

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

DAVID F. NELSON, SR., individually and
as a member of Francis, Nelson & Brison, P.L.L.C.,
Plaintiff,

v.

CIVIL ACTION NO.: 16-C-1590
The Honorable Jennifer Bailey

ALLEN & NEWMAN, PLLC, the Successor
Corporation of and f/k/a ALLEN KOPEL and
ASSOCIATES, PLLC, G. DAVID ALLEN and
M. ANDREW BRISON,
Defendants.

ANSWER TO SECOND AMENDED COMPLAINT

In response to the allegations of the *Second Amended Complaint* filed in the above-entitled civil action, the Defendant M. Andrew Brison by his counsel, Anspach Meeks Ellenberger LLP and Daniel R. Schuda, raise the following defenses.

FIRST DEFENSE

This Defendant denies that David F. Nelson, Sr., has standing to sue in the name of or to assert any claims on behalf of Francis, Nelson, & Brison, PLLC, inasmuch as he seeks to prosecute this suit as only one of the three members of that limited liability company, inasmuch as that limited liability company was terminated on June 30, 2010, and for other reason which are apparent of record.

SECOND DEFENSE

The *Second Amended Complaint* fails to state a claim upon which relief can be granted.

THIRD DEFENSE

In specific response to the allegations of the *Second Amended Complaint*, this Defendant responds as follows:

1. This Defendant denies the allegations of paragraph 1 of the *Second Amended Complaint*, but admits that Francis, Nelson & Brison, P.L.L.C. ("FNB") was, at one time, a professional limited liability company engaged in the practice of law with its only office located in Charleston, Kanawha County, West Virginia, and was the owner of certain assets, including unbilled work in progress and accounts receivable.
2. This Defendant denies the allegations of paragraph 2 of the *Second Amended Complaint* but admits that during its existence, R. Ford Francis ("Francis"), David F. Nelson, Sr. ("Nelson"), and M. Andrew Brison ("Brison") were licensed attorneys and members of FNB and were each personal guarantees on certain debt instruments for which certain FNB assets had been pledged as collateral.
3. This Defendant denies the allegations of paragraph 3 of the *Second Amended Complaint* but admits that Allen & Newman, PLLC ("A/N") is the successor corporation to Allen, Kopet and Associates, PLLC, ("AK&A") which was, at all relevant times, a professional limited liability company, created and existing under the law of a state other than West Virginia, with its principal offices located outside the state of West Virginia.
4. This Defendant makes no response to the allegations of in paragraph 4 of the *Second Amended Complaint*, the referenced documents speaking for themselves.

5. This Defendant denies the allegations of paragraph 5 of the *Second Amended Complaint* but admits that following the acquisition of FNB by AK&A, it did pay off the line of credit extended to FNB by Fifth Third Bank, and made payments to the individual members of FNB totaling approximately \$150,000, although not completed in accordance with the acquisition agreement.
6. This Defendant denies the allegations of paragraph 6 of this *Second Amended Complaint* but admits that during 2011, because of the tax repercussion on the individual members of FNB which would result from the immediate repayment of a debt owed by FNB, ("the Note") by A/N, it was agreed to extend the final payment on that note to a subsequent tax year.
7. This Defendant admits the allegations of paragraph 7 of this *Second Amended Complaint*.
8. This Defendant denies the allegation of paragraph 8 of the *Second Amended Complaint* but admits that in December, 2012, he resigned as Managing Partner of the A/N Charleston office, and that Nelson assumed that position.
9. This Defendant denies the allegations of paragraph 9 of the *Second Amended Complaint* but admits that the departure of any billing attorney or staff member might adversely affect the overall earning capacity of any law office.
10. This Defendant is without sufficient information to either admit or deny the allegations of paragraph 10 of the *Second Amended Complaint* but admits that, upon information and belief, Nelson obtained employment elsewhere than at A/N.

11. This Defendant makes no response to the allegations of paragraph 11 of the *Second Amended Complaint*, the referenced documents speaking for themselves.
12. This Defendant denies the allegations of paragraph 12 of the *Second Amended Complaint* inasmuch as FNB had ceased to exist as of 2010 but admits that Francis, Nelson, and Brison were advised that AK&A and/or A/N would not refinance the expiring Note, would not repay the Note as earlier agreed, and, by this action, threatened to subject Francis, Nelson, and Brison, as personal guarantors of the note, to personal liability for repayment of the Note, although AK&A and/or A/N continued to make payments on the Note.
13. This Defendant denies the allegations of paragraph 13 of the *Second Amended Complaint*, but admits that in or about January, 2016, AK&A and/or A/N ceased making payments on the note and Nelson, acting alone, refinanced the note, Francis and Brison having no further liability.
14. This Defendant has insufficient information to either admit or deny the allegations of paragraph 14 of the *Second Amended Complaint*.
15. This Defendant makes no response to the allegations of paragraph 15 of the *Second Amended Complaint*, the record of the referenced civil action speaking for itself, and this Defendant having no knowledge of the terms and conditions of any compromise of that civil action.
16. This Defendant is without sufficient information to either admit or deny the allegations of paragraph 16 of the *Second Amended Complaint* but denies that AK&A

and/or A/N had or have any equitable, legal, or contractual right to enforce against or upon which to base any claim for the collections of any penalty from this Defendant.

17. This Defendant incorporates his responses to the allegations of paragraphs 1 through 16 of the *Second Amended Complaint* in response to paragraph 17 of Count I of the *Second Amended Complaint* as if set forth herein in full.
18. This Defendant denies the allegations of paragraphs 18 and 19 of Count I of the *Second Amended Complaint*.
19. This Defendant incorporates his responses to the allegations of paragraphs 1 through 18 of the *Second Amended Complaint* in response to paragraph 20 of Count II of the *Second Amended Complaint* as if set forth herein in full.
20. This Defendant denies the allegations of paragraphs 21, 22, and 23 of Count II of the *Second Amended Complaint*.
21. This Defendant incorporates his responses to the allegations of paragraphs 1 through 23 of this *Second Amended Complaint* in response to paragraph 24 of Count III of the *Second Amended Complaint* as if set forth herein in full.
22. This Defendant denies the allegations of paragraphs 25 and 26 of Count III of the *Second Amended Complaint*.
23. This Defendant denies all allegations of the *Second Amended Complaint* not specifically admitted herein.

FOURTH DEFENSE

As to any and all claims asserted by the Plaintiff against this Defendant, this Defendant asserts the affirmative defense of failure of consideration.

FIFTH DEFENSE

As to any and all claims asserted by the Plaintiff against this Defendant, this Defendant asserts the affirmative defense of the statute of frauds.

SIXTH DEFENSE

This Defendant denies that AK&A and/or A/N had or have any valid claim against this Defendant which could be assigned to the Plaintiff.

SEVENTH DEFENSE

This Defendant reserves the right to raise such additional defenses as are revealed in the further development of this action.

WHEREFORE, having answered, this Defendant demands that this action be dismissed and that he be awarded his costs expended.

M. ANDREW BRISON
By Counsel



Daniel R. Schuda, Esquire (WVSB #3300)
ANSPACH MEEKS ELLENBERGER LLP
900 Lee Street, Suite 1700
Charleston, West Virginia 25301
304-205-8063 - telephone
304-205-8062 - facsimile
dschuda@anspachlaw.com

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

DAVID F. NELSON, SR., individually and
as a member of Francis, Nelson & Brison, P.L.L.C.,

Plaintiff,

v.

CIVIL ACTION NO.: 16-C-1590

The Honorable Jennifer Bailey

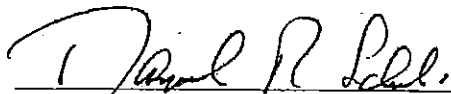
ALLEN & NEWMAN, PLLC, the Successor
Corporation of and f/k/a ALLEN KOPET and
ASSOCIATES, PLLC, G. DAVID ALLEN and
M. ANDREW BRISON,

Defendants.

CERTIFICATE OF SERVICE

I, Daniel R. Schuda, counsel for Defendant M. Andrew Brison, do hereby certify that I
have served a true and accurate copy of the foregoing *"Answer to Second Amended Complaint"*
upon the following counsel of record by depositing the same in the United States mail, with
postage prepaid, on this 25th day of September, 2017, addressed as follows:

Paul M. Stroebe, Esquire
Stroebe & Johnson, P.L.L.C.
Post Office Box 2582
Charleston, West Virginia 25329
Counsel for Plaintiff



Daniel R. Schuda, Esquire (WVSB #3300)
ANSPACH MEEKS ELLENBERGER LLP
900 Lee Street, Suite 1700
Charleston, West Virginia 25301
304-205-8063 - telephone
304-205-8062 - facsimile
dschuda@anspachlaw.com