was in October and November of 2010?

18 A 2010, yes.

19 Q And since that time, although you were working, you did
20 not receive a salary or any commissions?

21 A None whatsoever.

22 Q And is the total amount owed to you for salary and
23 commissions for the period of August 2010 through December
24 2012 \$401,000?

25 A Yes.

1 THE COURT: I'm sorry, say that again.

2 Q Is the total amount of salary and commissions owed to him
3 for the period of August of 2010 through December of 2012
4 \$401,000?

5 A Yes.

6 Q As a result of your termination from DSI were you
7 required to take personal loans to cover your debts?

8 A Yes.

9 Q And what was the amount of the loans that you took?

10 A Approximately 120,000 or more.

11 Q And have you also incurred attorney's fees and costs in
12 prosecuting this lawsuit?

13 A Yes.

14 Q And have you requested those costs in your complaint that
15 has been filed?

16 A Yes, ma'am.

17 Q And do the total attorney's fees and costs do they total
18 \$12,335?

19 A Yes, sounds right, yes.

20 Q And your costs, have you also incurred costs, not only
21 fees, attorney's fees, but also costs in this case?

22 A Absolutely.

23 Q And those would include filing fees?

24 A Yes.

25 Q And the total amount of those costs is that number

1 \$748.35?

2 A Yes.

3 Q And you were also at the last hearing in January of this
4 year; is that correct?

5 A Yes.

6 Q And during that hearing did you, did you hear Judge John
7 order that you submit an affidavit of fees and costs incurred
8 as a result of that hearing being continued?

9 A Yes, in fact there were - I think there were two.

10 MS. BYRD: Your Honor, we have filed an affidavit of
11 costs and fees. If I may approach?

12 THE COURT: Yes.

13 MS. BYRD: I've provided this to Mr. Graham. I'll
14 show you a copy.

15 A Okay, thank you.

16 Q Can you confirm that that is the affidavit of fees and
17 costs that we've submitted related to the January 14th hearing?

18 A Yes.

19 Q And in the affidavit the total amount of fees and costs
20 incurred is \$4,269.10; is that correct?

21 A Yes.

22 Q Mr. Bailey, is the total amount of damages that you have
23 sustained as a direct result of the conduct complained of in
24 your complaint total \$629,522.48?

25 A Yes.

1 Q And have you sustained other non-monetary damages as a
2 result?

3 A Absolutely, yes.

4 Q Can you tell the Court some of those things?

5 A Well, let's see, I lost my house to foreclosure because
6 the company didn't pay me what they said they were going to
7 pay me. I had a choice between keeping my two boys in college
8 or losing my house. So I let my house go. My wife left me in
9 October. She just packed her suitcase and went on vacation
10 and called me a week later and said she wasn't coming home as
11 a direct result of the financial stress that was part of all
12 of this culmination that affected our marriage. In addition
13 to that just the shame of being in a, in a community where my
14 reputation was well respected and to be, you know, I feel like
15 the rug's been pulled out from under me professionally and I
16 have rebounded. I do have a good job similar to the one I had
17 but, you know, when you take a hit you can't put a price on
18 something like that. It's just the personal integrity,
19 professional integrity that's involved in both of these. So,
20 you know, it's been a tough road.

21 Q Mr. Bailey, are you also seeking punitive damages from
22 the Defendants in default in this case?

23 A Yes.

24 Q And do you believe that the conduct of the Defendants was
25 willful and malicious?

1 A Yes.

2 MS. BYRD: I have no further questions, Your Honor.

3 THE COURT: All right, now, the posture of this is
4 somewhat loose. So, I'm going to let Mr. Graham ask any - do
5 a little bit of cross examination if you'd like to. Where,
6 where you are as far as Mr. Curtis is still a little up in the
7 air but since you're here I'm going to let you do any cross
8 examination if you wish to at this time.

9 MR. GRAHAM: Yes, sir.

10 CROSS EXAMINATION

11 BY MR. GRAHAM:

12 Q Mr. Bailey, did you sign an operating agreement with this
13 company?

14 A Yes, sir.

15 Q Okay, and in - you, you signed it. Do you remember what
16 date it was? I believe you attached to your complaint.

17 A I think it's October the 1st.

18 Q October 1st, was that the first agreement that you guys
19 had?

20 A That was the first agreement.

21 Q Okay, and then you had another agreement that further
22 defined the ownership interests and things of that nature.

23 A Right, because - and that, that agreement provided for
24 greater compensation than the first one.

25 Q Okay, and then did you have a subsequent agreement?

- 1 A We did.
- 2 Q Okay.
- 3 A We took, we took on two, two more partners.
- 4 Q Okay, and ---
- 5 A With, with the, with the ---
- 6 Q --- that reduced the ownership ---
- 7 A --- with the promise of even more lucrative.
- 8 Q I hear you.
- 9 A Yes, sir.
- 10 Q Did that introduce the ownership shares in the company?
- 11 A No, sir, the original operating agreement introduced the
- 12 ownership shares.
- 13 Q Well, the original was 25 percent and the last one end up
- 14 give 16 percent; is that not right?
- 15 A Correct, yes, sir.
- 16 Q Okay, now, did you have a separate employment agreement
- 17 with the company?
- 18 A A separate employment agreement?
- 19 Q Yes, sir.
- 20 A As a, as an agent, yes, sir.
- 21 Q As an agent or as an officer?
- 22 A Not as an officer, just the operating agreement and I did
- 23 sign a non-compete clause as an agent.
- 24 Q Now, is this company member managed or manager managed?
- 25 A I believe it's a member managed.

1 Q It's member managed and you were a member?

2 A Yes, sir.

3 Q And you helped manage the company?

4 A Until May the 12th.

5 Q Okay, but at any rate have your interest in the company
6 been purchased out or has anybody said that you are not a
7 member of this company?

8 A Yes, sir.

9 Q Who said you're not a member of this company?

10 A Well, they didn't say they - that I was not a member.
11 They just excommunicated me from all, you know, from any
12 communications as a partner.

13 Q Did they kick you out of the company?

14 A They fired me.

15 Q No, sir, I'm not asking you that. They kick you out of
16 the company?

17 A Yes, sir.

18 Q Okay, so, you're no longer, you no longer have any shares
19 in the company?

20 A No, sir, I still own shares, yes, sir.

21 Q You're still ---

22 A I am still a partner. I am still an equity partner, yes,
23 sir.

24 Q Okay, so, you are a partner in the company and you think
25 you ought to have your capital investment monies back?

1 A Absolutely.

2 Q You do. Okay, now, when you made that investment did you
3 consider what you were actually doing?

4 A Yes, sir.

5 Q Okay, and, and at the time you put in the \$40,000 it
6 didn't occur to you that you weren't going to be able to get
7 that back?

8 A What I was promised was \$3.3 million within three years
9 based on a pro forma projection that was pretty well
10 researched and put together with a business plan. That was
11 what we bought into.

12 Q Do you have that pro forma here?

13 A Yes, sir, I do.

14 Q Okay, may I see it, please?

15 A In fact, in fact I have one gigabyte of every
16 correspondence that has ever been made between any members of
17 ---

18 Q Do you have that pro forma here?

19 A Yes, sir, I do.

20 Q May I see it?

21 A It's on a disk drive.

22 Q Okay, now, take a look at that and I ask you if that's
23 the operating agreement that you signed.

24 A Yes, sir.

25 Q Would you look at paragraph four for us, sir, and read

1 that for the Court what it says.

2 A "None of the members shall be entitled to any interest on
3 their capital account or their capital contributions to the
4 capital of the company after the date hereof and except as
5 otherwise provided herein none of the members shall have the
6 right to demand or receive the return of all or any portion of
7 their capital account or their capital contributions to the
8 capital of the company."

9 Q Now, the capital contribution you made was \$40,000; isn't
10 that not right, sir?

11 A That's correct.

12 Q Okay, in ---

13 A In, in good faith.

14 Q In good faith.

15 A Yes, sir.

16 Q And this agreement says that you can't get that back;
17 doesn't it?

18 A Yes, sir, that's part ---

19 Q And you signed that, did you not?

20 A --- of the, that's part of the good faith, yes, sir.

21 Q Did you sign this?

22 A Yes, sir.

23 Q Okay, so you were fully aware of the fact that when you
24 put that \$40,000 in there you weren't going to be able to get
25 it back.

1 A Correct.

2 Q Okay.

3 A With the, with the promise and the assurance that based
4 on pro forma, based on business plans, based on current
5 operating expenses and revenues that I would receive, my
6 return on investment would be far greater than the \$40,000
7 that I put in, not to mention the fact that I didn't receive
8 anything except for the \$6,000 in partial payments during a
9 partial period.

10 Q And I, and I understand that, but that non-return of the
11 \$40,000 was your agreement with the members; is that right?

12 A Yes, sir, we established that.

13 Q Okay, so, the members and what they did to you was agree
14 with you that you were not to get \$40,000 back.

15 A Based on the statement that you have put before me that's
16 pretty clear.

17 Q And let the record reflect that I'm talking about the
18 operating agreement; is that right?

19 A Yes, sir.

20 Q Okay, now, you indicate that - are you an employee of the
21 company or you were just an officer?

22 A I'm an officer and was hired as a 1099 employee.

23 Q Okay, so, you were, you were expecting some money from
24 the LLC as you worked; is that right?

25 A Yes, sir.

1 Q Okay, take a look at this, sir, and I ask you if this is
2 the agreement, and for purposes of the record it's Exhibit C
3 that was attached to your complaint, is that the agreement by
4 which you worked under the company?

5 A Yes, sir, this was the last operating agreement we
6 signed.

7 Q Okay, well, that's not an operating agreement. That's an
8 agreement between the members and you and the executive
9 director; is that not right? Look at the signatures on the
10 back.

11 A I see the signatures.

12 Q Okay, so, that's an agreement between all of you all?

13 A Yes.

14 Q So, you all - you guys got together and decided that
15 everybody in the company of the members at least would do some
16 work for the company and they would get paid.

17 A That's correct.

18 Q Okay, and that's what that agreement sets forth?

19 A Yes, sir.

20 Q Now, does that agreement have any monetary amount
21 specified in it?

22 A I see \$18,329 per month to be payable to James LaRose as
23 the operating as CEO.

24 Q Yes, sir, is there a monetary amount specified in it
25 asking what the officers who were members would get?

1 A No, sir, that was all spelled out in the pro forma.

2 Q But there's nothing in that agreement that you signed
3 that said you were going to get X number of dollars?

4 A There was in the original operating agreement, yes, sir.

5 Q That's not what - I'm talking about this agreement.

6 A And so, what, what we had was a change of revenue
7 structure from the first operating agreement until we got to
8 the last operating agreement and the pot was sweetened each
9 time we signed on and created a better corporation.

10 Q Okay, let, let's go back to that. The first operating
11 agreement was superseded by the second one; is that not right?

12 A Correct.

13 Q So the one that you're operating under now is that one;
14 is it not right, which is Schedule A in your complaint? The
15 operating agreement that you are operating under now is
16 attached to your complaint as Schedule A, is that not right?

17 A I think that's correct.

18 Q Okay, and this agreement here that set forth you guys or
19 your work with the company is set forth in Exhibit Three; is
20 that not right?

21 A I'm not following that.

22 Q Look, look at it, that's Exhibit C to your complaint.

23 A Okay.

24 Q And that sets forth how you are to work as a member of
25 the company; is that not right?

1 A Yes.

2 Q Okay, and it says that you are to be - you, you are and I
3 forget the language but it didn't say you were an eligible
4 recipient.

5 A Yes.

6 Q Okay, and that being an eligible recipient then what the
7 company would do was give you work; is that right?

8 A How you mean for work that's already been done, yes, and
9 in addition to, yes.

10 Q Well, that says, that says work that you were supposed to
11 do.

12 A Right.

13 Q Does it not?

14 A Right.

15 Q Okay, and you would be paid under that agreement certain
16 amount?

17 A Right.

18 Q Does that specify the amount?

19 A No, sir, it does not.

20 Q Okay, did any of the members ever do anything to you to
21 stop you, not talking about the company, I'm talking about the
22 members, did any of the members ever stop you from doing any
23 work under that agreement and if so which members did it?

24 A Yes, they did.

25 Q Which members?

1 A They didn't - they never trained me to be a fundraising
2 consultant which is the whole reason that I came to work for
3 this company.

4 Q Okay, they never trained you to be a fundraising
5 consultant.

6 A Right.

7 Q Were they supposed to do that?

8 A Yes, sir, they were.

9 Q Where is that in the agreement, sir?

10 A It's part of the - if you look at the individual agent
11 agreement it's, it's, it states that there's a training
12 involved. They're supposed to ---

13 Q But, sir ---

14 A Any company would want you to be ---

15 Q But Mr. Bailey, that is the agreement, is it not?

16 MS. BYRD: Your Honor ---

17 THE COURT: Let me him finish his answer, let him
18 finish his answer.

19 A I mean, any, any company that has any integrity and wants
20 their employees to be profitable and productive would have
21 some training involved to be able to put them out there. You
22 know, it's interesting that the company sent me to the two
23 most important sales presentations that were made during that
24 time period. They didn't send anybody else. They sent me to
25 close the deals and I closed them. Now ---

1 Q And how much money did you make off of them?

2 A Zero.

3 Q Nothing, all right.

4 A The company never paid me a dime.

5 Q Okay, now ---

6 A Except the \$6,000.

7 Q --- your lawyer talked about them going out and
8 recruiting you because of your expertise and expertise in
9 that; is that right?

10 A Yes, yes, sir.

11 Q Okay, my question simply is, sir, is there any numbers in
12 that, is there any numbers in there to base your compensation
13 on?

14 A In the operating, original operating agreement, yes, sir.

15 Q In the original operating agreement and that's the one
16 that you referred to that you did before, I mean, that you did
17 early on?

18 A Each one of these were a progressive, more enticement to
19 get me to buy in. I still was not being compensated even
20 until the third one. I kept being told I was going to be -
21 "If you'll just sign this one everything's going to be great.
22 We're going to have money coming in the door, we're going to
23 pay you for everything, back, back pay, the, you know, the 375
24 - what is it 325,000 the first year, 1.2 the second year and
25 3.3 the third year," and so forth and so on was going to

1 materialize.

2 Q Okay, let's get back to my original question.

3 A Yes, sir.

4 Q What did the members do to violate that agreement right
5 there that's in front of you that all of you signed? What did
6 the members do?

7 A They fired me - they, they discommunicate - they
8 disassociated me in a hostile manner.

9 Q Which, which members disassociated you?

10 A Every one of them.

11 Q Every one of them.

12 A Not a single one of them came to my aid, not a single one
13 of them stood up and said, "Jimmy LaRose, you're making the
14 wrong decision here. You can't fire a partner without having
15 some partnership agreement, going through the proper
16 procedures as in an operating agreement as it states we would
17 all agree, we would have consensus, you just, you don't" ---

18 Q So, so, you're griping to this Court about damages that
19 these members did because they didn't step up to your aid, is
20 that fair?

21 A No, sir, I'm not asking for anybody to step up. I think
22 the facts speak for themselves.

23 Q Well ---

24 A I came into this in full, in good faith. I gave, I gave

25 ---

1 Q I, I understand that.

2 A --- \$40,000 up front.

3 Q Mr. Bailey ---

4 MS. BYRD: Your Honor, if I may ---

5 THE COURT: Yeah, one at a time, one at a time, let
6 him finish, Mr. Graham.

7 A You know, after coming to this and with my reputation,
8 who they sought me because I was the only one of all the
9 partners who had any fundraising capacity, had done any - I
10 had been doing fundraising for 30 years. Not a single one had
11 done fundraising. I was the integrity and the professional
12 competency that came to the table to enable them to leverage
13 and by virtue of that I became - they wanted me to be the
14 sales, director of sales and services; and so I took on that
15 role. In the vertical I worked 80 hours a week from the time
16 I came to work with them in August of 2010 until they fired me
17 May the 12th, which completely took me by surprise because I
18 had no idea that that was even being thought about.

19 Q Mr. Bailey, it was Mr. LaRose that fired, Mr. LaRose that
20 fired you; is that not right?

21 A Yes, sir, and, and ---

22 Q He, he fired you.

23 A He fired me.

24 Q In fact your complaint says that he called you to
25 Columbia and he fired you, not one of the members had anything

1 to do with that firing; is that fair?

2 A Yes, sir, they did because I called each one of them to
3 find out what their position was and they said that Jimmy
4 LaRose had spoken for them.

5 Q Jimmy LaRose had what?

6 A Had spoken for them.

7 Q Oh, okay, so, so, that's a tacit thing that they fired
8 you? Is that what you're telling the Court?

9 A They, they cut me out of the, the software which I
10 procured for the company and worked all the leads. All of a
11 sudden I was locked out of it.

12 Q Okay.

13 A I didn't understand how I got locked out and then I tried
14 to communicate with each of the members and they wouldn't
15 return my calls. I tried voicemail. I tried e-mails. I
16 tried and then finally the word was that they weren't going to
17 talk to me anymore.

18 Q Well, well, who was it that inflicted all these damages
19 on you? Was it the members or was it the corporation?

20 A I would say both.

21 Q Okay, and I'm asking you again what did the members do?

22 MS. BYRD: Your Honor, I'm going to object. This
23 cross examination seems to be on the liability phase. All
24 these allegations ---

25 THE COURT: Well, it is, but I'm going to let him go

1 ahead and let's finish it on up. I think ---

2 MS. BYRD: Yes, sir, Your Honor. Thank you.

3 Q What did the members do?

4 A Rephrase your question.

5 Q You're asking this Court to give you damages against the
6 members and I'm asking you what did the members do to you?

7 A They did not as a fiduciary, as a partner, as an equity
8 partner we place our hands - we put our good faith in each
9 other's hands. They did not act in a, in a prudent and
10 fiduciary manner to, to represent what they were supposed to
11 represent.

12 Q That's the essence of what they did to you? Now, how
13 much of this ---

14 A I'm trying to be very general in my statement here now.
15 If you want specifics I can give you specifics.

16 Q I just want you to answer my question.

17 A I think I did.

18 Q Okay, now, you say that you've been - you were paid
19 \$3,000 a month? Did you ever get a salary for \$3,000 a month?

20 A I did October and November. I stated that already.

21 Q October and November?

22 A Yes, sir.

23 Q Of what year?

24 A 2010.

25 Q That was under the old agreement; is that not right?

1 A That's right.

2 Q How much money did you get from them under the new
3 agreement?

4 A I didn't even get paid the rest of it under the old
5 operating agreement and was enticed to sign the second
6 operating agreement based on the fact that there was going to
7 be a windfall, that the company would be able to pay me back
8 everything that, that I had done thus far. Why would I have
9 left my job at UNCW? I was getting paid \$125,000. I had a
10 nice job. Why would I leave that job unless there was going
11 to be a pretty darn good chance that I was going to make a
12 whole lot more money than \$125,000?

13 Q And that's why you got the \$40,000 to make an investment?

14 A Yes, sir, it was ---

15 Q And you made it?

16 A It's ---

17 Q And it was a bad investment; wasn't it?

18 A It turns out that to be that way, yes, sir.

19 Q And now you want these members to come back and repay you
20 your \$40,000 which the operating agreement says you can't get.

21 A At the very least.

22 Q Is that right?

23 A Yes, sir.

24 Q Okay, the other thing I want you to look at for me and
25 I'm going to finish this up rather quickly, Your Honor, look

1 at your operating agreement again.

2 A I don't have a copy of the operating agreement.

3 Q I'm sorry. I thought I left it up there. Look at
4 paragraph 5-9, sir.

5 A And which operating agreement is this?

6 Q That's the - take a look at it, that's the last one.

7 A Okay.

8 Q Look at paragraph 5-9 and would you read that to the
9 Court, please, sir?

10 A "Liability to company. A member shall not be liable or
11 accountable in damages or otherwise to the company or to the
12 other member for any error of judgment or any mistake of fact
13 or law or anything that such members may do or refrain from
14 doing hereafter in their capacity as a member for and on
15 behalf of the company and in furtherance of its interests
16 except in the case of their willful misconduct or their bad
17 faith in performing or failing to perform their duties
18 hereinafter," and that's exactly why we're here, right there.

19 Q So ---

20 A You've just made my case, thank you very much.

21 Q Well, we're going to let the Judge decide that if he
22 would, okay?

23 A Yes, sir.

24 Q Now explain to me what they did in bad faith to you.

25 A They didn't, they didn't follow through with what was

1 expected of a partner.

2 Q Okay, and what did they do that was in willful
3 disobedience or disregard to this?

4 A They did not pay me what they promised to pay me, number
5 one.

6 Q Okay.

7 A Number, number -- well, I should back up, number one they
8 did not train me to be a consultant which is why I hired onto
9 this company to begin with was the opportunity to be a
10 consultant. Secondly, they did not pay me, they did not
11 compensate me as they said they would for work completed.
12 Third, they promised me, fraudulently I might add, an
13 opportunity to earn significant amount of money and I left a
14 good professional paying job with a great reputation in the
15 community to jump off and do this. It's something I've always
16 wanted to do was to be a 1099 employee and be my own
17 consultant.

18 Q Did any member coerce you to sign this document?

19 A In, in a sense, yes, sir.

20 Q Did any member coerce you to take \$40,000 of your hard-
21 earned cash out of the bank and put in this company?

22 A In a sense, yes, sir. There was -- I was, I was wooed.

23 Q And how old are you, sir?

24 A I'm 55 years old.

25 Q And you were, and you were wooed just like anybody else

1 who is getting ready to enter into business. Now, let me ask
2 you this, the 40,000 - the \$400,000 that you claim that is
3 owed to you do the members owe you that or does the company
4 owe you that?

5 A Both.

6 Q How is it the members owe you that?

7 A They're just like me, they signed personal liability
8 statements. I'm, I'm responsible to them. They're
9 responsible to me.

10 Q Are you responsible for some of this \$400,000 as a
11 member?

12 A Well, I think that's up to the judge.

13 Q I understand that but you're a member and you're saying
14 the members owe you \$400,000.

15 A I was no longer a member as of October the 12th. I didn't
16 file suit against myself. I filed suit against the remaining
17 partners.

18 Q Yes or no, sir, do you consider yourself to owe any of
19 this \$400,000 that the company owes you?

20 A I'm not, I'm not - I'm no longer a - they've ostracized
21 me. I'm, I'm no longer, I don't have the, I don't have the
22 ability to be a - I mean, I haven't acted as a partner since
23 October 12th. I'm not sure how to answer that question.

24 Q But you've answered as a member. You still have an
25 ownership right to the company?

1 A Yes, sir.

2 Q You still get the losses and some of the profits don't
3 you? Are you entitled?

4 A No, I have not received any losses or profit statements.

5 Q I understand that, Mr. Bailey. I'm asking you you're
6 eligible to receive those; are you not?

7 A I don't know how I'm eligible if I - I'm no longer an
8 acting partner. How can I be held liable for damages to
9 myself?

10 Q Well, I'm just trying to find out who did this to you?
11 Was it the members or was it the company?

12 A It was both, Development Systems International is a
13 corporation and all stated members that are filed in the
14 complaint. There are five of them.

15 Q So, those five ---

16 A Actually there are six of them.

17 Q Those six did it to you? You didn't have anything to do
18 with it although you're a member?

19 A Say that again.

20 Q Well, let me move on.

21 THE COURT: I think he's clear on that. Let's, let's
22 just - if we're going to have new - let's - got some new
23 ground to plow let's plow it but let's don't plow the same.

24 Q Okay, now, loss of your house ---

25 A Uh-huh.

1 Q --- all right ---

2 A Uh-huh.

3 Q --- you blame the members for losing your house?

4 A Indeed.

5 Q Did you after they defrocked you or put you out did you
6 go out and find other employment?

7 A I did.

8 Q Okay, and then you still blame them for the loss of your
9 house?

10 A I do.

11 Q Okay.

12 A The damage, the damage had already been done.

13 Q How do you put a damage on what these members owe you for
14 your house? How do you measure that?

15 A A lack of the agreement to pay me what they were supposed
16 to pay me.

17 Q No, how do you put a measure that what they did caused
18 you to lose your house?

19 A Because I didn't have the money to pay the mortgage
20 because they didn't give me the money that they had promised
21 me. I mean I can't just pay a mortgage out of thin air.

22 Q Did any of the members get money more than you?

23 A Oh, absolutely.

24 Q Okay.

25 A We already stated right here, James LaRose \$187,000.

1 Q No, James LaRose is not a member.

2 A Well, that's true, he's not. His wife is though, but she
3 - she's the one who compensated. That's how he constructed
4 the ---

5 Q How much money did they - did she get?

6 A She got \$187,000. It's in their bank account every,
7 every month.

8 Q No, no, sir, I'm not asking you about employment I'm
9 asking you how much money do they get, Ms. LaRose, how much
10 does she get?

11 A I don't know. You'll have to check her bank account.

12 Q How much did Curtis get?

13 A I don't know. You'll have to check their bank account.

14 Q So, you don't, you don't know what any, anyone else got
15 ---

16 A I ---

17 Q --- other than the salaries stated, stated in the
18 agreement.

19 A That's all I know.

20 Q And yours is not stated in the agreement.

21 A Correct.

22 Q Okay, now, you blame them for losing your wife?

23 A Yes, sir.

24 Q How do you measure that? How do you measure what they
25 did as being, causing you to lose your wife?

1 A Emotional stress.

2 Q Emotional stress?

3 A Financial stress, mental stress, pick something. It all
4 piles up. It's a cumulative effect and it has a relationship
5 bearing, yes, sir. I was married ---

6 THE COURT: All right, let's wait ---

7 A --- yeah, 25 years.

8 THE COURT: No, no, wait until you get a question.

9 A Yes, sir.

10 Q And your only beef with the members are that they didn't
11 step up and come to your defense when Mr. LaRose was doing all
12 these things to you?

13 A No, I've got lots of complaints against them. That's
14 just the one that steps out in my mind right now. Just as an
15 individual I would have thought, you know, we got together and
16 prayed before every meeting and after every meeting and then
17 to get the rug pulled out from under me with no warning was
18 not in character with the, the associations that I thought I
19 had made with these six folks.

20 Q You were a poor judgment of character, weren't you?

21 A Apparently.

22 Q Okay, and you made a bad deal?

23 A Apparently.

24 Q Okay, and you just want them to pay for your, your
25 negligence in not pursuing and following this out; is that

1 right?

2 A Well, it wasn't that, it wasn't that I made a bad deal,
3 per se, the deal that I made was based on logic, based on
4 reason, based on CPA research, based on business acumen. This
5 - everything looked great. I passed it by, you know, we did
6 diligence on my behalf, all of my counsel to make sure that
7 this was a viable investment that was going to pay dividends
8 and everything looked, looked, looked great on the front end.

9 Q And it didn't and that's what you're complaining about?

10 A I'm just where I am because of the actions that my
11 partners failed to do and the company, the corporation failed
12 to do to do its fiduciary duty.

13 Q Okay, I'm almost finished. Tell me now out of the
14 \$600,000 how much of that belonged to the company and how much
15 belonged to the members?

16 A I'm sure we can split that up in a, in a - we could, we
17 could do some math on that.

18 Q Well, that's what I'm asking you to do.

19 A Right now? I don't have a calculator in front of me.

20 Q Tell the judge how much of that belonged to the members
21 and how much belonged to the company based on what the company
22 did to you and what the members did to you.

23 A I'd let the - have to let the judge interpret that. I
24 have no idea how to segment the monetary aspects of this.

25 Q But you had no problem putting \$600,000 on it ---

1 A Yeah.

2 Q --- but you don't know how to divvy it up between who did
3 what to you?

4 MS. BYRD: Your Honor, we object. This is asking him for
5 a legal conclusion on joint and several liability, Your Honor.

6 THE COURT: Yeah, let's move on. Go ahead.

7 Q Now, Mr. Bailey, and I'm almost finished with you. You
8 don't think you made a bad investment?

9 A No, sir, I did not think I made a bad investment.

10 Q You don't?

11 A I thought I made an excellent investment. In fact, I was
12 proud of it.

13 Q So, you were proud to put your \$40,000 in.

14 A I was.

15 Q You just didn't get the return that you hoped on it?

16 A Yes, sir.

17 Q And that \$40,000 is still there in terms of capital
18 contributions?

19 A Yes, sir.

20 Q Okay, and that's a part of the \$600,000 that you want
21 back?

22 A Yes, sir.

23 Q And the rest of it is for salary at \$400,000; right?

24 A Yes, sir.

25 Q And what was the rest of it?

1 A And I might add that the reason that I gave up percentage
2 of the company from 25 to 16.6 was because the compensation
3 that was going to be due me was worth more than the interest
4 in the company which never materialized by the way.

5 Q How do you let these guys snow you like that?

6 A Good question.

7 Q How do you - you're 55 years old. How do you let them
8 snow you?

9 THE COURT: Let's don't go into that. I mean, he's
10 admitted he made a bad investment.

11 Q And you want them to pay you so that you can get back to
12 where you were because you made a bad investment.

13 THE COURT: Well, he doesn't admit it's a bad
14 investment but he thought it was a good investment at the
15 time.

16 Q Yes, sir.

17 THE COURT: But go ahead. Let's, let's wrap up.
18 We've got other motions. What's the question again?

19 Q The question is so you want them to pay you \$600,000 to
20 put you back where you were before you entered this
21 investment?

22 A I think that I'm entitled to that based on the good faith
23 that I want, I gave to them.

24 Q Based on the good faith that you gave to them?

25 A Yes, sir.

1 Q Thank you, sir. That's all I have.

2 THE COURT: You can step down. We appreciate your
3 time.

4 A Thank you, sir.

5 THE COURT: I'll take this - both - all the issues
6 under advisement.

7 A Thank you, sir.

8 MS. BYRD: Thank you, Your Honor.

9 (Adjourned.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

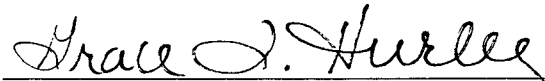
24

25

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of James H. Bailey, Jr. versus Development Systems International LLC, et al., held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on April 8, 2013.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-CM-M

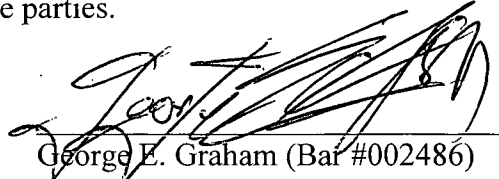
Official Reporter

July 8, 2013.

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains only the material proposed to be included by the parties.

November 29, 2013



George E. Graham (Bar #002486)

McIVER & GRAHAM, P.A.

P O Box 915

Conway, SC 29528

Phone: (843) 248-4615

Fax: (843) 248-6479

Attorney for the Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

John Hayes, III, Circuit Court Judge

Case No. 2012-001062

James H. Bailey, Jr.

Respondent,

v.

Development Systems
International, LLC, David
Auterson, John R. Curtis,
James P. LaRose, Robert C.
MacConnell and Sandra M.
Morckel, of whom David
Austerson, John R. Curtis,
James P. LaRose, Robert C.
MacConnell, and Sandra
Morkel are

Appellants.

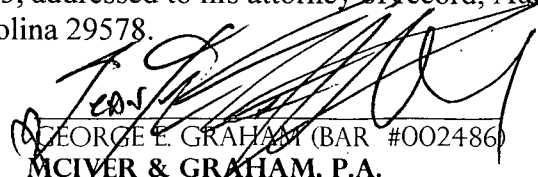
PROOF OF SERVICE

I certify that I have served the Record on Appeal on James H. Bailey, Jr. by depositing copies in the United States Mail, postage prepaid on November 29, 2013, addressed to his attorney of record, Audra M. Byrd, Post Office Box 2116, Myrtle Beach, South Carolina 29578.

RECEIVED

DEC 03 2013

SC Court of Appeals


GEORGE E. GRAHAM (BAR #002486)
MCIVER & GRAHAM, P.A.
PO BOX 915
CONWAY, SC 29528
PHONE: (843) 248-4615
FAX: (843) 248-6479
ATTORNEYS FOR THE APPELLANTS