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STATE OF MICHIGAN

IN THE OAKLAND COUNTY CIRCUIT COURT

2023-203945-NM

LONNIE PUKOFF, individually and as trustee of
the LONNIE J. PUKOFF LIVING TRUST, and
LJP PROPERTIES, LLC,

JUDGE DAVID M. COHEN

Plaintiffs,

Case No. 23- -NM
Honorable

v

TAFT STETTINIUS & HOLLISTER LLP,
JEFFREY IZZARD, and LEE KELLERT,

Defendants.

LENNON LAW PLLC
Edward G. Lennon (P42278)
Attorney for Plaintiffs
355 S. Old Woodward, Ste. 100
Birmingham, MI 48009
(248) 723-1276

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eFiling case, for more information
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COMPLAINT AND JURY DEMAND

There is no other pending or resolved civil action arising
out of the transaction or occurrence alleged in this Complaint.

Plaintiffs, LONNIE PUKOFF, individually and as trustee of the LONNIE J.
PUKOFF LIVING TRUST, and LJP PROPERTIES, LLC, by and through their
attorneys, Lennon Law PLLC, for their Complaint against Defendants, state as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Lonnie Pukoff (“Pukoff”) is a resident of Oakland County,
Michigan and conducts business in Oakland County, Michigan.
2. Pukoff is the Trustee of The Lonnie J. Pukoff Living Trust (“Pukoff
Trust”).

3. Pukoff is also the sole member of LJP Properties, LLC (“LJP”), a Michigan limited liability company.

4. Defendant Taft Stettinius & Hollister LLP (“Taft”) is a limited liability partnership that conducts business in Oakland County, Michigan. Taft is the successor to Jaffe, Raitt, Heuer & Weiss, Professional Corporation (“Jaffe”). Jaffe merged into Taft effective December 31, 2022.

5. Defendant Jeffrey Izzard (“Izzard”) is an individual who conducts business in Oakland County, Michigan.

6. Defendant Lee Kellert (“Kellert”) is an individual who conducts business in Oakland County, Michigan.

7. At all relevant times, Izzard and Kellert practiced law under the auspices of Jaffe and then Taft, and Taft is responsible for the acts and omissions of Izzard and Kellert alleged herein under the principals of agency, vicarious liability and *respondent superior*.

8. The injuries giving rise to this cause of action occurred in part in Oakland County, Michigan.

9. The amount in controversy, exclusive of interest and costs, exceeds \$25,000.

SUPERB FLOOR COVERING

10. Pukoff was formerly the owner of 100% of the membership interests in Superb Floor Covering, LLC (“Superb”), a Michigan limited liability company doing business as Superb Flooring & Design, LLC.

11. Superb is in the business of providing floor coverings through architects, interior designers, luxury home builders, material specifiers and contractors.

12. Superb operates out of a building located in Troy, Michigan. The building is owned by LJP and leased to Superb (the “LJP Property”).

PLAINTIFFS HIRE DEFENDANTS

13. In or around 2017-2018, Pukoff began having discussions with other parties about selling Superb.

14. One of the entities Pukoff had discussions with was BuildDirect Technology Holdings, Inc. (“BuildDirect”), a Delaware company which, upon information and belief, is now owned by a publicly traded company based in Vancouver, Canada.

15. In or around July of 2020, Pukoff hired Defendants to represent him in connection with the sale of Superb.

16. Subsequently, Pukoff resumed discussions with BuildDirect, and Defendants represented him in those discussions.

17. Negotiations between Pukoff and BuildDirect took place through November, 2021.

18. Eventually, it was agreed that BuildDirect would buy 100% of Pukoff’s membership interests in Superb, lease the LJP Property, and enter into an employment agreement with Pukoff.

19. At all times, Defendants also represented LJP in its dealings with BuildDirect.

20. At no time did any Defendant ever indicate in writing to Pukoff or LJP the

terms, scope, or duration of Defendants' representation of Plaintiffs.

21. Substantial due diligence was performed by BuildDirect in connection with the proposed transaction between BuildDirect and Pukoff/LJP. As part of that due diligence, Pukoff provided detailed accounting and financial records maintained by Superb.

22. During the due diligence period, Pukoff made it clear to both Defendants and BuildDirect that Superb did not follow Generally Accepted Accounting Principles ("GAAP").

23. Numerous drafts of various agreements were exchanged between Defendants and counsel for BuildDirect. These draft agreements included a Membership Interest Purchase Agreement by and among BuildDirect and Pukoff, individually and as Trustee of the Pukoff Trust ("MIPA"), an Employment Agreement between Superb and Pukoff ("Employment Agreement"), and a Lease Agreement between LJP and Superb (the "Lease").

24. In summary, the general terms of the contemplated transaction between Plaintiffs and BuildDirect were: (1) at closing, BuildDirect would pay Pukoff \$8.5 million for his membership interests in Superb; (2) BuildDirect would pay Pukoff \$750,000 on the first anniversary of the closing date; (3) BuildDirect would pay Pukoff \$750,000 if Superb's EBITDA exceeded a threshold during the two 12-month periods 2 and 3 years following the closing; (4) Pukoff would be employed by BuildDirect for a period of one year after the closing at a salary of \$200,000, plus fringe benefits and a potential for bonus; and (5) BuildDirect would lease the LJP Property for five years, with options for two additional five-year periods.

25. During negotiations of the language of the various agreements, one issue that surfaced was the “Governing Law” provision of the MIPA. Initially, Defendants advised Pukoff, and took the position with BuildDirect’s counsel, that the Governing Law provision should provide that the MIPA shall be governed and construed by the laws of the State of Michigan.

26. While exchanging drafts of the MIPA, Defendants edited the document so that the Governing Law provision indicated the MIPA shall be governed and construed by the laws of the State of Michigan.

27. BuildDirect took the position that the Governing Law provision should provide that the MIPA shall be governed and construed by the laws of the State of Delaware and edited the MIPA to reflect that change.

28. Defendants advised Pukoff that the provision that the MIPA would be governed by Delaware law was inconsequential, because the MIPA otherwise provided that any disputes between the parties would be litigated in Oakland County Circuit Court.

29. Defendants advised Pukoff that he should agree to a provision that the MIPA would be governed by Delaware law.

30. Based on Defendants’ advice, Pukoff agreed to a provision in the MIPA that any disputes between the parties would be governed by Delaware law.

31. A closing of the MIPA, Employment Agreement, Lease and other ancillary agreements took place on November 17, 2021. In general, the documents provided: (1) at closing, BuildDirect would pay Pukoff \$8.5 million for his membership interests in Superb; (2) BuildDirect would pay Pukoff \$750,000 on the first anniversary of the closing date; (3) BuildDirect would pay Pukoff \$750,000 if Superb’s EBITDA

exceeded a threshold during the two 12-month periods 2 and 3 years after the closing (the “EBITDA Goal Payment”); (4) Pukoff would be employed by BuildDirect for a period of one year after the closing at a salary of \$200,000, plus fringe benefits and a potential for bonus; and (5) BuildDirect would lease the LJP Property for five years, with options for two additional five-year periods.

32. Defendants represented Plaintiffs through the closing and seamlessly continued to represent Plaintiffs after issues arose between Plaintiffs and BuildDirect post-closing.

33. Post-closing issues in which Defendants continued to represent Plaintiffs included disputes regarding the Employment Agreement and MIPA.

34. In November, 2022, just prior to the deadline for BuildDirect to pay Pukoff \$750,000 on the first anniversary of the closing, BuildDirect’s counsel sent a letter to Pukoff, claiming BuildDirect had certain claims against Pukoff based on alleged violations of the representations and warranties of the MIPA.

35. Defendants continued to represent Pukoff and LJP in connection with the post-closing disputes with BuildDirect.

36. Under Michigan law, Pukoff had and has valid defenses to each and every claim made by BuildDirect beginning in November, 2022.

37. Among the defenses Pukoff had to BuildDirect’s claims were that, based on the due diligence conducted by BuildDirect, BuildDirect was aware of each and every circumstance purportedly giving rise to the claims advanced by BuildDirect.

38. However, relying on what is known as “sandbagging” under Delaware law, BuildDirect’s counsel contended that, even if BuildDirect was aware of the facts

allegedly inconsistent with Pukoff's representations and warranties in the MIPA, Delaware law allowed BuildDirect to assert those claims.

39. Defendants and BuildDirect negotiated a resolution of the disputes between BuildDirect and Pukoff/LJP.

40. During the negotiations of the disputes between BuildDirect and Pukoff/LJP, Defendants advised Pukoff that they would need to research Delaware law to assess the merits of BuildDirect's arguments.

41. Based on Defendants' statements, it was clear they did not research the impact of the choice of law provision – applying Delaware law - prior to the November 17, 2021 closing.

42. Based on Defendants' assessment of Pukoff/LJP's position in light of BuildDirect's reliance on Delaware "sandbagging" principles, Pukoff/LJP agreed to resolve outstanding issues with BuildDirect pursuant to a Confidential Settlement and Release Agreement. (the "BuildDirect Settlement Agreement").

43. In summary, under the BuildDirect Settlement Agreement: (a) LJP will provide two-years of free base rent to BuildDirect (costing about \$240,000); (b) Pukoff will not receive the \$750,000 payment that was due from BuildDirect on the first anniversary of the closing; (c) Pukoff will forego his right to the EBITDA Goal Payment that could have been as much as \$750,000; (d) BuildDirect will not contribute approximately \$30,000 to Pukoff's retirement plan; and (e) BuildDirect is not reimbursing Pukoff approximately \$150,000 it owed Pukoff under the MIPA due to the tax structure of the transaction.

44. But for Defendants' recommendation and the negative impact of the

Delaware choice of law provision recommended by Defendants, Pukoff and LJP would not have entered into the BuildDirect Settlement Agreement and would have asserted their rights in whatever manner necessary for them to obtain all of the monies to which they were are entitled under the MIPA, Employment Agreement and Lease.

COUNT I - LEGAL MALPRACTICE

45. Plaintiffs hereby incorporate the allegations contained in paragraphs 1 through 44 as if stated herein in their entirety.

46. As the attorneys representing Plaintiffs, Defendants owed Plaintiffs the duties to recognize established rules of law and to do that which attorneys of ordinary learning, judgment or skill would or would not do under the same or similar circumstances.

47. Defendants committed legal malpractice and breached duties owed to Plaintiffs by, among other things:

- a. failing to research and recognize the impact of the Delaware choice of law provision in the MIPA;
- b. failing to advise Pukoff of the potential impact of the Delaware choice of law provision;
- c. advising Pukoff the Delaware choice of law provision in the MIPA was inconsequential;
- d. recommending Pukoff sign the MIPA containing a Delaware choice of law provision;
- e. recommending Pukoff agree to Annex C to the MIPA, which provides that there are no exceptions to GAAP; and
- f. engaging in other acts of malpractice that may be ascertained during discovery in this matter.

48. But for Defendants' recommendation and the negative impact of the

Delaware choice of law provision recommended by Defendants, Pukoff and LJP would not have entered into the BuildDirect Settlement Agreement and would have asserted their rights in whatever manner necessary for them to obtain all of the monies to which they were entitled under the MIPA, Employment Agreement and Lease.

49. As a direct and proximate result of Defendants' legal malpractice: (a) LJP will provide two-years of free base rent to BuildDirect (costing about \$240,000); (b) Pukoff will not receive the \$750,000 payment that was due from BuildDirect on the first anniversary of the closing; (c) Pukoff will forego his right to the EBITDA Goal Payment that could have been as much as \$750,000; (d) BuildDirect will not contribute approximately \$30,000 to Pukoff's retirement plan; and (e) BuildDirect is not reimbursing Pukoff approximately \$150,000 it owed Pukoff under the MIPA due to the tax structure of the transaction.

Wherefore, Plaintiffs pray for a judgment against Defendants, jointly, awarding:

- a. actual damages in excess of \$25,000;
- b. costs, interest and attorney fees; and
- c. exemplary damages as permitted by law.

Respectfully submitted,

LENNON LAW PLLC

/s/Edward G. Lennon

Edward G. Lennon (P42278)

Attorney for Plaintiffs

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Dated: November 17, 2023

JURY DEMAND

Plaintiffs, LONNIE PUKOFF, individually and as trustee of the LONNIE J. PUKOFF LIVING TRUST, and LJP PROPERTIES, LLC, by and through their attorneys, Lennon Law PLLC, hereby demand a trial by jury of all issues so triable.

Respectfully submitted,

LENNON LAW PLLC

/s/Edward G. Lennon

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