

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

J.A.H. ENTERPRISES, INC., Plaintiff	CIVIL ACTION NO. 16-124-SDD-RLB
VERSUS	JUDGE: Hon. Shelly D. Dick
BLH EQUIPMENT, LLC, JAMES BLAKE EVERETT, SAM EVERETT, and ELA MISSION, LLC Defendants	MAGISTRATE: Richard L. Bourgeois, Jr.

ANSWER and COUNTERCLAIM

NOW INTO COURT, through undersigned counsel, comes defendant, BLH EQUIPMENT, LLC, JAMES BLAKE EVERETT, and ELA MISSION, LLC(hereinafter referred to as “defendants”), who for Answer to Plaintiff’s Petition for Damages and Declaratory Relief, respectfully aver as follows:

FIRST AFFIRMATIVE DEFENSE

Plaintiff fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Defendants deny each and every allegation not specifically admitted herein.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs’ damages, if any, were caused by the fault of third parties for whom the Defendants herein is not legally responsible.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs’ damages, if any, were caused by the Plaintiff’s own fault.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims, if any, are barred or limited in whole or in part by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims, if any, should be offset by any amounts owed by Plaintiff to defendants.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims, if any, have been satisfied by accord and satisfaction.

EIGHTH AFFIRMATIVE DEFENSE

Defendants reserve the right to supplement or amend their affirmative defenses, and to assert additional defenses, as the nature and scope of Plaintiff's claims are developed further through discovery.

AND NOW, answering the separate allegations of the complaint, Defendants aver as follows:

PARTIES

1.

The allegations contained in Paragraph 1 of the Petition for Damages and Declaratory Relief are admitted.

2.

The allegations contained in Paragraph 2 of the Petition for Damages and Declaratory Relief are admitted.

3.

The allegations contained in Paragraph 3 of the Petition for Damages and Declaratory Relief are admitted.

4.

The allegations contained in Paragraph 4 of the Petition for Damages and Declaratory Relief are admitted.

FACTUAL BACKGROUND

5.

The allegations contained in the first sentence of Paragraph 5 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein. The allegations contained in the second sentence Paragraph 5 of the Petition for Damages and Declaratory Relief are admitted.

6.

The allegations contained in Paragraph 6 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

7.

The allegations contained in Paragraph 7 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

8.

The allegations contained in Paragraph 8 of the Petition for Damages and Declaratory Relief are denied as written.

The Acquisition of the "Ivey House"

9.

The allegations contained in Paragraph 9 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein except it is admitted Henderson Auction did acquire the M/V Crown Casino.

10.

The allegations contained in Paragraph 10 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

11.

The allegations contained in Paragraph 11 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

12.

The allegations contained in Paragraph 12 of the Petition for Damages and Declaratory Relief are denied as written.

13.

The allegations contained in Paragraph 13 of the Petition for Damages and Declaratory Relief are denied.

14.

The allegations contained in Paragraph 14 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

15.

The allegations contained in Paragraph 15 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein except it is admitted JAH owes BLH over \$500,000.

16.

The allegations contained in Paragraph 16 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

17.

The allegations contained in Paragraph 17 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

18.

The allegations contained in Paragraph 18 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

19.

The allegations contained in Paragraph 19 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

The Miscellaneous Claims of Offset or for Amounts Due

20.

The allegations contained in Paragraph 20 of the Petition for Damages and Declaratory Relief are admitted.

21.

The allegations contained in Paragraph 21 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

22.

The allegations contained in Paragraph 22 of the Petition for Damages and Declaratory Relief are admitted.

23.

The allegations contained in Paragraph 23 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

24.

The allegations contained in Paragraph 24 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

25.

The allegations contained in Paragraph 10 of the Petition for Damages and Declaratory Relief are denied as written.

26.

The allegations contained in Paragraph 26 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

27.

The allegations contained in Paragraph 27 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

28.

The allegations contained in Paragraph 28 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

29.

The allegations contained in Paragraph 29 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

COUNT 1: BREACH OF FIDUCIARY DUTY

30.

The allegations contained in Paragraph 30 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

31.

The allegations contained in Paragraph 31 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

32.

The allegations contained in Paragraph 32 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

33.

The allegations contained in Paragraph 33 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

COUNT 2: BREACH OF CONTRACT/BAD FAITH BREACH OF CONTRACT

34.

The allegations contained in Paragraph 34 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

35.

The allegations contained in Paragraph 35 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

36.

The allegations contained in Paragraph 36 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

37.

The allegations contained in Paragraph 37 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

38.

The allegations contained in Paragraph 38 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

COUNT 3: DETRIMENTAL RELIANCE

39.

The allegations contained in Paragraph 39 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

40.

The allegations contained in Paragraph 40 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

41.

The allegations contained in Paragraph 41 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

42.

The allegations contained in Paragraph 42 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

COUNT 4: CONVERSION/FRAUD/MISREPRESENTATION

43.

The allegations contained in Paragraph 43 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

44.

The allegations contained in Paragraph 44 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

45.

The allegations contained in Paragraph 45 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

46.

The allegations contained in Paragraph 46 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

47.

The allegations contained in Paragraph 47 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

COUNT 5: DECLARATORY JUDGMENT

48.

The allegations contained in Paragraph 49 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

49.

The allegations contained in Paragraph 49 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

COUNT 6: DEMAND FOR ACCOUNTING

50.

The allegations contained in Paragraph 50 of the Petition for Damages and Declaratory Relief are denied for lack of sufficient information to justify a reasonable belief therein.

51.

The allegations contained in Paragraph 51 of the Petition for Damages and Declaratory Relief require no response on the part of the Defendants, to the extent that an answer be deemed required, said allegations are denied for lack of sufficient information to justify a reasonable belief therein.

52.

The allegations contained in Paragraph 52 of the Petition for Damages and Declaratory Relief require no response on the part of the Defendants, to the extent that an answer be deemed required, said allegations are denied for lack of sufficient information to justify a reasonable belief therein.

WHEREFORE, Defendants pray that after all due proceedings have been had, that there be a judgment rendered herein in favor of defendants, dismissing plaintiff's case at their costs and for all general and equitable relief to which he may be entitled to under law and equity including but not limited to attorneys' fees and costs.

DEFENDANTS HEREBY REQUEST A JURY TRIAL FOR ALL ISSUES TRIABLE BY JURY.

COUNTERCLAIM

NOW INTO COURT, through undersigned counsel, comes Defendant/Counterclaimants, BLH EQUIPMENT (hereinafter referred to as "Counterclaimant"), who sues Plaintiff/Counter Defendant J.A.H. Enterprises, Inc., a Louisiana Corporation and in support thereof states as follows:

JURISDICTION AND VENUE

1.

This is an action for damages in excess of the jurisdictional amount of seventy-five thousand dollars (\$75,000.00), exclusive of attorney's fees and costs.

2.

This Court has subject matter jurisdiction over the claims in this action based on 28 U.S.C. § 1332.

3.

This Court has personal jurisdiction over J.A.H. Enterprises, Inc., because of its substantial and continuous activities including: (a) at all relevant times J.A.H. Enterprises,

Inc., is a Louisiana Corporation with its principal place of business within the geographical jurisdiction of this court; (b) J.A.H. Enterprises, Inc., has asserted a claim against Counterclaimants in the State Court of this District prior to removal hereto.

4.

Venue is proper in this district pursuant to 28 U.S.C. § 1391 (a) as J.A.H. Enterprises, Inc., acts, omissions and events giving rise to Counterclaimants causes of action occurred within or were directed to this district; and J.A.H Enterprises, Inc., maintains headquarters in this district.

THE PARTIES

5.

J.A.H. ENTERISES, INC., is a Louisiana Corporation (“JAH”) that is headquartered in Livingston Parish in the State of Louisiana.

6.

BLH EQUIPMENT, LLC, is a Limited Liability Company (“BLH”) that is headquartered in the State of Mississippi.

FACTS COMMON TO ALL ALLEGATIONS

7.

JAH, the plaintiff in this matter, filed a “Petition for Damages and Declaratory Relief” in the 21st Judicial Court for the Parish of Livingston, State of Louisiana (the “Petition”) naming, among others, BLH as a defendant.

8.

In its Petition, JAH states that it "...is in the business of buying and reselling equipment and selling equipment on consignment through public auctions or private sales."

9.

Beginning in 2012 JAH, represented by Marvin Henderson ("Marvin") and BLH represented by Blake Everett ("Blake") had an arrangement whereby BLH located items of property for sale and would advise JAH of the same.

10.

If JAH was interested they would set the prices and put up the money to purchase the equipment or the owners of the property would be paid from the sales proceeds.

11.

JAH would then sell the equipment primarily through one of its auctions.

12.

BLH's compensation was 50% of the profit from the rent or sale of the property.

13.

Attached as Exhibit A hereto, is a spreadsheet of each transaction (the "Spreadsheet") categorized by each item of property involved in the transaction.

14.

The amounts set forth on the Spreadsheet are what is due and owing under BLH's agreement with JAH with respect to each item of property except for property involving B&B Fire and Safety, the M/V Crown Casino (the "Boat") and the Ivey House.

15.

There was never any agreement about sharing losses, as JAH set the prices and purchased the property.

16.

On several occasions JAH rented and/or used for their own purposes certain items of property, to wit: Volvo 290 BLC and Mulchers.

17.

On information and belief JAH sold the B&B Fire and Safety property and has not accounted to BLH with respect to the same.

18.

Originally, as was the normal arrangement between BLH and JAH, with respect to the Boat, BLH was to share in the profits and not the losses.

19.

However the agreement concerning the Boat changed because the cost of storing the boat was increasing by the month.

20.

Because of this JAH instructed BLH to sell the Boat for \$450,000 and it would receive a \$50,000 commission despite the fact the Boat was being sold for a loss.

21.

BLH found a buyer; notified Marvin and Marvin accepted the offer.

22.

The offer was \$450,000 plus the Ivey House.

23.

Just prior to the Boat sale closing, JAH and BLH reached a new agreement and in connection therewith JAH conveyed the Boat to BLH.

24.

Under the new agreement, from the \$450,000 sales price, JAH was to receive \$350,000 (less \$10,000 previously deducted from money due BLH) directly, and BLH and Marvin were going to split the additional \$100,000 and with respect to the Ivey House it was to be transferred to a limited liability company to be owned by BLH and Marvin with the gross sales price to be split without reduction.

25.

As per the agreement between JAH and BLH at the closing of the Boat sale the buyer of the Boat wired approximately \$450,000 to BLH's account and conveyed the Ivey House to ELA Mission, LLC (BLH's designee). All of this was done in the presence of and with the approval of Marvin.

26.

Thereafter BLH wired the \$340,000 to JAH.

27.

In addition to \$30,000, which BLH had already advanced to Marvin, BLH paid to Marvin or his designees not only the \$50,000 due him but also an additional \$50,000 on Marvin's representation that JAH was going to pay BLH when the Ivey House was sold.

28.

Apparently Marvin had not informed his daughter, Janet H. Cagley, about the details of the Boat sale transaction because sometime later she demanded that the Ivey House be conveyed to J3 Enterprises, LLC and she refused to honor the agreement between BLH and Marvin on behalf of JAH. BLH refused to sign the deed because of JAH's attempt to change the agreement. At that point Marvin offered on behalf of JAH to pay \$250,000 toward what was owed by it to BLH if BLH would transfer the Ivey House to a limited liability company to be owned by JAH and BLH with expenses to be deducted. However the \$250,000 was never paid and no agreement was finalized.

29.

The Ivey House has not been sold because JAH and J3 Enterprises, LLC (its alter ego), filed a lis pendens in Attala County both claiming to have an interest in the Ivey House.

30.

JAH is in breach of their agreements with and obligations to BLH.

31.

In light of the above acts, omissions, and transactions, BLH seeks damages, attorney's fees and costs in connection with the enforcement of its rights and/or causes of action against the JAH.

COUNT 1: BREACH OF CONTRACT/BAD FAITH BREACH OF CONTRACT

32.

BLH alleges and incorporates herein by this reference all of the foregoing facts and allegations.

33.

BLH had agreements in writing and orally with JAH to share in the profits from the sale of the property and with respect to the Boat and the Ivey House.

34.

JAH has failed to honor the aforementioned agreements with BLH

35.

These breaches of agreement and obligations have caused damages to BLH in an amount exceeding \$75,000 not including attorney's fees and costs. In addition, JAH's breaches were intentional, designed to gain an unfair advantage, and otherwise without legal or factual justification. J.A.H's breaches of obligation are bad faith breaches under Louisiana Law, entitling BLH to damages, including consequential damages, attorney's fees and all costs.

COUNT 2: DEMAND FOR ACCOUNTING

36.

BLH realleges and incorporates herein by this reference all of the foregoing facts and allegations.

37.

BLH specifically requests an accounting from JAH as to all transactions in which there were commissions or profits splits and all expenses incurred in connection therewith, backed up by evidence of actual expenditures.

In addition to any other relief requested herein, BLH pleads that it is entitled to damages for all breaches of obligations, contracts, standards of care, together with all attorney's fees and costs associated therewith. BLH further pleads from interest from the date of breach or demand, whichever is earlier, and for all general, specific and equitable relief available under the premises.

WHEREFORE, Counter-complainant BLH Equipment, LLC requests that this Counterclaim be served upon J.A.H. and that they be required to answer and, after due proceedings, there be a judgment for monetary damages, attorney's fees, costs, and all other specific and general relief available under the circumstances, including interest from the date of breach or the date of demand, whichever is earlier, and for all other relief. date of demand, whichever is earlier, and for all other relief.

COUNTERCLAIMANTS HEREBY REQUEST A JURY TRIAL FOR ALL
ISSUES TRIABLE BY JURY

Respectfully submitted,

RICHARDSON & LEVESQUE, L.L.C.

BY: /s/ WESLEY J. LEVESQUE
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Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on March ____, 2016 a copy of the foregoing pleading was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to Jean-Paul Layrisson, by operation of the court's electronic filing system.

/s/ WESLEY J. LEVESQUE