

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

LARRY LOVINS, D/B/A
APPALACHIAN HOME CENTER,
A Kentucky Business and TRI-STATE
HOTELS, LLC, a Kentucky Limited Liability
Company,

Plaintiffs,

v.

Civil Action No. 13-C-1796
Judge Charles E. King

JAI SAI, LLC, a West Virginia
Limited Liability Company; NATIONAL
REPUBLIC BANK OF CHICAGO; RIVER
CITIES GLASS & CONSTRUCTION, LLC,
a Kentucky Limited Liability Company,

Defendants,

v.

DOLATRAI PATEL, and
AMK, LLC, a Kentucky Limited
Liability Company,

Counterclaim Defendants.

Amended Counterclaim

Defendant, Jai Sai, LLC ("Jai Sai"), by counsel, for its Amended Counterclaim
unto this Honorable Court state as follows:

Nature of Action

1. This is an Amended Counterclaim against Plaintiff, Tri-State, LLC ("Tri-State"), Dolatrai Patel ("Dolatrai") and AMK, LLC ("AMK") for fraud, negligent misrepresentation, tortious interference of contract, unjust enrichment, abuse of process and joint

venture arising from Dolatrai, Tri-State and AMK's poor management and fraudulent business practices in overseeing the construction of a hotel for Jai Sai in Kanawha County, West Virginia.

Parties

2. Defendant, Jai Sai, LLC, is a West Virginia limited liability company with its principal place of business located at 56 Amos Court, Maggie Valley, North Carolina 28751.

3. Plaintiff, Tri-State Hotels, LLC, was a Kentucky limited liability company with its principal place of business located at 16037 Loneoak Drive, Catlettsburg, Kentucky 41129.

4. Upon information and belief, Counterclaim Defendant, Dolatrai Patel is an individual who resides in Boyd, Kentucky.

5. Counterclaim Defendant, AMK, LLC was a Kentucky limited liability company with its principal place of business located at 16037 Loneoak Drive, Catlettsburg, Kentucky 41129.

Jurisdiction and Venue

6. Jurisdiction and venue in this action are appropriate in the Circuit Court of Kanawha County because this action arises from Dolatrai, Tri-State and AMK's tortious actions related to the construction of Defendant's hotel in Kanawha County.

Operative Facts

7. On or around August 15, 2007, Ramesh Patel organized Cross Lanes Hospitality, LLC ("Cross Lanes Hospitality").

8. On or around June 20, 2008, Cross Lanes Hospitality executed a promissory note with the National Republic Bank of Chicago ("Bank of Chicago") to obtain a line of credit ("Line of Credit") to purchase and construct a hotel on a property situated on the westerly side of West Virginia 622 approximately 2000 feet southeasterly from the Cross Lanes Interchange of Interstate 64, and on the westerly side of Rocky Fork of Pocatalico River in Union District, Kanawha County, West Virginia, and more particularly bounded and described as follows:

Beginning on a 5/8 inch diameter rebar set at the southwesterly corner of the Raymond R. Gibson Parcel No. 1 (Deed Book 2443, page 728) and in the northerly boundary line of the Lyle D. and Lucy Milam 9.32 acre parcel (Deed Book 866, page 214,) said beginning, bears S. 67° 02' W. 871.20 feet from the original point of beginning of said Parcel No. 1 at the westerly right of way line of West Virginia Route 622, said beginning also bears N. 67° 02' E. 212.82 feet from a 30 inch diameter sycamore found at the northwesterly corner of said Milam 9.32 acre parcel, said beginning also bears S. 67° 02' W. 11.86 feet from a 1 inch diameter iron pipe found on the northerly line of said Milam parcel; thence with the westerly boundary line of said Gibson Parcel No. 1 and then the Raymond L. Gibson Parcel No. 2 (Deed Book 2443, page 723), N. 28 59' W. 202.78 feet to a 5/8 inch diameter rebar set at the northwesterly corner of said Gibson Parcel No. 2; thence with the northerly boundary line of said Gibson Parcel No. 2, N. 67° 13' E., at 182.56 feet passing a 5/8 inch diameter rebar set at the southwesterly corner of the James D. Moore Trust Property (Deed Book 2369 at page 862) and then with the common boundary line between said Gibson Parcel No. 2 and said Moore Trust property, in all 458.38 feet to the common northerly corner between proposed Lot B and Lot A; thence with the common boundary line between said proposed Lot B and Lot A and through said Gibson Parcel No. 2 and Parcel No. 1, S. 22° 47' E. 200.19 feet to a 5/8 inch diameter rebar set in the common boundary line between said Gibson Parcel No. 1 and said Milam 9.32 acre parcel and in the centerline of an Appalachian Power Company right of way; thence with the northerly boundary line of said Milam parcel, S. 67° 02' W. 436.50 feet to the point of beginning, containing 2.064 acre, more or less, as surveyed by Augusta Land Consultants, Danville, West Virginia.

(hereafter referred to as the "Hotel Property").

9. Following receipt of this Line of Credit, Cross Lanes Hospitality contracted with Tri-State to oversee and manage the construction on the Hotel Property.

10. Upon information and belief, Cross Lanes Hospitality experienced several problems with Tri-State including, but not limited to Tri-State:

- a) obtaining unauthorized draws on the Line of Credit;
- b) failing to pay vendors for work completed;
- c) failing to properly document the project's progress;
- d) failing to properly account for work and materials;
- e) misrepresenting certain work was performed on the Hotel Property; and
- f) misrepresenting that Tri-State paid certain vendors for work and/or materials.

11. While Tri-State oversaw construction on the Hotel Property for Cross Lanes Hospitality, only half of the construction was completed.

12. While Tri-State oversaw construction on the Hotel Property for Cross Lanes Hospitality, Cross Lanes Hospitality exhausted its Line of Credit.

13. While Tri-State oversaw construction on the Hotel Property for Cross Lanes Hospitality, Cross Lanes defaulted on its obligations to Bank of Chicago.

14. This default distressed the project and forced Cross Lanes Hospitality towards bankruptcy.

15. Dolatrai took advantage of Cross Lanes Hospitality's financial distress.

16. On or around December 2010, Dolatrai approached Bipin Morar ("Bipin") about an opportunity to purchase the Hotel Property from Cross Lanes Hospitality.

17. Dolatrai represented to Bipin that:

- a) Cross Lanes Hospitality owned the Hotel Property in Cross Lanes, West Virginia;
- b) Cross Lanes Hospitality defaulted on its Line of Credit to Bank of Chicago;
- c) Cross Lanes Hospitality was considering bankruptcy; and
- d) The Hotel Property represented a tremendous business opportunity.

18. At this time, Dolatrai omitted that Tri-State, under his leadership, caused Cross Lanes Hospitality's financial difficulties through its poor management and fraudulent business practices.

19. Bipin reasonably relied on Dolatrai's representations about the distress Hotel Property and business opportunity.

20. Bipin relayed Dolatrai's representations to Sunil Patel ("Sunil") and Vimalkumar Patel ("Vimalkumar").

21. Throughout January and February 2011, Dolatrai continued to delude Bipin, Sunil and Vimalkumar to collaborate with him to purchase the Hotel Property and finish construction of the hotel.

22. On or around March 4, 2011, Cross Lanes Hospitality filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of West Virginia.

23. This bankruptcy filing led Bank of Chicago to look for a purchaser for the Hotel Property.

24. On or around April 14, 2011, Bipin, Sunil and Vimalkumar formed Jai Sai for the purpose of purchasing the Hotel Property and operating a hotel.

25. Pursuant to the Operating Agreement, Bipin, Sunil, Vimalkumar, Kiran Kumar ("Kumar") and Dolatrai owned 20% of Jai Sai with an equity input of \$220,000.00.

26. Dolatrai never paid his initial equity share.

27. As a member of Jai Sai, Dolatrai negotiated with Bank of Chicago to obtain financing to complete construction on the Hotel Property.

28. On May 27, 2011, Jai Sai executed on a loan with Bank of Chicago to purchase the Hotel Property and complete construction.

29. Bipin, Sunil, Vimalkumar and Kumar, as members of Jai Sai, believed that Dolatrai, as a member of Jai Sai, would properly oversee and manage construction on the Hotel Property.

30. Dolatrai never intended to oversee the construction of the Hotel Property on behalf of Jai Sai.

31. Without the knowledge or consent of Jai Sai, Dolatrai began to manage the construction project through Tri-State.

32. Without the knowledge or consent of Jai Sai, Dolatrai, through Tri-State, reinstituted the poor management and fraudulent business practices previous employed by Tri-

State while under contract with Cross Lanes Hospitality. These poor management and fraudulent business practices included, but were not limited to:

- a) paying AMK (an entity Dolatrai wholly owned) approximately \$160,000.00 for work not completed;
- b) doctoring and fabricating checks;
- c) failing to pay vendors for work completed;
- d) failing to properly document the project's progress;
- e) failing to properly account for work and materials;
- f) purchasing materials for projects other than the Hotel Property;
- g) misrepresenting certain work was performed on the Hotel Property; and/or
- h) misrepresenting that Tri-State and/or Dolatrai paid certain vendors for work and/or materials.

33. From May 27, 2011 through April of 2012, Jai Sai reasonably assumed and relied on Dolatrai's representations that he was diligently and lawfully managing the construction on the Hotel Property.

34. On or around April of 2012, Bank of Chicago declared Jai Sai in default of their loan.

35. Receipt of this notice of default from Bank of Chicago trouble Bipin and Vimalkumar and led them to confront Dolatrai about the project.

36. Dolatrai assured to Jai Sai that the Bank of Chicago mistakenly issued the default, and Dolatrai promised to contact the Bank of Chicago to fix the mistake.

37. Dolatrai knew that this representation was false, but made it in order to further his personal interests.

38. On or around June of 2012, the Bank of Chicago contacted Bipin and Vimalkumar about Jai Sai's default on their loan.

39. The Bank of Chicago informed Bipin and Vimalkumar that insufficient funds remained to complete construction of the hotel.

40. Following several conversation and meetings between Jai Sai and the Bank of Chicago, the Bank of Chicago agreed to loan Jai Sai an additional \$900,000.00 to finish construction on the Hotel Property.

41. On or around July 13, 2013, Jai Sai removed Dolatrai and tasked Twinkle Patel to oversee the construction on the Hotel Property.

42. Prior to the initiation of this action, Dolatrai removed himself as a member of Jai Sai.

Count I - Fraud against Tri-State, Dolatrai and AMK

43. Jai Sai realleges each and every allegation set out in paragraphs 1 through 42 of this Amended Counterclaim as if set out fully verbatim herein.

44. Tri-State, Dolatrai and/or AMK knew, or should have known, of the prior problems Dolatrai and/or Tri-State caused while managing the construction on the Hotel Property for Cross Lanes Hospitality.

45. Tri-State, Dolatrai and/or AMK misrepresented and/or materially omitted these problems in order to mislead Bipin, Vimalkumar and Sunil to collaborate with Dolatrai and purchase the Hotel Property.

46. Additionally, Dolatrai, through Tri-State and AMK, knowingly committed fraud by:

- a) paying AMK approximately \$160,000.00 for work not completed;
- b) doctoring and fabricating checks;
- c) failing to pay vendors for work completed;
- d) failing to properly document the project's progress;
- e) failing to properly account for work and materials;
- f) purchasing materials for projects other than the Hotel Property;
- g) misrepresenting certain work was performed on the Hotel Property; and/or
- h) misrepresenting that Tri-State paid certain vendors for work and/or materials.

47. Tri-State, Dolatrai and/or AMK knew, or should have known, that Tri-State, Dolatrai and/or AMK's poor management and fraudulent business practices caused Jai Sai to default on the loan with Bank of Chicago.

48. Notwithstanding this knowledge, Tri-State, Dolatrai and/or AMK intentionally misrepresented to Jai Sai that the Bank of Chicago made a mistake issuing the default.

49. Tri-State, Dolatrai and/or AMK also intentionally misrepresented that they would take corrective action with respect to the default, because Tri-State, Dolatrai and/or AMK

knew that Jai Sai defaulted on the loan based on the poor management and fraudulent business practices.

50. Jai Sai justifiably relied on the affirmative representations, material misrepresentations and omissions of Tri-State, Dolatrai and/or AMK in deciding to purchase the Hotel Property and obtaining loans from Bank of Chicago to finish construction.

51. As a foreseeable, direct and proximate cause of Tri-State, Dolatrai and/or AMK's fraudulent actions, Jai Sai has suffered damages.

Count II - Negligent Misrepresentation against Tri-State, Dolatrai and AMK

52. Jai Sai realleges each and every allegation set out in paragraphs 1 through 51 of this Amended Counterclaim as if set out fully herein.

53. Tri-State, Dolatrai and/or AMK had an affirmative duty to disclose the prior problems they encountered overseeing the construction on the Hotel Property for Cross Lanes Hospitality.

54. Tri-State, Dolatrai and/or AMK had an affirmative duty to disclose the poor management practices to Jai Sai.

55. Tri-State, Dolatrai and/or AMK had an affirmative duty to disclose that the mismanagement caused Jai Sai to default on the loan to Bank of Chicago.

56. Jai Sai justifiably relied on Tri-State, Dolatrai and/or AMK's representations and/or omissions in deciding to purchase the Hotel Property and obtaining loans from Bank of Chicago to finish construction.

57. As a foreseeable, direct and proximate cause of Tri-State, Dolatrai and/or AMK's negligent misrepresentations, Jai Sai has suffered damages.

**Count III - Tortious Interference of Contract
against Tri-State, Dolatrai and AMK**

58. Jai Sai realleges each and every allegation set out in paragraphs 1 through 57 of this Amended Counterclaim as if set out fully herein.

59. Jai Sai entered into a loan contract with Bank of Chicago to finance the completion of construction on the Hotel Property.

60. Tri-State, Dolatrai and/or AMK intentionally interfered with Jai Sai's loan contract by:

- a) paying AMK approximately \$160,000 for work not completed;
- b) doctoring and fabricating checks;
- c) failing to pay vendors for work completed;
- d) failing to properly document the project's progress;
- e) failing to properly account for work and materials;
- f) purchasing materials for projects other than the Hotel Property;
- g) misrepresenting certain work was performed on the Hotel Property;
and/or
- h) misrepresenting that Tri-State and/or Dolatrai paid certain vendors for work and/or materials.

61. As a foreseeable, direct and proximate cause of Tri-State, Dolatrai and/or AMK's tortious interference of contract, Jai Sai has suffered damages.

Count IV - Unjust Enrichment against Tri-State, Dolatrai and AMK

62. Jai Sai realleges each and every allegation set out in paragraphs 1 through 61 of this Amended Counterclaim as if set out fully herein.

63. During Jai Sai's completion of construction on the Hotel Property, Tri-State, Dolatrai and/or AMK received money for construction services that neither entity rendered.

64. Tri-State, Dolatrai and/or AMK have substantially benefited from receipt of these inappropriate payments.

65. Jai Sai received no benefit from Tri-State, Dolatrai and/or AMK, as none provided services essential to the completion of the construction on the Hotel Property.

66. As a foreseeable, direct and proximate cause of Tri-State, Dolatrai and/or AMK's unjust enrichment, Jai Sai has suffered damages.

Count V - Abuse of Process against Tri-State

67. Jai Sai realleges each and every allegation set out in paragraphs 1 through 66 of this Amended Counterclaim as if set out fully herein.

68. On April 15, 2013, Tri-State filed a mechanic's lien in the Office of the Clerk of County Commission of Kanawha County against Jai Sai for \$630,000.00.

69. At the time Tri-State filed this \$630,000.00 mechanic's lien against Jai Sai, Tri-State knew it never incurred expenses related to the Hotel Property in this amount.

70. In filing this mechanic's lien, Tri-State willfully and/or maliciously misused the legal process to accomplish an impermissible purpose.

71. As a foreseeable, direct and proximate cause of Tri-State's abuse of process, Jai Sai has suffered damages.

Count VI - Joint Venture against Tri-State, Dolatri and AMK

72. Jai Sai realleges each and every allegation set out in paragraphs 1 through 71 of this Amended Counterclaim as if set out fully herein.

73. Tri-State, Dolatri and/or AMK have associated for the alleged purpose of construction a hotel on the Hotel Property.

74. By associating, Tri-State, Dolatri and/or AMK have combined their property, money, profit, skill and knowledge in an attempt to carry out a single business enterprise for profit.

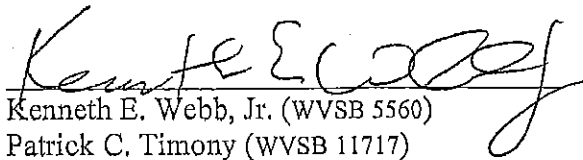
75. As a foreseeable, direct and proximate cause of the joint venture, Jai Sai has suffered damages.

WHEREFORE, Defendant, Jai Sai, LLC, prays for judgment against Dolatri Patel, Tri-State Hotels, LLC and AMK, LLC, jointly and severally, in an amount to be determined, for compensatory damages, including incidental and consequential damages, punitive damages, equitable relief including restitution, together with interest (both pre and post judgment), costs, reasonable attorneys' fees and such other relief as this Court deems just.

JAI SAI, LLC DEMANDS A JURY TRIAL.

JAI SAI, LLC,

By Counsel,

A handwritten signature in cursive script, appearing to read "Kenneth E. Webb, Jr.", written over a horizontal line.

Kenneth E. Webb, Jr. (WVSB 5560)

Patrick C. Timony (WVSB 11717)

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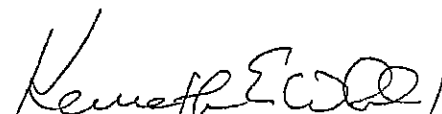
DOLATRAI PATEL, and
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Certificate of Service

I, Kenneth E. Webb, Jr., counsel for Jai Sai, LLC, do hereby certify that a true and correct copy of the *Amended Counterclaim* was mailed to counsel of record, on this the 19th day of October 2016.

J. Phillip Fraley, Esquire
Litchfield Cavo, LLP
99 Cracker Barrel Drive, Suite 100
Barboursville, West Virginia 25504
Counsel for Tri-State Hotels, LLC


Kenneth E. Webb, Jr. (WVSB 5860)