

CIVIL 2014

21st JUDICIAL DISTRICT COURT FOR THE PARISH OF LIVINGSTON

STATE OF LOUISIANA

DOCKET NO.

DIVISION " "

J.A.H. ENTERPRISES, INC.

VERSUS

BLH EQUIPMENT, L.L.C., JAMES BLAKE EVERETT, SAM EVERETT
and ELA MISSION, L.L.C.

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CLERK OF COURT
PARISH OF LIVINGSTON
2014 MAY 27 AM 9:41
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PETITION FOR DAMAGES AND DECLARATORY RELIEF

NOW COMES, J.A.H. Enterprises, Inc. which files this Petition against BLH Equipment, L.L.C., James Blake Everett, Sam Everett, and ELA Mission, L.L.C. asserting the following claims and actions:

I. PARTIES

1.

J.A.H. Enterprises, Inc. is a Louisiana corporation with its principal place of business in Livingston Parish, Louisiana.

2.

Defendant, BLH Equipment, L.L.C. is a limited liability company believed to be domiciled in and with its principal place of business in, the State of Mississippi.

3.

Individual Defendants Blake Everett and Sam Everett are persons of the age of majority and domiciled in the State of Mississippi, upon information and belief.

4.

Defendant ELA Mission, L.L.C. is a Mississippi limited liability company domiciled and with its principal place of business in the State of Mississippi, upon information and belief.

II. FACTUAL BACKGROUND

5.

J.A.H. Enterprises does business as "Henderson Auctions". J.A.H. Enterprises (hereinafter "Henderson Auctions") is owned by Jeffrey Henderson and Janet Henderson Cagley. Henderson Auctions is in the business of buying and reselling equipment and selling equipment on consignment through public auctions and private sales.

6.

Henderson Auctions often acquires assets directly from third parties to sell at its auctions or uses brokers or agents to purchase the assets in return for a split of commissions on any resale.

7.

Henderson Auctions also takes possession of equipment or assets owned by third parties on consignment to resell or auction off as part of its regular business activity.

8.

Henderson Auctions formerly employed Defendant Blake Everett as a salesperson. Blake Everett left Henderson Auctions' employment several years ago. Since then, however, Blake Everett and his father, Sam Everett, have been personally involved in a number of different transactions with Henderson Auctions, some of which gave rise to this Petition.

A. The Acquisition of the "Ivey House".

9.

Henderson Auctions acquired the former M/V Crown Casino vessel for approximately \$600,000 for resale.

10.

Henderson Auctions expended an additional \$300,000.00, more or less, after the purchase of the vessel in additional fees and expenses to maintain, moor, and prepare the vessel for resale.

11.

Blake Everett and Henderson Auctions agreed in this Parish to partner up in

connection with the sale of the Crown Casino vessel and to an equal split of any profits on the sale of the vessel, after payment of all actual expenses incurred by either party.

12.

Henderson Auctions eventually reached an agreement with a Louisiana buyer to transfer title to the M/V Crown Casino in return for a cash payment of \$350,000.00 and title to a Kosciusko, Mississippi, property known as the "Ivey House" and its contents.

13.

It was the parties' intentions to place the ownership of the Ivey House into another limited liability company co-owned equally by the parties as a first step to the resale of the property.

14.

Unknown to Henderson Auctions, and contrary to their agreement and obligations to each other as partners, Blake Everett set up a Mississippi limited liability company named ELA Mission, L.L.C., to take title to the Ivey House. The only member of ELA Mission is Blake Everett.

15.

Henderson Auctions objected to ELA Mission's acquisition of title without the participation of Henderson Auctions. The parties exchanged spreadsheets in which Blake Everett claims over \$500,000.00 in expenses and commissions from Henderson Auctions.

16.

The Everetts and/or BLH Equipment are in breach of their agreements with and obligations to Henderson Auctions and in breach of their duties as partners with Henderson Auctions.

17.

Unknown to Henderson Auctions, Blake Everett scheduled an auction of all of the Ivey House's furniture, fixtures, and equipment, to be followed by a public auction of the Ivey House itself. Blake Everett, Sam Everett, and the other individual Defendants failed to disclose the pending auctions and proposed sale of the Ivey House and the other assets at

any point in time.

18.

Henderson Auctions learned of the proposed sale and the pending auction. Henderson Auctions was successful in obtaining a temporary restraining order from a Mississippi state court requiring the escrow of any proceeds of the sale of the assets.

19.

Henderson Auctions pleads that the Everetts and/or BLH Equipment intended to retain all funds from the sale of the furniture, fixtures and equipment at the Ivey House, as well as funds from the Ivey House itself, in derogation of obligations owed to Henderson Auctions to share profits and pay off the approximate \$700,000.00 in expenses related to the M/V Crown Casino.

B. The Miscellaneous Claims of Offset or for Amounts Due.

20.

Blake Everett has asserted that Henderson Auctions is liable to him for \$551,877.00 as a result of a number of transactions involving sales and/or usage of the equipment.

21.

Contrary to the Defendants' claims, Henderson Auctions not only does not owe any monetary obligation to any of the Defendants. Instead, BLH Equipment and/or Blake Everett owe Henderson Auctions approximately \$83,741.43 as of the date of this filing.

22.

The Defendants' claim amounts due by Henderson Auctions for the "rental value" of equipment owned by third parties and allegedly used by Henderson Auctions, claims for "time and expenses" in connection with the M/V Crown Casino transaction and the Ivey House acquisition, and for commissions or profits due on a number of other pieces of equipment.

23.

The Defendants are not entitled to payments from Henderson Auctions for rental value on any equipment owned by third parties at any point in time. The Defendants had no

ownership interest in the assets and no agreement for rental payments.

24.

Henderson Auctions and the Defendants never agreed that either party would be compensated for "time" expended in connection with the M/V Crown Casino and/or Ivey House transactions. The parties' agreed to share in profits, subject only to the reimbursement of legitimate (non-overhead) expenses paid to third parties.

25.

In connection with several other transactions, most of which occurred in Livingston Parish, including the sale of compressors, bulldozers, trailer-enclosed generators, a motor home, gravel equipment and a Peterbilt and Viking lowboy, Henderson Auctions and the Defendants (Blake Everett and/or BLH Equipment) agreed to split profits and losses in connection with the sale of these various pieces of equipment.

26.

In some instances, sales were at a loss. In those instances, BLH Equipment and/or Blake Everett are legally obligated to share in the loss.

27.

In other cases, where a sale to a third party made a profit, Blake Everett and/or BLH Equipment may be entitled to share in the profits, after expenses, subject however to an offset for losses on other transactions.

28.

Henderson Auctions contends that a proper accounting consistent with their agreement results in the amount due from Blake Everett, BLH Equipment, and/or the other Defendants of approximately \$83,741.43, without considering any other damages, costs, or expenses.

29.

In light of the above acts, omissions, and transactions, J.A.H. Enterprises, Inc. seeks damages, declaratory relief, attorneys' fees and costs in connection with the enforcement of its rights and/or causes of action against the Defendants, Blake Everett, Sam Everett, BLH

Equipment, and ELA Mission, L.L.C.

COUNT 1: BREACH OF FIDUCIARY DUTY

30.

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

31.

As a joint venture partner in connection with the Ivey House sale, Henderson Auctions had a special relationship of trust and a resulting fiduciary duty with the Defendants, Blake Everett, Sam Everett, BLH Equipment, and ELA Mission, L.L.C.

32.

The Defendants' actions with regard to the title to the Ivey House and the attempted auctions of the furniture, fixtures, equipment, as well as the property itself, are breaches of fiduciary obligations owed to Henderson Auctions.

33.

In addition to affirmative claims for damages and other relief, Henderson Auctions specifically pleads the right to offset any commissions due to any of the Defendants by the amount of damages and/or commissions and profit sharing owed to Henderson Auctions.

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

34.

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

35.

Henderson Auctions had agreements in writing and orally with the Defendants to share in profits and losses on the sale of the M/V Crown Casino, the acquisition and resale of the Ivey House and its furniture, fixtures and equipment, and several other pieces of equipment and/or machinery.

36.

The Defendants' collective actions with regard to the Ivey House and the attempted

auction of its furniture, fixtures and equipment were in breach of obligations owed to Henderson Auctions. Those breaches of obligations caused damages to Henderson Auctions.

37.

In addition, the Defendants' failure to remit the full sum of \$83,741.43 to Henderson Auctions for the sale of various pieces of equipment to third parties is in breach of their agreements to share in profits and losses after expenses.

38.

These breaches of agreement and obligations have caused damages to Henderson Auctions in an amount of no less than \$83,741.43, not including the expenses relating to the Ivey House/M/V Crown Casino transaction. In addition, the Defendants breaches were intentional, designed to gain an unfair advantage, and otherwise without legal or factual justification. Defendants' breaches of obligation are bad faith breaches under Louisiana law, entitling Henderson Auctions to damages, including consequential damages, attorneys' fees and all costs.

COUNT 3: DETRIMENTAL RELIANCE

39.

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

40.

In the alternative to prior two claims for relief, Henderson Auctions asserts that the Defendants individually and collectively made certain promises to Henderson Auctions about splitting profits and losses and reimbursing expenses, as well as promises to share in the proceeds of the Ivey House and its furniture, fixtures, and equipment after expenses, that the Defendants collectively knew or should have known would induce Henderson Auctions to rely on them to their detriment.

41.

Henderson Auctions was reasonable in relying upon the promises and representations of the Defendants, collectively.

42.

Henderson Auctions has suffered damages and losses as a result of its reasonable reliance upon such promises.

COUNT 4: CONVERSION/FRAUD/MISREPRESENTATION

43.

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

44.

The Defendants have committed the torts of conversion and/or fraud by inducing Henderson Auctions to fund the acquisition of the M/V Crown Casino and agree to a structure of the Ivey House transaction where the parties would have joint ownership.

45.

Instead, the Defendants collectively have converted, defrauded, or misrepresented (or have attempted to convert or defraud) Henderson Auctions by placing the ownership of the Ivey House and the furniture, fixtures, and equipment into the name of a limited liability company solely owned by Everett family members, with the intention of excluding Henderson Auctions or its affiliates of any ownership interest.

46.

In addition, Blake Everett has been representing falsely that he is a "shareholder" in Henderson Auctions and, at the same time, asserting publicly that Henderson Auctions is not paying its bills or living up to its obligations. These assertions are false are causing harm to Henderson Auctions business and reputation.

47.

The Defendants' actions and inactions have caused damages to Henderson Auctions and have required them to incur attorneys' fees in connection with this Petition in an attempt to resend the earlier agreements based on misrepresentation or fraud in the inducement.

COUNT 5: DECLARATORY JUDGMENT

48.

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

49.

In connection with the Defendants' claims for commissions, rentals, and other damages and/or offsets, Henderson Auction seeks a declaratory judgment pursuant to Articles 1871-1883 of the Louisiana Code of Civil Procedure, declaring:

- a. That no amounts are due to any Defendant for the "rental value" of any equipment that was owned by third parties and not actually sold to third parties;
- b. That no amount is due for any "time" expended on any marketing negotiation, or efforts to sell the Ivey House, its furniture, its fixtures, and equipment, or with regard to the M/V Crown Casino by any party;
- c. That except for expenses actually incurred with third parties, specifically excluding any general overhead expenses;
- d. There is no amount due to the Defendants in connection with the marketing, negotiation, or efforts to sell the Ivey House, its furniture, its fixtures, and equipment, or with regard to the M/V Crown Casino;
- e. That any commissions due to any Defendant from the sale of equipment (in which any Defendant was involved by contract) would be at an agreed upon percentage, subject to offset for any losses on bona fide sales to third parties;
- f. That no obligations are owed to any Defendant except to the extent there was an agreement in connection with the consignment or equipment to any third parties where there was an actual sale;
- g. A declaration that the Ivey House and any contents are to be titled in the name of Henderson Auctions or its designee;

- h. A declaration that any proceeds from the sale of the Ivey House or its contents are to be paid over to Henderson Auctions to defray expenses related to the M/V Crown Casino acquisition, with any excess to be used to offset obligations owed by the Defendants to Henderson Auctions; and
- i. A declaration or money judgment that the Defendants owe Henderson Auctions the amount of \$83,741.43 as a result of the accounting of the transactions between the parties.

COUNT 6: DEMAND FOR AN ACCOUNTING

50.

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

51.

Henderson Auctions specifically requests an accounting from the Defendants as to all transactions in which there were commissions or profit splits and all expenses incurred in connection therewith, backed up by evidence of actual expenditures.

52.

In addition to any other relief requested herein, Henderson Auctions pleads that is entitled to damages for all breaches of obligation, contracts, standards of care, together with all attorneys' fees and costs associated therewith. Henderson Auctions 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.

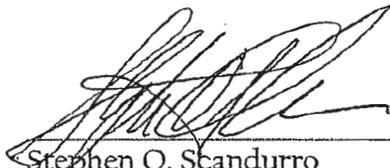
WHEREFORE, Complainant J.A.H. Enterprises, Inc. requests that this Petition be served upon the Defendants and that they each be required to answer and, after due proceedings, there be a declaratory judgment as prayed for hereinabove, a judgment for monetary damages, attorneys' fees, costs, and all other 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.

Respectfully submitted,

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