

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

PURDY RUN AGGREGATES, LLC, a Michigan limited liability company (the surviving company after the merger of Purdy Run Aggregates, LLC, a Florida limited liability company, and Purdy Run Aggregates II, LLC, a Michigan corporation),

Plaintiff,

VS.

Civil Action NO.: 21-C-273-1

TALL GRASS MANAGEMENT PARTNERS, LLC, a Florida limited liability company, JOHN H.W. GEFAELL, an individual, WILLIAM M. WARD (a/k/a BILLY M. WARD), an individual, and AWARD DEVELOPMENT LLC, a Kentucky limited liability company, jointly and severally,

Defendants.

FILED
CIRCUIT COURT
2021 NOV 12 P 3:07

COMPLAINT

Plaintiff, PURDY RUN AGGREGATES, LLC ("Plaintiff"), by and through its attorneys, GREER LAW OFFICES, PLLC, for its Complaint against Defendants TALL GRASS MANAGEMENT PARTNERS, LLC, JOHN H.W. GEFAELL, WILLIAM M. WARD (a/k/a BILLY WARD), and AWARD DEVELOPMENT, LLC (collectively, the "Defendants"), hereby provides as follows:

PARTIES

1. Plaintiff¹ is a Michigan limited liability company with its principal place of business in the State of Michigan.
2. Defendant TALL GRASS MANAGEMENT PARTNERS, LLC ("Tall Grass") is

¹ Plaintiff is the surviving entity after the merger of Purdy Run Aggregates, LLC, a Florida limited liability company, and Purdy Run Aggregates II, LLC, a Michigan corporation (the "Merger").

a Florida limited liability company with its principal place of business in the State of Florida.

3. Defendant JOHN H.W. GEFAELL (“Gefael”) is an individual residing, upon information and belief, in the State of Florida, and is a member of Tall Grass.

4. Defendant WILLIAM M. WARD (a/k/a BILLY WARD) (“Ward”) is an individual residing, upon information and belief, in the ^{State of West Virginia} ~~Commonwealth of Kentucky~~, and, upon information and belief, is a member of Award, LLC (defined below).

5. Defendant AWARD DEVELOPMENT LLC (“Award LLC”) is a Kentucky limited liability company with its principal place of business in the Commonwealth of Kentucky and does business with Plaintiff, accepting work from Plaintiff and remitting invoices to Plaintiff in Oakland County, Michigan for work performed in Harrison County WV.

JURISDICTION, VENUE, AND CHOICE OF LAW

6. This Court has subject matter jurisdiction over this matter because the amount in controversy exceeds Seven Thousand Five Hundred and 00/100 (\$7,500.00) Dollars, exclusive of interest, costs and attorney fees.

7. The Court has personal jurisdiction over the parties under the West Virginia Long-Arm Statute (W. Va. Code § 56-3-33) as the Defendants had sufficient minimum contacts with the State of West Virginia (detailed below) to exert personal jurisdiction.

8. Venue in Harrison County is proper pursuant to W. Va. Code § 56-1-1 as the site where the cause of action(s) arose.

9. Though this Court has personal and subject matter jurisdiction over this matter and the parties thereto, Michigan law applies to the claims set forth herein because a majority of the parties consented, as a part of the Management Agreement (defined below) that “[t]he laws of the State of Michigan shall govern the validity, performance and enforcement of the Agreement

without regard to choice of law principles.”

FACTS

10. Plaintiff (prior to the Merger) and Tall Grass entered into that certain Management Agreement dated April 10, 2018 and a certain letter agreement dated April 9, 2018 (collectively, the “Management Agreement,” copies of which are attached hereto as Exhibit 1 and incorporated herein by reference), whereby Tall Grass was to perform management services on behalf of Plaintiff, as more specifically outlined in the Management Agreement.

11. Plaintiff was and is currently in the pipeline and energy business. The Defendants approached Plaintiff, unsolicited, and proposed Plaintiff invest in the development of an aggregate business by purchasing real property for the purpose of extracting aggregate, minerals, and other materials.

12. Defendants represented to Plaintiffs that Defendants had knowledge and expertise relevant in the aggregate business and, in reliance upon Defendants’ representations, Plaintiff and Tall Grass entered into a Management Agreement to manage the extraction operation on a 94.11 acres tract situate in Clay District, Harrison County, West Virginia, said property being of record in the Office of the Clerk of the County Commission of Harrison County, West Virginia in Deed Book 1610 at Page 876 (hereinafter the “Property”).

13. The Management Agreement identifies thirteen (13) services but is not limited to the identified services as Tall Grass was to have managed the day to day operations of Purdy Run at the Property.

14. Tall Grass, through its Co-Managers, Gefaell and Ward, failed to meet the financial performance requirements under the Management Agreement during 2018.

15. Additionally, Tall Grass failed to meet the financial performance requirements

under the Management Agreement during 2019 (i.e., 50% of EBITDA Targets for two consecutive quarters starting in 2019), thereby effectively terminating the Operating Agreement.

16. Upon information and belief, Defendants' tortious and/or fraudulent conduct (or misconduct) caused failure of and, thus, the consequent adverse impact to Plaintiff and its business.

17. Under the Management Agreement, Tall Grass was charged with taking all necessary steps to manage the business in a prudent, commercially sound, and professional manner.

18. Tall Grass, through its Co-Managers, Gefaell and Ward, failed to establish the most basic systems to manage, administer and report on the business of Plaintiff, including, but not limited to, the failure to establish the following:

- (a) basic transaction processing,
- (b) accounting system,
- (c) reporting system,
- (d) sound administrative processes,
- (b) documentation and filing systems,
- (c) procedures for customer invoicing,
- (d) credit assessment and monitoring,
- (e) collections,
- (f) managing vendors and trade payables, and
- (g) basic bookkeeping, accounting, and timely financial statement preparation.

19. Tall Grass also failed to report operating results to Plaintiff as required by the Management Agreement.

20. Tall Grass delegated its bookkeeping and accounting responsibilities to two (2)

third-party accounting firms.

21. Notwithstanding such delegation of bookkeeping responsibilities, Tall Grass has failed to meet the bookkeeping, accounting, and reporting requirements of the Management Agreement.

22. The above commissions and omissions have been a detriment to the development, commercialization, and prudent management of Plaintiffs business.

23. Tall Grass failed to honor the engagement terms and pay agreed upon fees for services to be provided to Plaintiff by both accounting firms it engaged, which has had a chronic adverse effect on the quality, responsiveness and timeliness of service and information provided to Plaintiff essential to operating the business.

24. As a result of non-payment of accounting fees, Plaintiff has been forced to address this issue directly.

25. In the same regard, as a direct result of the failure of Tall Grass to take the necessary steps to ensure Plaintiff's regulatory compliance with the Mine Safety and Health Administration and the requirements of the West Virginia Department of Environmental Protection ("WV-DEP") pursuant to the company's quarry permit, Tall Grass exposed Plaintiff to violations, shut-down and civil penalties.

26. Due to Tall Grass's failure to submit to the WV-DEP required water sampling results taken in 2018 on a timely basis, Plaintiff has received two civil penalties notices which indicate potential financial exposure of as much as \$37,000, dated September 18, 2019 and September 30, 2020 (copies of which are attached hereto as Exhibit 2 and Exhibit 3, respectively, and incorporated herein by reference).²

² Plaintiff and WV-DEP entered into a Consent Order which resulted in the total fine paid by Plaintiff being revised from \$37,000.00 to \$13,140.00.

27. Tall Grass assumed both operational and financial responsibility to ensure the access road leading to the quarry was suitable and continuously maintained to accommodate gravel haulers accessing the quarry on a daily basis.

28. Upon information and belief, Gefaell and Ward used Tall Grass as an instrument to their own personal gain, committing fraud and other wrongdoing.

29. Upon information and belief, Ward (through Award LLC) fraudulently billed Plaintiff a total of 60 hours for grading work (within a one-week period) and material charges (culvert pipe) in connection with that same work.

30. Upon information and belief, the grading performed took substantially less time than 60 working hours.

31. Ward produced no evidence of culvert pipe being supplied to the quarry site or used to improve the access road to the quarry as invoiced.

32. Ward has admitted that no culvert pipe was ever supplied to the quarry site or used to improve the access road to the quarry as invoiced.

33. Upon information and belief, Tall Grass took for its use, unscaled material from the quarry to service the access road which was not accounted properly or paid for.

34. Upon information and belief, a scale house contract worker, under the management of and at the direction of Tall Grass, was instructed to manually alter and falsify tickets generated by the scale system, by artificially changing tare weights on various scale tickets.

35. Upon information and belief, the above practice then allowed Tall Grass and/or its managers to have material, not properly accounted for, available for its own commercial use to “make good” on other commitments in a manner that was beyond Plaintiff’s purview.

36. Upon information and belief, Ward engaged in a practice that can be best

described as “truck skimming” or tortious interference.

37. Under normal circumstances and Plaintiff’s business practices, of which Tall Grass was fully aware, Plaintiff arranges trucking services on behalf of its customers to facilitate the delivery of material from the Plaintiff quarry to its customer’s designated delivery location on a seamless, full requirements basis.

38. Billing and collections from customers, scheduling, dispatch and payment to hauling subcontractors is to be managed and controlled by Plaintiff.

39. Plaintiff has typically earned a margin for the above service.

40. Upon information and belief, using Confidential Information (as defined the Management Agreement and under common law), including Plaintiff’s customers and their job locations, along with the commercial relationships established by Plaintiff with hauling subcontractors (and Plaintiff’s pricing model), Ward, using Award LLC as a sleeve, inserted himself in a number of transactions with known Plaintiff customers and haulers to make a profit on trucking.

41. Upon information and belief, in some instances, the above activity involved transactions in which material was sold by and hauled from other quarries in direct competition with Plaintiff.

42. In doing so, Tall Grass has interfered in a commercial opportunity of Plaintiff for the personal gain of members of Tall Grass and/or Award LLC.

43. Upon information and belief, Tall Grass engaged in a breach of its obligations to Plaintiff to maintain Confidential Information to the economic detriment of Plaintiff.

COUNT I: BREACH OF CONTRACT

44. Plaintiff reasserts and realleges the foregoing paragraphs of the Complaint as

though fully restated herein.

45. Pursuant to the Management Agreement, including explicit representations by Tall Grass therein, it was intended that Tall Grass would take all necessary steps to manage Plaintiff's business in a prudent, commercially sound and professional manner (the "Business Services").

46. Tall Grass failed to provide the Business Services and failed to meet the most basic standard of care as intended by and specifically outlined in the Management Agreement and, for that reason, *inter alia*, it was terminated. (See Notice of Termination attached hereto as Exhibit 4 and incorporated herein by reference.)

47. As a direct and proximate result of Tall Grass's conduct (or misconduct), Plaintiff has suffered and will continue to suffer injuries including, but not limited to, loss of profits, additional expenses, loss of business operations, loss of the benefit of its bargain, civil penalties, and other incidental and consequential damages including attorneys' fees.

COUNT II: FRAUD/INTENTIONAL MISREPRESENTATION

48. Plaintiff reasserts and realleges the foregoing paragraphs of the Complaint as though fully restated herein.

49. Prior to and after entering into the Management Agreement, Tall Grass misrepresented to Plaintiff that it possessed the basic knowledge and expertise necessary to perform the contractual services it committed to and fully comply with the Management Agreement.

50. Tall Grass would have reasonably expected that Plaintiff would have relied upon such representations.

51. Instead, Tall Grass took the Confidential Information provided to it by Plaintiff

and used it to benefit its own business and/or its members, such benefit being in an amount not known to the Plaintiff.

52. As a direct and proximate result of Tall Grass's conduct (or misconduct), Plaintiff has suffered and will continue to suffer injuries including, but not limited to, loss of profits, additional expenses, loss of business operations, loss of the benefit of its bargain, civil penalties, and other incidental and consequential damages including attorneys' fees.

COUNT III: TORTIOUS INTERFERENCE
WITH BUSINESS RELATIONSHIP

53. Plaintiff reasserts and realleges the foregoing paragraphs of the Complaint as though fully restated herein.

54. As part of its duties under the Management Agreement, Tall Grass was given access to Plaintiffs Confidential Information.

55. The Confidential Information included, but was not limited to job locations, commercial relationships established by Plaintiff with hauling subcontractors, and Plaintiff's pricing model.

56. Tall Grass, Gefaell, Ward and Award LLC each inserted themselves in a number of transactions with known Plaintiff customers and haulers to make a profit on trucking.

57. Tall Grass, used the Confidential Information to obtain jobs and earn income to benefit Tall Grass and/or businesses under the control of the Tall Grass and/or its member(s), including Gefaell, Ward and Award LLC.

58. Upon information and belief, in some instances, the above activity involved transactions in which material was sold by and hauled from other quarries in direct competition with Plaintiff.

59. Tall Grass, Gefaell, Ward and Award LLC have intentionally and negligently

interfered with Plaintiffs contractual relationships through improper means and with reckless disregard for the consequences of their actions.

60. As a direct and proximate result of the conduct of Tall Grass, Gefaell, Ward and Award LLC as alleged hereinabove, Plaintiff has suffered damages in an amount unknown to Plaintiff at this time, but which will be proven at trial.

61. The actions of Tall Grass, Gefaell, Ward and Award LLC were undertaken willfully, wantonly, maliciously and in reckless disregard for Plaintiffs rights, and as a direct and proximate result thereof Plaintiff suffered economic damage in a total amount to be proven at trial, therefore Plaintiff seeks exemplary and punitive damages in an amount sufficient to deter said Tall Grass and others from similar future wrongful conduct.

COUNT IV: TORTIOUS INTERFERENCE
WITH PROSPECTIVE ECONOMIC ADVANTAGE

62. Plaintiff reasserts and realleges the foregoing paragraphs of the Complaint as though fully restated herein.

63. Plaintiff had a legitimate and identifiable prospective business advantage of hauling of various aggregates and other various products in the highly competitive market and being established within such field.

64. Tall Grass was aware of Plaintiffs prospective business advantage and, by engaging in the unjustified conduct described hereinabove, Tall Grass intentionally, negligently, and improperly interfered with Plaintiffs prospective economic advantage in the aggregates marketplace.

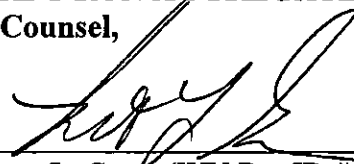
65. As a direct and proximate result of the conduct of Tall Grass as alleged hereinabove, Plaintiff has suffered damages in an amount unknown to Plaintiff at this time, but which will be proven at trial.

66. Tall Grass's actions were undertaken willfully, wantonly, maliciously and in reckless disregard for Plaintiffs rights, and as a direct and proximate result thereof Plaintiff suffered economic damage in a total amount to be proven at trial, therefore Plaintiff seeks exemplary and punitive damages in an amount sufficient to deter said Tall Grass and others from similar future wrongful conduct.

WHEREFORE, Plaintiff requests this Honorable Court:

- A. That Defendants pay to Plaintiff the amount of Sixty Thousand (\$60,000.00) Dollars for failure to pay expenses,
- B. That Defendants pay to Plaintiff the amount of One Hundred Eight-Five Thousand (\$185,000.00) Dollars for reimbursed management fees,
- C. That Defendants pay to Plaintiff such other costs and expenses incurred as a result of Defendants' conduct in an amount to be determined by the trier of fact,
- D. That Tall Grass assign its membership interest in Purdy Run to Purdy Run (redemption),
- E. That Defendants pay to Plaintiffs reasonable attorneys' fees and the costs incurred regarding this action, and
- F. All other just, proper, and equitable relief as this Court may determine.

**PURDY RUN AGGREGATES, LLC,
By Counsel,**



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CLARK COUNTY
CIRCUIT COURT

