

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



Linda Propst,  
Individually and on behalf of  
Propst Plumbing and Heating, Inc.,  
Plaintiff,

vs.)

Case No. CC-19-21-C-141

Propst Plumbing and Heating, Inc.,  
P.D. Propst Enterprises, LLC,  
Paul D. Propst, Sr.,  
Paul D. Propst, Jr.,  
Defendants.

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MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

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*Counsel for Paul D. Propst, Sr.*

- |   |   |
|---|---|
| <p>Insurance Coverage Disputes in Commercial Insurance Policies;</p> <p>Professional Liability Claims in Connection with the Rendering of Professional Services to a Commercial Entity;</p> <p>Anti-trust Actions between Commercial Entities;</p> <p>Injunctive and Declaratory Relief Between Commercial Entities;</p> <p>✓ Liability of Shareholders, Directors, Officers, Partners, etc.;</p> | <p>Mergers, Consolidations, Sale of Assets, Issuance of Debt, Equity and Like Interest;</p> <p>Shareholders Derivative Claims;</p> <p>Commercial Bank Transactions;</p> <p>Franchisees/Franchisors;</p> <p>Internet, Electronic Commerce and Biotechnology</p> <p>✓ Disputes involving Commercial Entities; or</p> <p>✓ Other (Describe) <u>alleged oppression of minority shareholder rights</u></p> |
|---|---|

In support of this motion, this matter contains issues significant to businesses, and presents novel and/or complex commercial or technological issues for which specialized treatment will be helpful, as more fully described here: This case arises out of the business operations and ownership of a small family corporate plumbing business, Propst Plumbing and Heating, Inc. Plaintiff is Linda Propst, individually, a shareholder in Propst Plumbing and Heating, Inc., and on behalf of Propst Plumbing and Heating, Inc. The Defendants include two businesses, Propst Plumbing and Heating, Inc. and P.D. Propst Enterprises, LLC. Paul D. Propst, Sr., an officer and shareholder in Propst Plumbing and Heating, Inc., and Paul D. Propst, Jr., owner of P.D. Enterprises, LLC, are also named as Defendants. All of the issues raised on the pleadings relate directly to business matters including allegations of oppression of minority shareholder rights, breach of fiduciary duty and self dealing.

In further support of this Motion, please find attached hereto an accurate copy of the operative complaint(s), the operative answer(s), the docket sheet, and the following other documents: None.

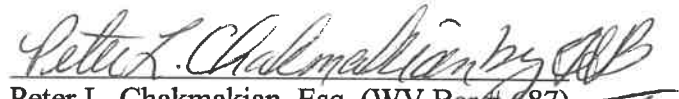
In regard to expedited review, the Movants:

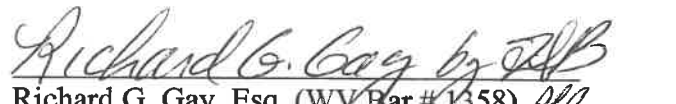
- ✓ DO NOT request an expedited review under W.Va. Trial Court Rule 29.06(a)(4), and give notice that all affected parties may file a memorandum stating their position, in accordance with W.Va. Trial Court Rule 29.

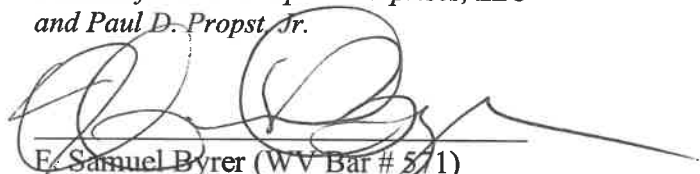
hereby REQUESTS that the Chief Justice grant this Motion to Refer without responses, pursuant to W.Va. Trial Court Rule 29.06(a)(4), and contends that the following constitutes good cause to do so: \_\_\_\_\_

**WHEREFORE**, the undersigned hereby MOVE, pursuant to W.Va. Trial Court Rule 29, the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division.

Respectfully submitted, this 5<sup>th</sup> day of April, 2022

  
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CERTIFICATE OF SERVICE

I, F. Samuel Byrer, do hereby certify that on this 5<sup>th</sup> day of April, 2022, I have served the foregoing "Motion to Refer Case to Business Court Division," with attachments by either hand delivery or first class mail to:

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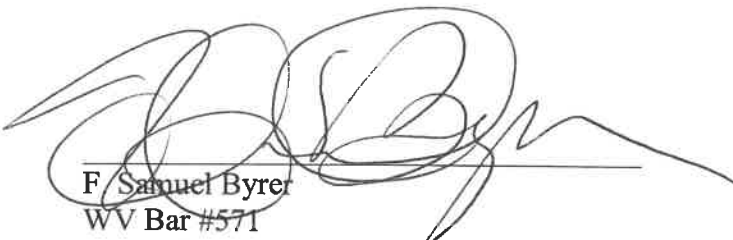
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Jefferson County Circuit Clerk's Office  
P.O. Box 1234  
Charles Town, WV 25414

Business Court Division Central Office  
Berkeley County Judicial Center  
380 West South Street  
Suite 2100  
Martinsburg, WV 25401

A handwritten signature in black ink, appearing to read 'F. Samuel Byrer', is written over a horizontal line. The signature is stylized with large, looping letters.

F. Samuel Byrer  
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# Case Docket Entries

CC-19-2021-C-141

	<u>Entered Date</u>	<u>Event</u>	<u>Ref. Code</u>	<u>Description</u>
21	10/27/2021 2:00:59 PM	E-Filed		Certificate of Service - Certificate of Service
	21-1 10/27/2021	Certificate of Service - Certificate of Service		
	21-2 10/27/2021	Supporting Document - Answer of Defendant, Propst Plumbing and Heating, Inc., to the Complaint of Plaintiff, Linda Propst		
	21-3 10/27/2021	Transmittal		
22	10/27/2021 2:00:59 PM	Attorney Listed	D-001	A-687 - Peter L. Chakmakian
23	10/27/2021 2:11:37 PM	E-Filed		Answer - Answer of Defendant, Propst Plumbing & Heating
	23-1 10/27/2021	Civil Case Information Statement		
	23-2 10/27/2021	Answer - Answer of Defendant, Propst Plumbing & Heating, Inc., to Complaint of Plaintiff, Linda Propst		
	23-3 10/27/2021	Transmittal		
24	10/28/2021 10:44:31 AM	-----		Reason for Deletion: PER ORDER ENTERED ON LINE 25
	24-1 10/28/2021	----- - Reason for Deletion: PER ORDER ENTERED ON LINE 25		
	24-2 10/28/2021	----- - Reason for Deletion: PER ORDER ENTERED ON LINE 25		
25	10/28/2021 11:06:29 AM	E-Filed		Order - Case - Order Voiding Docket Entry and Cancelling Scheduling Hearing
	25-1 10/28/2021	Order - Order Voiding Docket Entry and Cancelling Scheduling Hearing (CORRECTED D. FAWCETT'S ADDRESS ON ENVELOPE AND MAILED TO 225 FIFTH AVENUE PITTSBURGH, PA 15222)		
	25-2 10/28/2021	Transmittal		
26	11/1/2021 4:31:36 PM	E-Filed		Answer - Complaint Denied
	26-1 11/1/2021	Civil Case Information Statement		
	26-2 11/1/2021	Answer - Defendant Paul D. Propst, Sr., Answer to the Complaint and Affirmative Defenses		
	26-3 11/1/2021	Transmittal		
27	11/22/2021 3:00:19 PM	E-Filed		Answer - Amended Answer
	27-1 11/22/2021	Civil Case Information Statement		
	27-2 11/22/2021	Answer - First Amended Answer and Affirmative Defenses of Defendant Paul D. Propst, Sr., to the Complaint		
	27-3 11/22/2021	Transmittal		
28	3/21/2022 1:33:37 PM	E-Filed		Notice of Appearance - Notice of Appearance and Bona Fide Defense
	28-1 3/21/2022	Notice of Appearance - Notice of Appearance and Notice of Bona Fide Defense		
	28-2 3/21/2022	Transmittal		
29	3/21/2022 1:33:37 PM	Attorney Listed	D-002	A-1358 - Richard G. Gay
30	3/21/2022 1:33:37 PM	Attorney Listed	D-004	A-1358 - Richard G. Gay
31	3/24/2022 2:25:52 PM	E-Filed		Answer - Answer of P.D. Propst Ent. and Paul Propst, Jr.
	31-1 3/24/2022	Civil Case Information Statement		
	31-2 3/24/2022	Answer - Answer and Affirmative Defenses of P.D. Propst Enterprises, LLC and Paul D. Propst, Jr.		
	31-3 3/24/2022	Transmittal		
32	3/28/2022 2:06:36 PM	E-Filed		Order - Case - Order Setting Scheduling Conference via MS Teams
	32-1 3/28/2022	Order - Order Setting Scheduling Conference via MS Teams		
	32-2 3/28/2022	Transmittal		
33	4/4/2022 4:36:58 PM	E-Filed		Certificate of Service - certificate of service
	33-1 4/4/2022	Certificate of Service - Certificate of Service for PLAINTIFF'S FIRST COMBINED SET OF DISCOVERY REQUESTS TO DEFENDANT PROPST PLUMBING AND HEATING, INC		
	33-2 4/4/2022	Transmittal		
34	4/5/2022 3:32:26 PM	E-Filed		Letter to Clerk - Letter to Clerk
	34-1 4/5/2022	Letter - Clerk letter		
	34-2 4/5/2022	Transmittal		

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA**

**LINDA PROPST,**  
Individually and on behalf of  
Propst Plumbing and Heating, Inc.,

*Plaintiff,*

v.

CIVIL ACTION NO:

JUDGE:

**JURY TRIAL DEMANDED**

**PROPST PLUMBING AND HEATING,  
INC., P.D. PROPST ENTERPRISES,  
LLC, PAUL D. PROPST, SR., and PAUL  
D. PROPST, JR.,**

*Defendants..*

**COMPLAINT**

NOW COMES Plaintiff Linda Propst ("Plaintiff"), by and through her undersigned attorneys, and presents the following Complaint against Defendants Propst Plumbing and Heating, Inc., Paul D. Propst, Sr., Paul D. Propst, Jr. and P.D. Propst Enterprises, LLC, (the "Defendants"), alleging as follows:

**Summary of Claims**

1. This action arises out of the unlawful attempt of the Defendants to exclude Plaintiff from the profitable family heating and plumbing business.

2. As a result of Defendants' various breaches of fiduciary duty, unethical conduct, misrepresentations and omissions, usurpations of corporate opportunities, tortious interference, oppression of minority shareholder rights, and self-dealing, Plaintiff is forced to bring this action to remedy the Defendants' attempts to create a windfall for themselves and to deprive her of the incidents and benefits of ownership of the family business.

### **The Parties**

3. Plaintiff is a shareholder of Propst Plumbing and Heating, Inc. and is a citizen and resident of Jefferson County, West Virginia.

4. Defendant Propst Plumbing and Heating, Inc. is a West Virginia Corporation and has an address of 222 E. 3rd Avenue, Ranson, WV 25438.

5. Defendant P.D. Propst Enterprises, LLC is a West Virginia limited liability company and has an address of 161 Mason Farm Drive, Kearneysville, WV 25430.

6. Defendant Paul Douglas Propst, Sr. ("Paul, Sr.") is a shareholder of Propst Plumbing and Heating, Inc. and has an address of 212 E. 3rd Avenue, Ranson, WV 25438. Upon information and belief, at all relevant times, Paul, Sr. was an officer and director of Propst Plumbing and Heating, Inc.

7. Defendant Paul Douglas Propst, Jr. ("Paul, Jr."), is, upon information and belief, the owner or managing member of P.D. Propst Enterprises, LLC and has an address of 161 Mason Farm Drive, Kearneysville, WV 25430. Upon information and belief, at all relevant times, Paul, Jr. was both an officer and director of Propst Plumbing and Heating, Inc. and also the owner and managing member of P.D. Propst Enterprises, LLC.

### **Jurisdiction and Venue**

8. Jurisdiction over the Defendants is proper because Defendants have purposefully subjected and availed themselves of and to the jurisdiction of this Court by virtue of their presence in this jurisdiction and by transacting business in West Virginia and committing the acts that give rise to this cause of action within the jurisdiction of this Court.

9. Venue is proper in Jefferson County because all of the Defendants reside in, or are based in, Jefferson County and because all, or a significant number of the events, acts,

omissions, and transactions out of which the causes of action herein arose took place in, originated in, or affected Plaintiff in Jefferson County.

**Factual Allegations Common to All Counts**

10. Mr. Johnny Propst incorporated Propst Plumbing and Heating, Inc (“the Corporation”) on March 13, 1972 as a West Virginia corporation. Over the years, the Corporation installed and serviced plumbing, heating and air conditioning equipment throughout the Eastern Panhandle of West Virginia and surrounding areas.

11. At the time of incorporation in 1972, the Corporation authorized one class of capital (common) stock in the amount of \$25,000 with a par value of \$1.00 per share. The actual amount of capital stock with which the Corporation began business was \$1,000.00 which was divided into the following shares: 500 shares to Johnny Propst, 499 shares to his wife Ruby Propst and 1 share to Peter Chakmakian. Upon information and belief, Peter Chakmakian no longer has any interest in the Corporation, and has not held any interest at any time relevant to this Complaint.

12. Johnny and Ruby Propst structured the Corporation for the long-term benefit of their children with the intention of them equally sharing in the financial benefits and ownership of the family business. This ownership interest was not tied to any day-to-day employment with the Corporation. In accord with their plan, over time Johnny and Ruby Propst gifted shares of the Corporation to their three children: Defendant Paul Sr., Paula Angus and Ronald Propst. Following the passing of both Johnny and Ruby Propst, the remaining shares of the



Corporation were allocated equally among the three children, resulting in all three of them being equal owners.

13. Ronald Propst was married to Plaintiff Linda Propst when he received his legal interest in the Corporation. Ronald Propst passed away on May 22, 2020. Following his passing, Plaintiff became the owner of her husband's shares and interest in the Corporation.

14. Prior to the onset of the illness which led to Ronald Propst's passing, the shareholders worked together to successfully operate the business. The business was profitable and allowed the shareholders to earn a good living for themselves and their families. The Plaintiff justifiably expected that her husband's interest in the Corporation would provide for her and her husband and their family, and she relied upon it in that regard.

15. When Ronald Propst turned 62 and became eligible for Social Security, the parties agreed that he would earn the maximum allowable income without reducing his available Social Security benefits. Nonetheless, and despite health problems, Ronald continued to devote himself to the business, including working many uncompensated hours above his income limits because he enjoyed working, he truly cared about his customers that he serviced for years, and wanted to ensure that his wife would enjoy the benefits of owning shares in this valuable company if he might pass before her. Ronald finally stopped working for the Corporation in August of 2019 when he was diagnosed with cancer and began undergoing treatment that included radiation and surgery. However, at all times Ronald remained an equal shareholder with equal rights to the incidents of ownership in the Corporation, including regular distributions and other benefits.

16. In his later years, Ronald's illness prevented him from closely monitoring the affairs of the Corporation personally. The Corporation and other shareholders did not fully or

fairly apprise Ronald, and later Plaintiff, of the Corporation's activities and finances, and, as alleged below, actively concealed information in that regard.

17. Previously, the Corporation agreed that it would pay for medical insurance for Ronald until he turned 65. The Corporation would also pay for Paul, Sr.'s and his wife's medical insurance until that same point (when Ronald turned 65). Following that point, however, due to the extreme cost, all parties agreed that the Corporation would no longer pay any medical insurance for anyone. In fact, the insurance representative indicated that the insurer would be dropping the business as an insured because the only people covered were all family, and the insurer no longer viewed the policy as a business policy.

18. However, Ronald later learned that Paul, Sr. was improperly causing the Corporation to continue to pay for his health insurance as well as the health insurance premiums for his son (Paul, Jr.) following the date on which Ronald turned 65.

19. Following Ronald's passing, the Corporation did not provide Plaintiff with any information concerning the activities, transactions and financial status of the Corporation. Nor did the Corporation provide Plaintiff with any payments, distributions or other benefits pursuant to her ownership interest.

20. Several months after Ronald's death, Plaintiff learned for the first time that there were possible problems with the Defendants' financial management of the Corporation going back many years.

21. Specifically, Plaintiff learned that the Corporation was paying for a wide variety of credit card charges by Paul, Sr. and Paul, Jr. which did not appear related to the Corporation's plumbing and heating business. When asked about those charges, Paul, Sr.

indicated that, “You’re going to see some charges on there that you don’t like, and if you think you’re going to get reimbursed for it, you’re wrong,” or words to that effect.

22. Thereafter, it became apparent that the Defendants were also using the Corporation to pay for expenses for Paul, Jr.’s business – Defendant P.D. Propst Enterprises, LLC – an unrelated construction company and separate legal entity, and for the Defendants’ other personal expenses.

23. Upon inquiry from Plaintiff, the Defendants suddenly began closing down and winding up the Corporation with no previous notice to Plaintiff. From facts known to Plaintiff, including inventory for P.D. Propst Enterprises, LLC being stored on the business property of the Corporation, it became evident that the Defendants were funneling, and had been funneling, the Corporation’s business to P.D. Propst Enterprises, LLC. It now appears that the Defendants were secretly directing business away from the Corporation while maintaining that they were in the process of winding down its affairs.

24. During this time, the Defendants kept all money and income earned by the Corporation. They did not make any payments or distributions to Plaintiff, despite her 1/3 ownership share in the Corporation. Under the circumstances, the Defendants took excessive salaries (in fact, they increased their salaries in July 2020 as the questions started to arise around the handling of finances), advances or bonuses or other payments, thus preventing distributions to Plaintiff and benefitting themselves at Plaintiff’s expense.

25. The Corporation’s real property, which the Corporation used to support its business, was sold on or around June 25, 2021. However, for several months prior to that time, the Defendants were using the Corporation real estate as a place to store inventory and conduct business for P.D. Propst Enterprises, LLC and for other non-Corporation purposes. The

Defendants have not paid rent or otherwise reimbursed the Corporation for the misuse of its real estate.

26. At all relevant times, Defendants Paul, Sr. and Paul, Jr., as owners, officers, directors and/or agents of the Company, owed high fiduciary duties, including the duty of loyalty, the duty of good faith and other duties to the Corporation. Defendant P.D. Propst Enterprises, LLC owed a duty to not interfere with or usurp the Corporation's business.

#### **Lost Business Value and Income.**

27. As an entity long established in the community, in addition to possessing hard assets, the Corporation had significant value at the time of Ronald Propst's passing. The Defendants improperly diverted, usurped and used the Corporation's name, reputation, assets and customer goodwill for their own personal gain and separate business, and funneled resultant revenue and income through P.D. Propst Enterprises, LLC.

28. The Plaintiff, working with forensic accountants, estimates that the Corporation has a value of approximately \$550,000 that reflects its normalized cash flow, business reputation and goodwill, as well as tangible assets, including real estate.<sup>1</sup> The building has a monthly rental value of \$1,750 per month that is properly due from PD Propst Enterprises for the months it has used the building owned by Propst Plumbing.

29. Since Ronald's passing, there has been no distributions, payments or benefits provided to the Plaintiff. As an equal, 1/3 shareholder, she was entitled to benefits and incidents of ownership, including but not limited to a share of monies that were or should have been earned and distributed had the Corporation's assets not been usurped and suddenly shut

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<sup>1</sup> References to financial information related to the Corporation described in this Complaint are based on the best information currently available to the Plaintiff. Plaintiff reserves the right to update these descriptions of financial information as more information is discovered

down. Further, despite demands, Plaintiff has not received her fair share of the value of the Corporation.

30. Plaintiff has not received any business value or distribution, nor has she received any explanation of the Corporation's financial management during all relevant times.

**Personal and Other Improper Expenses.**

31. Plaintiff's accountants have so far identified in excess of \$125,000 in personal expenses paid for by Propst Plumbing incurred for the benefit of either P.D. Propst Enterprises or Paul, Sr. or Paul, Jr., individually. These include significant expenditures for, among other things, concrete, lumber, boat and fishing supplies, dining and excessive transportation costs (e.g., gasoline).

32. Plaintiff's forensic accountants have tentatively identified another approximately \$68,000 in health insurance payments by the company for Paul, Sr. and his family incurred after an agreement the Corporation would no longer shoulder that expense.

33. These amounts have not been repaid to the Corporation, nor has Plaintiff otherwise been compensated for these amounts.

**Payroll and Cash Advances.**

34. Records reviewed by Plaintiff's accountants reflect \$24,000 in advances to employees and approximately \$111,000 in accounts receivable without any explanation of either the amounts or the Corporation's efforts to recover those amounts.

35. The Defendants also caused the Corporation to pay 100% of employee wages until the last day of business (adding a salary increase stating in July 2020), even though a substantial portion of those wages were for work that actually benefited P.D. Propst Enterprises, LLC rather than the Corporation.

36. These amounts have not been repaid to the Corporation, nor has Plaintiff otherwise been compensated for these amounts.

**Tax Matters.**

37. The Corporation is able to claim \$47,000 in losses that can be used to offset any capital gains, such as for the sale of the Corporation's real property, with an additional amount of loss that can be forwarded likely as well that cannot be determined at this time since. At a minimum, this is a valuable asset to be shared equally by all shareholders in the Corporation. However, the Corporation has failed, or may fail, to preserve this tax write off.

**Improper Business Dealings.**

38. While serving as owner and manager of P.D. Propst Enterprises, LLC, Paul, Jr. used assets of the Corporation to enrich himself and fund his business to the detriment of the corporation.

39. Paul, Sr., knew of, approved and assisted in such improper dealings, and, upon information and belief, wrongfully caused the Corporation to participate in such improper dealings. No one, however, informed Plaintiff what was going on, or that the value of her share in the Corporation was being depleted by such improper dealings.

**Withholding of Information about Corporate Operations and Transactions.**

40. Despite being a shareholder in the Corporation, Plaintiff was never informed of any of the transactions to which the Corporation was a party, and was never given access to the Corporation's financial statements until she first learned of possible problems following Ronald Propst's death in 2020.

41. The Defendants have caused the Corporation to fail to hold proper and regular shareholder meetings, or to otherwise notify the shareholders of critical developments.

42. As a result, Plaintiff's right to information regarding the Corporation's business operations and corporate governance was not merely disregarded, but willfully violated by the Defendants.

**Disregard for Corporate Formalities and Operations.**

43. For years, the Defendants ran the Corporation with disregard of the standards of corporate governance.

44. Despite requirements to hold such meetings regularly, shareholders' meetings were not conducted for many years, and information was not disseminated regarding the true state of the Corporation's affairs, transactions and business as conducted by the individual Defendants.

45. The few shareholders meetings that actually took place were not properly noticed and/or conducted. Major corporate transactions including substantial expenditures were never subject to shareholders' review or approval.

46. The Defendants have never properly disclosed the true condition of the Corporation to all shareholders and, at times, have actively concealed information from Plaintiff.

**Count One - Breach of Fiduciary Duties**

47. Plaintiff incorporates herein by reference the preceding paragraphs as though set forth fully herein.

48. As officers, directors, and, in Paul, Sr.'s case, shareholders, Defendants Paul, Sr. and Paul, Jr. owed fiduciary duties of good faith, honesty, candor, due care and loyalty, and bore a relation of trust and confidence to Plaintiff, as a minority shareholder.

49. Accordingly, Defendants Paul, Sr. and Paul, Jr. were required to act with the utmost good faith in their dealings with Plaintiff, a minority shareholder.

50. Defendants Paul, Sr. and Paul, Jr. owed fiduciary duties to provide and disclose full information to Plaintiff, as a minority shareholder, regarding the finances, plans and operations of the Corporation.

51. Defendants Paul, Sr. and Paul, Jr. owed fiduciary duties not to conceal information from Plaintiff, as a minority shareholder.

52. Defendants Paul, Sr. and Paul, Jr. had a duty to manage the business of the corporation with a view to promote the common interests thereof, and to avoid directly or indirectly deriving a windfall, personal profits, or advantage from their positions which were not shared by all of the shareholders.

53. Defendants Paul, Sr. and Paul, Jr. had a duty to not wrongfully compete with and tortiously interfere with the Corporation, they had a fiduciary duty to preserve the assets of the Corporation, and they had a duty not to funnel or otherwise divert Corporation assets to P.D. Propst Enterprises, LLC.

54. Defendants have breached their fiduciary duties to the Corporation and its shareholders by engaging in self-dealing transactions and misappropriating funds from the Corporation to the general detriment of its shareholders and, specifically to Plaintiff.

55. Defendants Paul, Sr. and Paul, Jr ran the Corporation in their interest, disregarding Plaintiff's rights in the business and having no intention of ever making distributions to Plaintiff or providing her with any of the incidents and benefits of ownership.



56. Rather, Defendants used the Corporation for their exclusive benefit, and for the benefit of P.D. Propst Enterprises, LLC, extracting all of the Corporation's profits for themselves through the payment of excessive expenditures and other payments

57. These actions diverted funds from the Corporation and eliminated any possibility of dividend distribution to Plaintiff.

58. Because Defendants were already receiving benefits through other means, this practice predominantly harmed Plaintiff, who was effectively excluded from enjoying her fair share of the Corporation's benefits while for years the Defendants have enjoyed the full measure of personal benefits from the business.

59. Defendants' conduct is marked by a lack of probity and fair dealing, in that their acts were not the product of an informed, independent business judgment, lacked good faith, and failed to adhere to any measure of fair play upon which a minority shareholder is entitled to rely.

60. Defendants' breaches of their fiduciary duties constitute willful, wanton and oppressive conduct that was intentional, malicious, undertaken in bad faith and/or with a conscious, reckless and outrageous indifference to the rights of others.

61. Defendants' actions directly and proximately injured Plaintiff by, among other ways, depriving her of the benefits of her ownership in the Corporation and by reducing the value of her interest in the Corporation.

62. Plaintiff demands and is entitled to damages to compensate her for the Defendants' breach of fiduciary duties, and all other remedies as may be available and appropriate. Damages include, but are not limited to: compensation for the loss of business value, compensation for the loss of dividends or other distributions which were not made, pre and

post judgment interest on all such amounts, lost corporation profits, lost opportunities (*e.g.*, unpaid rent), punitive damages to the extent permitted by law, attorneys' fees and expert and legal costs to the extent permitted by law and all other damages caused by the Defendants' breaches of fiduciary duty.

#### **Count Two - Conversion**

63. The Plaintiff incorporates by reference the preceding paragraphs of this complaint as if fully set forth here.

64. The Defendants' actions in using Corporation money for their own purposes constitute conversion. They wrongfully exerted dominion over property not belonging to them.

65. As a direct and proximate result of the Defendants' conversion, Plaintiff has been injured and suffered losses.

66. Plaintiff demands and is entitled to all damages directly and consequently flowing from the Defendants' conversion, including, but not limited to: compensation for the loss of business value, compensation for the loss of dividends or other distributions which were not made, pre and post judgment interest on all such amounts, lost corporation profits, lost opportunities (*e.g.*, unpaid rent), punitive damages to the extent permitted by law, attorneys' fees and expert fees and legal costs to the extent permitted by law, and all other remedies as may be available and necessary to remedy harm caused by the Defendants' conversion.

#### **Count Three – Fraud and Constructive Fraud**

67. The Plaintiff incorporates by reference the preceding paragraphs of this complaint as if fully set forth here.

68. By charging the expenses to the Corporation credit cards and otherwise, and/or seeking reimbursement from the Corporation for such expenses, Defendants represented that certain personal expenses, and expenses related to P.D. Propst Enterprises, LLC, were legitimate business expenses of the Corporation. Such representations were material and false, and the Defendants knew they were false.

69. The Plaintiff and the Corporation justifiably relied on the Defendants' representation to their detriment. The Plaintiff and the Corporation were directly and proximately injured and damaged because they relied on those representations. Therefore, the Defendants' actions constitute fraud.

70. The Defendants' actions further constitute constructive fraud and a breach of their legal or equitable duties, which, irrespective of moral guilt, the law declares fraudulent, because of its tendency to deceive others, to violate public or private confidence, or to injure public interests.

71. Therefore, the Plaintiff is entitled to all remedies available and appropriate, including damages directly and consequently flowing from the Defendants' fraud, including, but not limited to: compensation for the loss of business value, compensation for the loss of dividends or other distributions which were not made, pre and post judgment interest on all such amounts, lost corporation profits, lost opportunities (*e.g.*, unpaid rent), punitive damages to the extent permitted by law, attorneys' fees and expert fees and legal costs to the extent permitted by law, and all other remedies as may be available and necessary to remedy harm caused by the Defendants' fraud.

**Count Four – Tortious Interference with Business Relationships and Expectancies**

72. The Plaintiff incorporates by reference the preceding paragraphs of this complaint as if fully set forth here.

73. At all relevant times, the Corporation has business and contractual relationships and expectancies with its customers, and the Plaintiff has a business or contractual relationship and expectancy with the Corporation. P.D. Propst Enterprises, LLC was outside of business relationships between the Corporation and its customers, and it was outside of the relationship between the Plaintiff and the Corporation. For example, on some occasions, customers made checks out to the Corporation, yet the checks were deposited into the account of P.D. Propst Enterprises, LLC.

74. Defendant P.D. Propst Enterprises, LLC tortiously interfered with the Corporation's the Plaintiff's business relationships and expectancies. Among other things, upon information and belief, P.D. Propst Enterprises, LLC improperly took business, goodwill and other assets from the Corporation. P.D. Propst Enterprises, LLC improperly used the Corporation's real property as an inventory storage facility without paying rent or otherwise compensating the Corporation. In fact, although P.D. Propst Enterprises, LLC was, or should have been treated as a competitor, the Defendants funneled business, goodwill and assets of the Corporation to P.D. Propst Enterprises, LLC.

75. As a direct and proximate result of the Defendants' tortious interference, Plaintiff and the Corporation have been injured and suffered losses.

76. Accordingly, the Plaintiff demands and is entitled to all damages directly and consequently flowing from the Defendants' tortious interference, including, but not limited to: compensation for the loss of business value, compensation for the loss of dividends or other distributions which were not made, pre and post judgment interest on all such amounts, lost

corporation profits, lost opportunities (e.g., unpaid rent), punitive damages to the extent permitted by law, attorneys' fees and expert fees and legal costs to the extent permitted by law, and all other remedies as may be available and necessary to remedy harm caused by the Defendants' tortious interference.

**Count Five - Statutory Violations**

77. The Plaintiff incorporates by reference the preceding paragraphs of this complaint as if fully set forth here.

78. Defendants' Paul, Sr. and Paul, Jr's actions violated the following statutes and requirements:

- a. West Virginia Code § 31D-8-842 which requires officers to act in good faith, with reasonable care and in the best interests of the Corporation.
- b. West Virginia Code § 31D-8-830 which requires each member of the board of directors to act in good faith and in the best interests of the corporation.
- c. The requirement of objectivity and the requirement to refrain from receipt of improper financial benefits found in West Virginia Code § 31D-8-831
- d. West Virginia Code § 31D-16-1620 which requires annual financial statements for shareholders unless unanimously waived.
- e. West Virginia Code § 31D-7-701 which requires an annual shareholder meeting.

To the best of the Plaintiff's knowledge, no such meetings have taken place for years.

79. The Defendants' statutory violations directly and proximately injured the Plaintiff and the Corporation.

80. Accordingly, the Plaintiff demands and is entitled to all damages directly and consequently flowing from the Defendants' statutory violations, including, but not limited to: compensation for the loss of business value, compensation for the loss of dividends or other distributions which were not made, pre and post judgment interest on all such amounts, lost corporation profits, lost opportunities (*e.g.*, unpaid rent), punitive damages to the extent permitted by law, attorneys' fees and expert fees and legal costs to the extent permitted by law, and all other remedies as may be available and necessary to remedy harm caused by the Defendants' statutory violations.

#### **Count Six – Constructive Trust**

81. The Plaintiff incorporates by reference the preceding paragraphs of this complaint as if fully set forth here.

82. Where a person appropriates or improperly employs for his own use the property of another, that person is deemed to be trustee for such other. A constructive trust is imposed by equity as a means of effecting an equitable adjustment.

83. It is fundamental rule of law that no man shall be permitted to profit by his own wrong, and equity impresses a constructive trust on whoever acquires property rights by the commission of a wrong to hold the same as a trustee for the one equitably entitled thereto.

84. In this case, the Defendants have improperly employed for their own use the property of the Plaintiff, including the income, interest and other benefits that the Plaintiff would have and should have derived from the Corporation but for the Defendants' wrongful actions. The Defendants should not be allowed to profit from their own wrongs.

85. Accordingly, the law imposes a constructive trust on all remaining Corporation assets (which the Defendants have represented to be \$120,000 in cash) for the benefit of the Plaintiff.

86. Therefore, the Plaintiff demands and is entitled to a preliminary and then final order immediately establishing a constructive trust over all assets of the Corporation, including but not limited to all proceeds from the sale of real estate and all other cash-on-hand, accounts receivable, and incoming revenues, and requiring Defendants to immediately establish an escrow account for such purposes.

WHEREFORE, Plaintiff requests that this Court enter judgment in favor of Plaintiff and against Defendants in an amount to be determined at trial, including compensatory damages, consequential damages for, among other things: compensation for the loss of business value, compensation for the loss of dividends or other distributions which were not made, pre and post judgment interest on all such amounts, lost corporation profits, lost opportunities (*e.g.*, unpaid rent), punitive damages to the extent permitted by law, attorneys' fees and expert fees and all legal costs and other costs, and all other damages caused by the Defendants' actions, loss of her share of company distributions and earnings and loss of the benefits of continuing to hold an ownership interest in the Corporation, and all other such relief as the Court deems right and just under the circumstances, including but not limited to the equitable relief.

The Plaintiff demands a trial by jury.

Respectfully submitted,

Plaintiff Linda Propst,  
by counsel:

/s/ Alex A. Tsiatsos

Alex A. Tsiatsos, Esq. (#10543)  
Tsiatsos Law Firm, PLLC  
142 N. Queen Street, Suite 210  
Martinsburg, WV 25401  
(304) 249-4822 (phone)  
(304) 405-2864 (fax)  
alex.tsiatsos@tsiatsoslawfirm.com  
*Counsel for Plaintiff*

---

David B. Fawcett, Esq.  
*Pro Hac Vice submission forthcoming*

DFawcett@reedsmith.com  
REED SMITH LLP  
Reed Smith Centre  
225 Fifth Avenue  
Pittsburgh, PA 15222  
412-288-3131 (phone)

*Counsel for Plaintiff*





## West Virginia E-Filing Notice

CC-19-2021-C-141

Judge: David Hammer

**To:** F. Samuel Byrer  
fsamuelbyrer@frontiernet.net

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### NOTICE OF FILING

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IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

Linda Propst v. Propst Plumbing and Heating, Inc.

CC-19-2021-C-141

The following certificate of service was FILED on 10/27/2021 2:00:53 PM

Notice Date: 10/27/2021 2:00:53 PM

Laura Storm  
CLERK OF THE CIRCUIT COURT  
Jefferson County  
PO Box 1234  
CHARLES TOWN, WV 25414

(304) 728-3231  
circuitclerk@jeffersoncountywv.org

**THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA**

**LINDA PROPST,  
Individually and on behalf of  
Propst Plumbing and Heating, Inc.**

**PLAINTIFF**

**VS.**

**Case No. CC-19-2021-C-141**

**PROPST PLUMBING AND HEATING,  
INC., P.D. PROPST ENTERPRISES,  
LLC., PAUL D. PROPST, SR., and PAUL  
D. PROPST, JR.,**

**DEFENDANTS**

**CERTIFICATE OF SERVICE**

I, Peter L. Chakmakian, Esquire, counsel for Defendant, Propst Plumbing and Heating, Inc., do hereby certify that I served a true and accurate copy of the **ANSWER OF THE DEFENDANT, PROPST PLUMBING AND HEATING, INC., TO THE COMPLAINT OF PLAINTIFF, LINDA PROPST, and CERTIFICATE OF SERVICE**, upon the following persons, by United States Mail, postage prepaid, this 27<sup>th</sup> day of October, 2021:

Alex Tsiatsos, Esq.  
Attorney for Plaintiff  
142 N. Queen Street, Suite 210  
Martinsburg, WV 25401  
[alex.tsiatsos@tsiatsoslawfirm.com](mailto:alex.tsiatsos@tsiatsoslawfirm.com)

David B. Fawcett, Esq.  
Attorney for Plaintiff  
Reed Smith LLP  
Reed Smith Centre  
225 Fifth Avenue, Suite 1200  
Pittsburgh, PA 15222  
[DFawcett@reedsmith.com](mailto:DFawcett@reedsmith.com)

F. Samue Bryer, Esq.  
Attorney for Defendants  
P.D. Propst Enterprises, LLC  
Paul D. Propst, Sr.  
Paul D. Propst, Jr.  
PO Box 597  
Charles Town, WV 25414  
[fsamuelbyrer@frontiernet.net](mailto:fsamuelbyrer@frontiernet.net)

By: "s/" Peter L. Chakmakian, Esquire  
Peter L. Chakmakian, LC  
PO Box 547  
Charles Town, WV 25414  
[peter@chakmakianlawwv.com](mailto:peter@chakmakianlawwv.com)

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA**

**LINDA PROPST,  
Individually and on behalf of  
Propst Plumbing and Heating, Inc.**

**PLAINTIFF**

**VS.**

**Case No. CC-19-2021-C-141**

**PROPST PLUMBING AND HEATING,  
INC., P.D. PROPST ENTERPRISES,  
LLC, PAUL D. PROPST, SR., and PAUL  
D. PROPST, JR.,**

**DEFENDANTS**

**ANSWER OF THE DEFENDANT, PROPST PLUMBING AND HEATING, INC.,  
TO THE COMPLAINT OF PLAINTIFF, LINDA PROPST**

**FIRST DEFENSE**

**Summary of Claims**

1. The Defendant, Propst Plumbing and Heating, Inc. denies the allegations contained in Paragraph 1 of the Complaint.
2. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 2 of the Complaint.

**The Parties**

3. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 3 of the Complaint.
4. The Defendant, Propst Plumbing and Heating, Inc., admits the allegations contained in Paragraph 4 of the Complaint to the extent that for many years the business of the Defendant, Propst Plumbing and Heating, Inc., was carried out at 222 E. 3<sup>rd</sup>

Avenue, Ranson, West Virginia. However, this property has been sold and the Defendant, Propst Plumbing and Heating, Inc., is currently conducting no business.

5. The Defendant, Propst Plumbing and Heating, Inc., is without knowledge sufficient to either admit or deny the allegations contained in Paragraph 5 of the Complaint.

6. The Defendant, Propst Plumbing and Heating, Inc., admits the allegations contained in Paragraph 6 of the Complaint.

7. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 7 of the Complaint, and affirmatively states that Paul, Jr., was never a director of Propst Plumbing and Heating, Inc.

#### **Jurisdiction and Venue**

8. The Defendant, Propst Plumbing and Heating, Inc., admits the allegations contained in Paragraph 8 of the Complaint only insofar as the allegations suggest that jurisdiction over the Defendant, Propst Plumbing and Heating, Inc., is proper and denies that the Defendant, Propst Plumbing and Heating, Inc., committed any acts that gave rise to this cause of action.

9. The Defendant, Propst Plumbing and Heating, Inc., admits the allegations contained in Paragraph 9 of the Complaint only insofar as the allegations suggest that venue over the Defendant, Propst Plumbing and Heating, Inc., is proper and denies that the Defendant, Propst Plumbing and Heating, Inc., committed any acts that gave rise to this cause of action.

#### **Factual Allegations Common to All Counts**

10. The Defendant, Propst Plumbing and Heating, Inc., admits the allegations contained in Paragraph 10 of the Complaint.

11. The Defendant, Propst Plumbing and Heating, Inc., admits the allegations contained in Paragraph 11 of the Complaint.

12. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 12 of the Complaint.

13. The Defendant, Propst Plumbing and Heating, Inc., is without knowledge sufficient to either admit or deny the allegations contained in Paragraph 13 of the Complaint.

14. The Defendant, Propst Plumbing and Heating, Inc., admits the allegations contained in Paragraph 14 of the Complaint only insofar as the allegations suggest that the shareholders worked together to successfully operate the business. The Defendant, Propst Plumbing and Heating Inc., denies the remaining allegations contained in Paragraph 14 of the Complaint.

15. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 15 of the Complaint.

16. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 16 of the Complaint and affirmatively states that Ronald presented himself practically every day at the place of business of the Defendant, Propst Plumbing and Heating, Inc.

17. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 17.

18. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 18 of the Complaint only insofar as the allegations suggest that Paul, Sr., was improperly causing the corporation to pay for his health insurance, as well as for the health insurance for his son, Paul, Jr.

19. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 19 of the Complaint.

20. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 20 of the Complaint.

21. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 21 of the Complaint.

22. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 22 of the Complaint.

23. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 23 of the Complaint.

24. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 24 of the Complaint.

25. The Defendant, Propst Plumbing and Heating, Inc., admits the allegations contained in Paragraph 25 of the Complaint only insofar as the allegations in Paragraph 25 suggest that the corporation sold its real property. The Defendant, Propst Plumbing and Heating, Inc., denies the balance of the allegations contained in Paragraph 25 of the Complaint.

26. The Defendant, Propst Plumbing and Heating, Inc., admits the allegations contained in Paragraph 26 of the Complaint only insofar as the allegations suggest that Paul, Sr., was an owner, officer or agent of the Company. The Defendant, Propst Plumbing and Heating, Inc., denies the balance of the allegations contained in Paragraph 26 of the Complaint.

#### **Lost Business Value and Income**

27. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 27 of the Complaint.

28. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 28 of the Complaint and demand strict proof thereof.

29. The Defendant, Propst Plumbing and Heating, Inc., admits the allegations contained in Paragraph 29 of the Complaint only insofar that there has been no distribution, payments or benefits made to the Plaintiff or to other shareholders since 2013. Defendant, Propst Plumbing and Heating, Inc., denies the remaining allegations contained in Paragraph 29 of the Complaint.

30. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 30 of the Complaint.

#### **Personal and Other Improper Expenses**

31. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 31 of the Complaint.

32. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 32 of the Complaint; and affirmatively states that any health insurance payments made by the corporation for Paul, Sr., and his family, were done with the full knowledge and consent of Ronald.

33. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 33 of the Complaint.

#### **Payroll and Cash Advances**

34. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 34 of the Complaint.

35. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 35 of the Complaint.

36. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 36 of the Complaint.



### **Tax Matters**

37. The Defendant, Propst Plumbing and Heating, Inc., is without knowledge sufficient to either admit or deny the allegations contained in Paragraph 37 of the Complaint.

### **Improper Business Dealings**

38. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 38 of the Complaint.

39. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 39 of the Complaint.

### **Withholding of Information about Corporate Operations and Transactions**

40. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 40 of the Complaint.

41. The Defendant, Propst Plumbing and Heating, inc., denies the allegations contained in Paragraph 41 of the Complaint.

42. The Defendant, Propst Plumbing and Heating, inc., denies the allegations contained in Paragraph 42 of the Complaint.

### **Disregard for Corporate Formalities and Operations**

43. The Defendant, Propst Plumbing and Heating, inc., denies the allegations contained in Paragraph 43 of the Complaint; and affirmatively states that the corporation was managed in the same manner, since its inception, up to the passing of Ronald, who actively participated in said management of the corporation.

44. The Defendant, Propst Plumbing and Heating, inc., denies the allegations contained in Paragraph 44 of the Complaint; and affirmatively states that the corporation was managed in the same manner, since its inception, up to the passing of Ronald, who actively participated in said management of the corporation.

45. The Defendant, Propst Plumbing and Heating, inc., denies the allegations contained in Paragraph 45 of the Complaint; and affirmatively states that the corporation was managed in the same manner, since its inception, up to the passing of Ronald, who actively participated in said management of the corporation.

46. The Defendant, Propst Plumbing and Heating, inc., denies the allegations contained in Paragraph 46 of the Complaint; and affirmatively states that the corporation was managed in the same manner, since its inception, up to the passing of Ronald, who actively participated in said management of the corporation.

**Count One – Breach of Fiduciary Duties**

47. The Defendant, Propst Plumbing and Heating, Inc., incorporates all of the answers to Allegations 1 through 46 hereinabove set forth.

48. The Defendant, Propst Plumbing and Heating, Inc., admits the allegations contained in Paragraph 48 of the Complaint insofar as Paul, Sr., owed a duty of good faith, honesty, candor, due care and loyalty to every shareholder; and denies that Paul, Jr., was, at any time, a director or shareholder of Propst Plumbing and Heating, Inc.

49. The Defendant, Propst Plumbing and Heating, Inc., admits the allegations contained in Paragraph 49 of the Complaint only insofar as Paul, Sr., owed a duty of good faith, honesty, candor, due care and loyalty to every shareholder; and denies that Paul, Jr., was, at any time, a director or shareholder of Propst Plumbing and Heating, Inc.

50. The Defendant, Propst Plumbing and Heating, Inc., admits the allegations contained in Paragraph 50 of the Complaint only insofar as Paul, Sr., owed a duty of good faith, honesty, candor, due care and loyalty to every shareholder; and denies that Paul, Jr., was, at any time, a director or shareholder of Propst Plumbing and Heating, Inc.

51. The Defendant, Propst Plumbing and Heating, Inc., admits the allegations contained in Paragraph 51 of the Complaint only insofar as Paul, Sr., owed a duty of good

faith, honesty, candor, due care and loyalty to every shareholder; and denies that Paul, Jr., was, at any time, a director or shareholder of Propst Plumbing and Heating, Inc.

52. The Defendant, Propst Plumbing and Heating, Inc., admits the allegations contained in Paragraph 52 of the Complaint only insofar as Paul, Sr., owed a duty of good faith, honesty, candor, due care and loyalty to every shareholder; and denies that Paul, Jr., was, at any time, a director or shareholder of Propst Plumbing and Heating, Inc.

53. The Defendant, Propst Plumbing and Heating, Inc., admits the allegations contained in Paragraph 53 of the Complaint only insofar as Paul, Sr., owed a duty of good faith, honesty, candor, due care and loyalty to every shareholder; and denies that Paul, Jr., was, at any time, a director or shareholder of Propst Plumbing and Heating, Inc.

54. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 54 of the Complaint and specifically denies that any fiduciary duties were breached.

55. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 55 of the Complaint.

56. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 56 of the Complaint.

57. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 57 of the Complaint.

58. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 58 of the Complaint.

59. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 59 of the Complaint.

60. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 60 of the Complaint.

61. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 61 of the Complaint.

62. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 62 of the Complaint.

#### **Count Two - Conversion**

63. The Defendant, Propst Plumbing and Heating, Inc., incorporates all of the answers to Allegations 1 through 62 hereinabove set forth.

64. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 64 of the Complaint.

65. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 65 of the Complaint.

66. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 66 of the Complaint.

#### **Count Three – Fraud and Constructive Fraud**

67. The Defendant, Propst Plumbing and Heating, Inc., incorporates all of the answers to Allegations 1 through 66 hereinabove set forth.

68. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 68 of the Complaint.

69. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 69 of the Complaint.

70. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 70 of the Complaint.

71. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 71 of the Complaint.

**Count Four – Tortious Interference with Business Relationships and Expectancies**

72. The Defendant, Propst Plumbing and Heating, Inc., incorporates all of the answers to Allegations 1 through 71 hereinabove set forth.

73. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 73 of the Complaint.

74. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 74 of the Complaint.

75. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 75 of the Complaint.

76. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 76 of the Complaint.

**Count Five – Statutory Violations**

77. The Defendant, Propst Plumbing and Heating, Inc., incorporates all of the answers to Allegations 1 through 76 hereinabove set forth.

78. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 78 of the Complaint.

79. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 79 of the Complaint.

80. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 80 of the Complaint.

**Count Six – Constructive Trust**

81. The Defendant, Propst Plumbing and Heating, Inc., incorporates all of the answers to Allegations 1 through 80 hereinabove set forth.

82. This paragraph does not appear to be a factual allegation, but a statement of law, and therefore requires no response.

83. This paragraph does not appear to be a factual allegation, but a statement of law, and therefore requires no response.

84. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 84 of the Complaint.

85. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 85 of the Complaint.

86. The Defendant, Propst Plumbing and Heating, Inc., denies the allegations contained in Paragraph 86 of the Complaint.

### **SECOND DEFENSE**

Since its inception, up to and including the date of the filing of this response, a majority, and during many years a unanimous percentage of the officers and directors of Propst Plumbing and Heating, Inc., agreed to, accepted and endorsed all of the actions of its officers, employees and agents. Since its inception, through the date of his death, Ronald Propst, agreed to, accepted and endorsed and also participated in all of the actions of its officers, employees and agents.

### **THIRD DEFENSE**

To the extent that they may be applicable in this matter, the Defendant, Propst Plumbing and Heating, Inc., asserts the following affirmative defenses:

- 1) Fails to state a claim upon which relief may be granted.
- 2) Failure to join indispensable parties.
- 3) Any and all applicable statutes of limitation.
- 4) Laches.
- 5) Estoppel.
- 6) Accord and Satisfaction.
- 7) Waiver.

- 8) Ratification.
- 9) Plaintiff lacks standing.
- 10) Failure to plead fraud with particularity.
- 11) Payment.
- 12) Doctrine of unclean hands.

**WHEREFORE**, Defendant, Propst Plumbing and Heating, Inc., having fully answered the Plaintiff's Complaint, prays that the same be dismissed and that it be awarded costs expended on its behalf.

**Propst Plumbing and Heating, Inc.**  
**By Counsel**

**/s/Peter L. Chakmakian**  
Peter L. Chakmakian  
Attorney for Plaintiff, Propst Plumbing and Heating, Inc.  
WV Bar ID # 687  
P.O. Box 547  
Charles Town, WV 25414  
Email address: peter@chakmakianlawwv.com



## West Virginia E-Filing Notice

CC-19-2021-C-141

Judge: David Hammer

To: F. Byrer  
fsamuelbyrer@frontiernet.net

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### NOTICE OF FILING

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IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

Linda Propst v. Propst Plumbing and Heating, Inc.

CC-19-2021-C-141

The following answer was FILED on 11/1/2021 4:31:31 PM

Notice Date: 11/1/2021 4:31:31 PM

Laura Storm  
CLERK OF THE CIRCUIT COURT  
Jefferson County  
PO Box 1234  
CHARLES TOWN, WV 25414

(304) 728-3231  
circuitclerk@jeffersoncountywv.org



# COVER SHEET

E-FILED | 11/1/2021 4:31 PM  
CC-19-2021-C-141  
Jefferson County Circuit Clerk  
Laura Storm

## GENERAL INFORMATION

IN THE CIRCUIT COURT OF JEFFERSON COUNTY WEST VIRGINIA

**Linda Propst v. Propst Plumbing and Heating, Inc.**

**First Plaintiff:**

☐ Business ☒ Individual  
☐ Government ☐ Other

**First Defendant:**

☒ Business ☐ Individual  
☐ Government ☐ Other

**Judge:**

David Hammer

## COMPLAINT INFORMATION

**Case Type:** Civil

**Complaint Type:** Other

**Origin:**

☒ Initial Filing ☐ Appeal from Municipal Court ☐ Appeal from Magistrate Court

**Jury Trial Requested:**

☒ Yes ☐ No

**Case will be ready for trial by:** 11/1/2022

**Mediation Requested:**

☒ Yes ☐ No

**Substantial Hardship Requested:** ☐ Yes ☒ No

☐ Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: \_\_\_\_\_

☐ I am proceeding without an attorney

☒ I have an attorney: F. Byrer, P.O. Box 597, Charles Town, WV 25414

## SERVED PARTIES

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA**

**LINDA PROPST,  
Individually and on behalf of  
Propst Plumbing and Heating, Inc.,**

**Plaintiff,**

**v.**

**CIVIL ACTION NO. 21-C-141  
Judge David Hammer**

**PROPST PLUMBING AND HEATING,  
INC., P.D. PROPST ENTERPRISES,  
LLC, PAUL D. PROPST, SR., and PAUL  
D. PROPST, JR.,**

**Defendants.**

**DEFENDANT PAUL D. PROPST, SR. ANSWER TO THE COMPLAINT  
AND AFFIRMATIVE DEFENSES**

**Summary of Claims**

NOW COMES Defendant, Paul D. Propst, Sr., (hereafter referred to as "Paul D. Propst, Sr., or Defendant") by counsel, and respectfully submits this Answer to the Complaint.

1. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 1 of the Complaint.

2. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 2 of the Complaint.

**The Parties**

3. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 3 of the Complaint.

4. The Defendant, Paul D. Propst, Sr., admits the allegations contained in Paragraph 4 of the Complaint to the extent that for many years the business of Propst Plumbing and Heating,

Inc. was carried out at 222 E. 3<sup>rd</sup> Avenue, Ranson, West Virginia. However, this property has been sold and Propst Plumbing and Heating, Inc., is currently conducting no business.

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7. The Defendant, Paul D. Propst, Sr., admits the address is correct in Paragraph 7 of the Complaint and denies the remaining allegations contained in Paragraph 7 of the Complaint.

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38. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 38 of the Complaint.

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**Withholding of Information about Corporate Operations and Transactions**

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42. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 42 of the Complaint.

**Disregard for Corporate Formalities and Operations**

43. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 43 of the Complaint; and affirmatively states that the corporation was managed in the same manner, since its inception, up to the passing of Ronald, who actively participated and acquiesced in said management and operation of the corporation.

44. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 44 of the Complaint; and affirmatively states that the corporation was managed substantially in the same manner, since its inception, up to the passing of Ronald, who actively participated and acquiesced in said management and operation of the corporation.

45. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 45 of the Complaint; and affirmatively states that the corporation was managed in the same manner, since its inception, up to the passing of Ronald, who actively participated and acquiesced in said management and operation of the corporation.



46. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 46 of the Complaint; and affirmatively states that the corporation was managed in substantially the same manner, since its inception, up to the passing of Ronald, who actively participated and acquiesced in said management and operation of the corporation.

**Count One – Breach of Fiduciary Duties**

47. The Defendant, Paul D. Propst, Sr., incorporates all of the answers to Allegations 1 through 46 hereinabove set forth.

48. The Defendant, Paul D. Propst, Sr., admits the allegations contained in Paragraph 48 of the Complaint insofar as Paul, Sr., owed a duty of good faith, honesty, candor, due care and loyalty to every shareholder; and denies that Paul, Jr., was, at any time, a director or shareholder of Propst Plumbing and Heating, Inc.

49. The Defendant, Paul D. Propst, Sr., admits the allegations contained in Paragraph 49 of the Complaint only insofar as Paul, Sr., owed a duty of good faith, honesty, candor, due care and loyalty to every shareholder; and denies that Paul, Jr., was, at any time, a director or shareholder of Propst Plumbing and Heating, Inc.

50. The Defendant, Paul D. Propst, Sr., admits the allegations contained in Paragraph 50 of the Complaint only insofar as Paul, Sr., owed a duty of good faith, honesty, candor, due care and loyalty to every shareholder; and denies that Paul, Jr., was, at any time, a director or shareholder of Propst Plumbing and Heating, Inc.

51. The Defendant, Paul D. Propst, Sr., admits the allegations contained in Paragraph 51 of the Complaint only insofar as Paul, Sr., owed a duty of good faith, honesty, candor, due care and loyalty to every shareholder; and denies that Paul, Jr., was, at any time, a director or shareholder of Propst Plumbing and Heating, Inc.

52. The Defendant, Paul D. Propst, Sr., admits the allegations contained in Paragraph 52 of the Complaint only insofar as Paul, Sr., owed a duty of good faith, honesty, candor, due care and loyalty to every shareholder; and denies that Paul, Jr., was, at any time, a director or shareholder of Propst Plumbing and Heating, Inc.

53. The Defendant, Paul D. Propst, Sr., admits the allegations contained in Paragraph 53 of the Complaint only insofar as Paul, Sr., owed a duty of good faith, honesty, candor, due care and loyalty to every shareholder; and denies that Paul, Jr., was, at any time, a director or shareholder of Propst Plumbing and Heating, Inc.

54. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 54 of the Complaint and specifically denies that any fiduciary duties were breached.

55. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 55 of the Complaint.

56. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 56 of the Complaint.

57. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 57 of the Complaint.

58. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 58 of the Complaint.

59. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 59 of the Complaint.

60. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 60 of the Complaint.

61. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 61 of the Complaint.

62. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 62 of the Complaint.

### **Count Two - Conversion**

63. The Defendant, Paul D. Propst, Sr., incorporates all of the answers to Allegations 1 through 62 hereinabove set forth.

64. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 64 of the Complaint.

65. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 65 of the Complaint.

66. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 66 of the Complaint.

### **Count Three – Fraud and Constructive Fraud**

67. The Defendant, Paul D. Propst, Sr., incorporates all of the answers to Allegations 1 through 66 hereinabove set forth.

68. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 68 of the Complaint.

69. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 69 of the Complaint.

70. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 70 of the Complaint.

71. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 71 of the Complaint.

**Count Four – Tortious Interference with Business Relationships and Expectancies**

72. The Defendant, Paul D. Propst, Sr., incorporates all of the answers to Allegations 1 through 71 hereinabove set forth.

73. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 73 of the Complaint.

74. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 74 of the Complaint.

75. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 75 of the Complaint.

76. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 76 of the Complaint.

**Count Five – Statutory Violations**

77. The Defendant, Paul D. Propst, Sr., incorporates all of the answers to Allegations 1 through 76 hereinabove set forth.

78. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 78 of the Complaint.

79. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 79 of the Complaint.

80. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 80 of the Complaint.

**Count Six – Constructive Trust**

81. The Defendant, Paul D. Propst, Sr., incorporates all of the answers to Allegations 1 through 80 hereinabove set forth.

82. This paragraph does not appear to be a factual allegation, but a statement of law, and therefore requires no response.

83. This paragraph does not appear to be a factual allegation, but a statement of law, and therefore requires no response.

84. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 84 of the Complaint.

85. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 85 of the Complaint.

86. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 86 of the Complaint.

**FIRST DEFENSE**

87. The Complaint fails to state a claim upon which relief may be granted and should be dismissed.

**SECOND DEFENSE**

88. The Plaintiff has failed to join indispensable parties and the Complaint should be dismissed.

**THIRD DEFENSE**

89. This Defendant asserts any and all applicable statute of limitations as bars to the claims asserted by Plaintiff.

**FOURTH DEFENSE**

90. The Plaintiff's alleged claims are barred by laches.

**FIFTH DEFENSE**

91. The Plaintiff's claims are barred by estoppel based upon Ronald Propst's conduct.

**SIXTH DEFENSE**

92. The Plaintiff asserts the defense of accord and satisfaction.

**SEVENTH DEFENSE**

93. The Plaintiff's claims are barred by the defense of waiver.

**EIGHTH DEFENSE**

94. The claims in the Complaint are barred because Plaintiff and her husband, Ronald Propst, who acted as an officer, director and manager of the business, participated in, accepted and ratified the actions of the Defendants and the corporation.

**NINTH DEFENSE**

95. Plaintiff lacks standing to assert the claims set forth in the Complaint.

**TENTH DEFENSE**

96. Plaintiff's claims are barred by the failure to plead fraud with sufficient particularity pursuant to the legal requirements of West Virginia law.

**ELEVENTH DEFENSE**

97. The Plaintiff's claims are barred by payments from the corporation.

**TWELFTH DEFENSE**

98. This Defendant asserts that Plaintiff's claims are barred by the doctrine that he who seeks equity must do equity.

**THIRTEENTH DEFENSE**

99. This Defendant asserts that Plaintiff's claims are barred because Plaintiff comes to equity with unclean hands.

**FOURTEENTH DEFENSE**

100. The Plaintiff's claims are barred by the gist of the action doctrine.

**FIFTEENTH DEFENSE**

101. The Plaintiff's claims are barred because Paul D. Propst, Sr., does not now own and never owned a majority of shares in the corporation, and claims against him are barred as a result.

**SIXTEENTH DEFENSE**

102. Plaintiff may have failed to mitigate her damages, if any.

**SEVENTEENTH DEFENSE**

103. Plaintiff's and/or her predecessor's negligence may have contributed in whole or in part to cause any alleged damages. Plaintiff's claims may be barred and/or reduced by Plaintiff's and/or her predecessor's contributory or comparative negligence. This Defendant reserves all affirmative defenses and the right to amend this Answer to assert the same as discovery proceeds.

**EIGHTEENTH DEFENSE**

104. This Defendant asserts that he never signed or agreed to any non-competition agreement or covenant not to compete with Propst Plumbing and Heating, Inc.

**NINETEENTH DEFENSE**

105. This Defendant asserts the Statute of Frauds as a defense.

**TWENTIETH DEFENSE**

106. This Defendant asserts the Dead Man's Statute as a defense.

### **TWENTY FIRST DEFENSE**

107. Any alleged damages may have been the result of the intervening or superseding conduct of Plaintiff and/or her agents and representatives, independent third-parties or events over whom or over which Defendant had no control and no duty to control.

### **TWENTY SECOND DEFENSE**

108. Plaintiff's claimed damages, if any, may have been caused, in whole or in part, by the actions or omissions of non-parties for whose conduct this Defendant is not responsible.

### **TWENTY THIRD DEFENSE**

109. Plaintiff's claims for punitive damages fail to state a claim upon which relief can be granted because no claim for punitive damages is alleged with the requisite specificity and further no act or omission by this Defendant was willful, unconscionable, oppressive, fraudulent, wanton, malicious, reckless, intentional or with actual malice, with reckless disregard for the safety of Plaintiff or with conscious disregard and difference to the rights, safety and welfare of Plaintiff. Additionally, any such claim would violate the excessive fines clauses of the United States Constitution, Defendant's right to due process under the Fifth and Fourteenth Amendments to the United States Constitution, and his rights to equal protection under the Fourteenth Amendment to the United States Constitution and relevant portions of the West Virginia Constitution.

WHEREFORE, Defendant Paul D. Propst, Sr., prays that Plaintiff's Complaint be dismissed, that he be awarded its costs and attorney fees incurred in connection with answering the Complaint, and for such other and further relief as this Court deems appropriate.

**PAUL D. PROPST, SR.,**  
By Counsel



/s/ F. Samuel Byrer

F. Samuel Byrer, Esquire

W.Va. State Bar No. 571

Law Office of F. Samuel Byrer, PLLC

202 West Liberty Street

P. O. Box 597

Charles Town, WV 25414

Telephone (304) 724-7228

Fax (304) 724-7278

[fsamuelbyrer@frontiernet.net](mailto:fsamuelbyrer@frontiernet.net)

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA**

**LINDA PROPST,  
Individually and on behalf of  
Propst Plumbing and Heating, Inc.,**

**Plaintiff,**

**v.**

**CIVIL ACTION NO. 21-C-141  
Judge David Hammer**

**PROPST PLUMBING AND HEATING,  
INC., P.D. PROPST ENTERPRISES,  
LLC, PAUL D. PROPST, SR., and PAUL  
D. PROPST, JR.,**

**Defendants.**

**Certificate of Service**

I, F. Samuel Byrer, hereby certify that on the 1<sup>st</sup> day of November, 2021, I served a copy of the foregoing *Defendant Paul D. Propst, Sr. Answer to the Complaint and Affirmative Defenses* via the Court's electronic filing system which will send a copy to the following:

Alex A. Tsiatsos, Esq.  
Tsiatsos Law Firm, PLLC  
142 N. Queen Street, Suite 210  
Martinsburg, WV 25401  
[alex.tsiatsos@tsiatsoslawfirm.com](mailto:alex.tsiatsos@tsiatsoslawfirm.com)

David B. Fawcett, Esq.  
Reed Smith LLP  
Reed Smith Centre  
225 Fifth Avenue  
Pittsburg, PA 15222  
[dfawcett@reedsmith.com](mailto:dfawcett@reedsmith.com)

Peter L. Chakmakian, Esq.  
P.O. Box 647  
Charles Town, WV 25414  
[peter@chakmakianlawwv.com](mailto:peter@chakmakianlawwv.com)

/s/ F. Samuel Byrer  
F. Samuel Byrer



## West Virginia E-Filing Notice

CC-19-2021-C-141

Judge: David Hammer

**To:** F. Byrer  
fsamuelbyrer@frontiernet.net

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### NOTICE OF FILING

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IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

Linda Propst v. Propst Plumbing and Heating, Inc.

CC-19-2021-C-141

The following answer was FILED on 11/22/2021 3:00:15 PM

Notice Date: 11/22/2021 3:00:15 PM

Laura Storm  
CLERK OF THE CIRCUIT COURT  
Jefferson County  
PO Box 1234  
CHARLES TOWN, WV 25414

(304) 728-3231  
circuitclerk@jeffersoncountywv.org

# COVER SHEET

E-FILED | 11/22/2021 3:00 PM  
CC-19-2021-C-141  
Jefferson County Circuit Clerk  
Laura Storm

## GENERAL INFORMATION

IN THE CIRCUIT COURT OF JEFFERSON COUNTY WEST VIRGINIA

**Linda Propst v. Propst Plumbing and Heating, Inc.**

**First Plaintiff:**

☐ Business ☒ Individual  
☐ Government ☐ Other

**First Defendant:**

☒ Business ☐ Individual  
☐ Government ☐ Other

**Judge:**

David Hammer

## COMPLAINT INFORMATION

**Case Type:** Civil

**Complaint Type:** Other

**Origin:**

☒ Initial Filing ☐ Appeal from Municipal Court ☐ Appeal from Magistrate Court

**Jury Trial Requested:**

☒ Yes ☐ No

**Case will be ready for trial by:** 11/22/2022

**Mediation Requested:**

☒ Yes ☐ No

**Substantial Hardship Requested:** ☐ Yes ☒ No

☐ Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: \_\_\_\_\_

☐ I am proceeding without an attorney

☒ I have an attorney: F. Byrer, P.O. Box 597, Charles Town, WV 25414

## **SERVED PARTIES**

**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA**

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Individually and on behalf of  
Propst Plumbing and Heating, Inc.,**

**Plaintiff,**

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Judge David Hammer**

**PROPST PLUMBING AND HEATING,  
INC., P.D. PROPST ENTERPRISES,  
LLC, PAUL D. PROPST, SR., and PAUL  
D. PROPST, JR.,**

**Defendants.**

**FIRST AMENDED ANSWER AND AFFIRMATIVE DEFENSES  
OF DEFENDANT PAUL D. PROPST, SR. TO THE COMPLAINT**

**Summary of Claims**

NOW COMES Defendant, Paul D. Propst, Sr., (hereafter referred to as "Paul D. Propst, Sr., or Defendant") by counsel, and in accordance with Rule 15(a) of the West Virginia Rules of Civil Procedure, respectfully submits this Amended Answer to the Complaint.

1. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 1 of the Complaint.

2. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 2 of the Complaint.

**The Parties**

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51. The Defendant, Paul D. Propst, Sr., admits the allegations contained in Paragraph 51 of the Complaint only insofar as Paul, Sr., owed a duty of good faith, honesty, candor, due care and loyalty to every shareholder; and denies that Paul, Jr., was, at any time, a director or shareholder of Propst Plumbing and Heating, Inc.

52. The Defendant, Paul D. Propst, Sr., admits the allegations contained in Paragraph 52 of the Complaint only insofar as Paul, Sr., owed a duty of good faith, honesty, candor, due care and loyalty to every shareholder; and denies that Paul, Jr., was, at any time, a director or shareholder of Propst Plumbing and Heating, Inc.

53. The Defendant, Paul D. Propst, Sr., admits the allegations contained in Paragraph 53 of the Complaint only insofar as Paul, Sr., owed a duty of good faith, honesty, candor, due care and loyalty to every shareholder; and denies that Paul, Jr., was, at any time, a director or shareholder of Propst Plumbing and Heating, Inc.

54. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 54 of the Complaint and specifically denies that any fiduciary duties were breached.

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62. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 62 of the Complaint.

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63. The Defendant, Paul D. Propst, Sr., incorporates all of the answers to Allegations 1 through 62 hereinabove set forth.

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65. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 65 of the Complaint.

66. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 66 of the Complaint.

### **Count Three – Fraud and Constructive Fraud**

67. The Defendant, Paul D. Propst, Sr., incorporates all of the answers to Allegations 1 through 66 hereinabove set forth.

68. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 68 of the Complaint.

69. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 69 of the Complaint.

70. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 70 of the Complaint.

71. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 71 of the Complaint.

**Count Four – Tortious Interference with Business Relationships and Expectancies**

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73. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 73 of the Complaint.

74. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 74 of the Complaint.

75. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 75 of the Complaint.

76. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 76 of the Complaint.

**Count Five – Statutory Violations**

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80. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 80 of the Complaint.

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82. This paragraph does not appear to be a factual allegation, but a statement of law, and therefore requires no response.

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85. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 85 of the Complaint.

86. The Defendant, Paul D. Propst, Sr., denies the allegations contained in Paragraph 86 of the Complaint.

### **FIRST DEFENSE**

87. The Complaint fails to state a claim upon which relief may be granted and should be dismissed.

### **SECOND DEFENSE**

88. The Plaintiff has failed to join indispensable parties and the Complaint should be dismissed.

### **THIRD DEFENSE**

89. This Defendant asserts any and all applicable statute of limitations as bars to the claims asserted by Plaintiff.



**FOURTH DEFENSE**

90. The Plaintiff's alleged claims are barred by laches.

**FIFTH DEFENSE**

91. The Plaintiff's claims are barred by estoppel based upon Ronald Propst's conduct.

**SIXTH DEFENSE**

92. The Defendant asserts the defense of accord and satisfaction.

**SEVENTH DEFENSE**

93. The Plaintiff's claims are barred by the defense of waiver.

**EIGHTH DEFENSE**

94. The claims in the Complaint are barred because Plaintiff and her husband, Ronald Propst, who acted as an officer, director and manager of the business, participated in, accepted and ratified the actions of the Defendants and the corporation.

**NINTH DEFENSE**

95. Plaintiff lacks standing to assert the claims set forth in the Complaint.

**TENTH DEFENSE**

96. Plaintiff's claims are barred by the failure to plead fraud with sufficient particularity pursuant to the legal requirements of West Virginia law.

**ELEVENTH DEFENSE**

97. The Plaintiff's claims are barred by payments from the corporation.

**TWELFTH DEFENSE**

98. This Defendant asserts that Plaintiff's claims are barred by the doctrine that he who seeks equity must do equity.

#### **THIRTEENTH DEFENSE**

99. This Defendant asserts that Plaintiff's claims are barred because Plaintiff comes to equity with unclean hands.

#### **FOURTEENTH DEFENSE**

100. The Plaintiff's claims are barred by the gist of the action doctrine.

#### **FIFTEENTH DEFENSE**

101. The Plaintiff's claims are barred because Paul D. Propst, Sr., does not now own and never owned a majority of shares in the corporation, and claims against him are barred as a result.

#### **SIXTEENTH DEFENSE**

102. Plaintiff may have failed to mitigate her damages, if any.

#### **SEVENTEENTH DEFENSE**

103. Plaintiff's and/or her predecessor's negligence may have contributed in whole or in part to cause any alleged damages. Plaintiff's claims may be barred and/or reduced by Plaintiff's and/or her predecessor's contributory or comparative negligence. This Defendant reserves all affirmative defenses and the right to amend this Answer to assert the same as discovery proceeds.

#### **EIGHTEENTH DEFENSE**

104. This Defendant asserts that he never signed or agreed to any non-competition agreement or covenant not to compete with Propst Plumbing and Heating, Inc.

#### **NINETEENTH DEFENSE**

105. This Defendant asserts the Statute of Frauds as a defense.

#### **TWENTIETH DEFENSE**

106. This Defendant asserts the Dead Man's Statute as a defense.

### **TWENTY FIRST DEFENSE**

107. Any alleged damages may have been the result of the intervening or superseding conduct of Plaintiff and/or her agents and representatives, independent third-parties or events over whom or over which Defendant had no control and no duty to control.

### **TWENTY SECOND DEFENSE**

108. Plaintiff's claimed damages, if any, may have been caused, in whole or in part, by the actions or omissions of non-parties for whose conduct this Defendant is not responsible.

### **TWENTY THIRD DEFENSE**

109. Plaintiff's claims for punitive damages fail to state a claim upon which relief can be granted because no claim for punitive damages is alleged with the requisite specificity and further no act or omission by this Defendant was willful, unconscionable, oppressive, fraudulent, wanton, malicious, reckless, intentional or with actual malice, with reckless disregard for the safety of Plaintiff or with conscious disregard and difference to the rights, safety and welfare of Plaintiff. Additionally, any such claim would violate the excessive fines clauses of the United States Constitution, Defendant's right to due process under the Fifth and Fourteenth Amendments to the United States Constitution, and his rights to equal protection under the Fourteenth Amendment to the United States Constitution and relevant portions of the West Virginia Constitution.

### **Jury Trial Demand**

This Defendant demands trial by jury on all matters properly tried before a jury.

WHEREFORE, Defendant Paul D. Propst, Sr., prays that Plaintiff's Complaint be dismissed, that he be awarded its costs and attorney fees incurred in this matter, and for such other and further relief as this Court deems appropriate.

PAUL D. PROPST, SR.,  
By Counsel

/s/ F. Samuel Byrer  
F. Samuel Byrer, Esquire  
W.Va. State Bar No. 571  
Law Office of F. Samuel Byrer, PLLC  
202 West Liberty Street  
P. O. Box 597  
Charles Town, WV 25414  
Telephone (304) 724-7228  
Fax (304) 724-7278  
fsamuelbyrer@frontiernet.net

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

LINDA PROPST,  
Individually and on behalf of  
Propst Plumbing and Heating, Inc.,

Plaintiff,

v.

CIVIL ACTION NO. 21-C-141  
Judge David Hammer

PROPST PLUMBING AND HEATING,  
INC., P.D. PROPST ENTERPRISES,  
LLC, PAUL D. PROPST, SR., and PAUL  
D. PROPST, JR.,

Defendants.

Certificate of Service

I, F. Samuel Byrer, hereby certify that on the 22<sup>nd</sup> day of November, 2021, I served a copy of the foregoing *First Amended Answer and Affirmative Defenses of Defendant Paul D. Propst, Sr., to the Complaint* via the Court's electronic filing system which will send a copy to the following:

Alex A. Tsiatsos, Esq.  
Tsiatsos Law Firm, PLLC  
142 N. Queen Street, Suite 210  
Martinsburg, WV 25401  
[alex.tsiatsos@tsiatsoslawfirm.com](mailto:alex.tsiatsos@tsiatsoslawfirm.com)

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Peter L. Chakmakian, Esq.  
P.O. Box 647  
Charles Town, WV 25414  
[peter@chakmakianlawwv.com](mailto:peter@chakmakianlawwv.com)

/s/ F. Samuel Byrer  
F. Samuel Byrer



## West Virginia E-Filing Notice

CC-19-2021-C-141

Judge: David Hammer

To: F. Samuel Byrer  
fsamuelbyrer@frontiernet.net

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### NOTICE OF FILING

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IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

Linda Propst v. Propst Plumbing and Heating, Inc.

CC-19-2021-C-141

The following answer was FILED on 3/24/2022 2:25:50 PM

Notice Date: 3/24/2022 2:25:50 PM

Laura Storm  
CLERK OF THE CIRCUIT COURT  
Jefferson County  
PO Box 1234  
CHARLES TOWN, WV 25414

(304) 728-3231  
circuitclerk@jeffersoncountywv.org

# COVER SHEET

E-FILED | 3/24/2022 2:25 PM  
CC-19-2021-C-141  
Jefferson County Circuit Clerk  
Laura Storm

## GENERAL INFORMATION

IN THE CIRCUIT COURT OF JEFFERSON COUNTY WEST VIRGINIA

**Linda Propst v. Propst Plumbing and Heating, Inc.**

**First Plaintiff:**

☐ Business ☒ Individual  
☐ Government ☐ Other

**First Defendant:**

☒ Business ☐ Individual  
☐ Government ☐ Other

**Judge:**

David Hammer

## COMPLAINT INFORMATION

**Case Type:** Civil

**Complaint Type:** Other

**Origin:**

☒ Initial Filing ☐ Appeal from Municipal Court ☐ Appeal from Magistrate Court

**Jury Trial Requested:**

☐ Yes ☒ No

**Case will be ready for trial by:** \_\_\_\_\_

**Mediation Requested:**

☐ Yes ☒ No

**Substantial Hardship Requested:** ☐ Yes ☒ No

☐ Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: \_\_\_\_\_

☐ I am proceeding without an attorney

☒ I have an attorney: Richard Gay, 11 N WASHINGTON ST # 2, BERKELEY SPGS, WV 25411

## **SERVED PARTIES**



**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA**

**LINDA PROPST,  
Individually and on behalf of  
Propst Plumbing and Heating, Inc.,**

**Plaintiff,**

**v.**

**CIVIL ACTION NO. 21-C-141  
Judge David Hammer**

**PROPST PLUMBING AND HEATING,  
INC., P.D. PROPST ENTERPRISES,  
LLC, PAUL D. PROPST, SR., and PAUL  
D. PROPST, JR.,**

**Defendants.**

**ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS P.D. PROPST  
ENTERPRISES, LLC AND PAUL D. PROPST, JR. TO THE COMPLAINT**

COMES NOW Defendants, P.D. Propst Enterprises, LLC and Paul D. Propst, Jr., (herein collectively "Paul D. Propst, Jr.") by counsel, and respectfully submits this Answer to the Complaint.

**Summary of Claims**

1. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 1 of the Complaint.

2. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 2 of the Complaint.

**The Parties**

3. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 3 of the Complaint.

4. The Defendant, Paul D. Propst, Jr., admits the allegations contained in Paragraph 4 of the Complaint to the extent that for many years the business of Propst Plumbing and Heating,

Inc. was carried out at 222 E. 3<sup>rd</sup> Avenue, Ranson, West Virginia. However, this property has been sold and Propst Plumbing and Heating, Inc., is currently conducting no business.

5. The Defendant, Paul D. Propst, Jr., is without knowledge sufficient to either admit or deny the allegations contained in Paragraph 5 of the Complaint.

6. The Defendant, Paul D. Propst, Jr., admits the allegations contained in Paragraph 6 of the Complaint.

7. The Defendant, Paul D. Propst, Jr., admits the address is correct in Paragraph 7 of the Complaint and that Paul D. Propst, Jr. is the managing member of P.D. Propst Enterprises, LLC, but denies the remaining allegations contained in Paragraph 7 of the Complaint.

#### **Jurisdiction and Venue**

8. The Defendant, Paul D. Propst, Jr., admits the allegations contained in Paragraph 8 of the Complaint only insofar as the allegations suggest that jurisdiction over the Defendant, Paul D. Propst, Jr., is proper and denies that the Defendant, Paul D. Propst, Jr., committed any acts that gave rise to this cause of action.

9. The Defendant, Paul D. Propst, Jr., admits the allegations contained in Paragraph 9 of the Complaint only insofar as the allegations suggest that venue over the Defendant, Paul D. Propst, Jr., is proper and denies that the Defendant, Paul D. Propst, Jr., committed any acts that gave rise to this cause of action.

#### **Factual Allegations Common to All Counts**

10. The Defendant, Paul D. Propst, Jr., admits the allegations contained in Paragraph 10 of the Complaint.

11. The Defendant, Paul D. Propst, Jr., admits the allegations contained in Paragraph 11 of the Complaint.

12. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 12 of the Complaint.

13. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 13 of the Complaint.

14. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 14 of the Complaint.

15. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 15 of the Complaint.

16. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 16 of the Complaint and affirmatively states that Ronald Propst presented himself practically every day at the place of business of the Defendant, Propst Plumbing and Heating, Inc.

17. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 17 of the Complaint.

18. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 18 of the Complaint.

19. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 19 of the Complaint.

20. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 20 of the Complaint.

21. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 21 of the Complaint.

22. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 22 of the Complaint.

23. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 23 of the Complaint.

24. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 24 of the Complaint.

25. The Defendant, Paul D. Propst, Jr., admits the allegations contained in Paragraph 25 of the Complaint only insofar as the allegations in Paragraph 25 suggest that the corporation sold its real property. The Defendant Paul D. Propst, Jr., denies the balance of allegations contained in Paragraph 25 of the Complaint.

26. The Defendant, Paul D. Propst, Jr., admits the allegations contained in Paragraph 26 of the Complaint only insofar as the allegations suggest that Defendant Paul D. Propst, Jr., was an officer of the Company. Defendant Paul D. Propst, Jr., denies the balance of the allegations contained in Paragraph 26 of the Complaint.

#### **Lost Business Value and Income**

27. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 27 of the Complaint.

28. The Defendant, Paul D. Propst, Jr., lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 28 of the Complaint regarding the Corporation's value and denies the balance of the allegations contained in Paragraph 28 of the Complaint.

29. The Defendant, Paul D. Propst, Jr., admits the allegations contained in Paragraph 29 of the Complaint and adds that payments were made to Ronald Propst on behalf of Propst Plumbing and Heating, Inc. Defendant, Paul D. Propst, Jr., denies the remaining allegations contained in Paragraph 29 of the Complaint.

30. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 30 of the Complaint.

31. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 31 of the Complaint.

32. The Defendant, Paul D. Propst, Jr., is without knowledge sufficient to either admit or deny the allegations contained in Paragraph 32 of the Complaint, and the same is therefore denied.

33. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 33 of the Complaint.

#### **Payroll and Cash Advances**

34. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 34 of the Complaint.

35. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 35 of the Complaint.

36. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 30 of the Complaint.

#### **Tax Matters**

37. The Defendant, Paul D. Propst, Jr., lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 37 of the Complaint, and the same is therefore denied.

#### **Improper Business Dealings**

38. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 38 of the Complaint.

39. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 39 of the Complaint.

**Withholding of Information about Corporate Operations and Transactions**

40. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 40 of the Complaint.

41. The Defendant, Paul D. Propst, Jr., is without knowledge sufficient to either admit or deny the allegations contained in Paragraph 41 of the Complaint, and the same is therefore denied.

42. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 42 of the Complaint.

**Disregard for Corporate Formalities and Operations**

43. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 43 of the Complaint; and affirmatively states that the corporation was managed in the same manner, since its inception, up to the passing of Ronald Propst, who actively participated and acquiesced in said management and operation of the corporation.

44. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 44 of the Complaint; and affirmatively states that the corporation was managed substantially in the same manner, since its inception, up to the passing of Ronald Propst, who actively participated and acquiesced in said management and operation of the corporation.

45. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 45 of the Complaint; and affirmatively states that the corporation was managed in the same manner, since its inception, up to the passing of Ronald Propst, who actively participated and acquiesced in said management and operation of the corporation.

46. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 46 of the Complaint; and affirmatively states that the corporation was managed in substantially the same manner, since its inception, up to the passing of Ronald Propst, who actively participated and acquiesced in said management and operation of the corporation.

**Count One – Breach of Fiduciary Duties**

47. The Defendant, Paul D. Propst, Jr., incorporates all of the answers to Allegations 1 through 46 hereinabove set forth.

48. The Defendant, Paul D. Propst, Jr., admits the allegations contained in Paragraph 48 of the Complaint insofar as Paul, Jr., owed a duty of good faith, honesty, candor, due care and loyalty to every shareholder; and denies that Paul, Jr., was, at any time, a director or shareholder of Propst Plumbing and Heating, Inc.

49. The Defendant, Paul D. Propst, Jr., admits the allegations contained in Paragraph 49 of the Complaint only insofar as Paul, Jr., owed a duty of good faith, honesty, candor, due care and loyalty to every shareholder; and denies that Paul, Jr., was, at any time, a director or shareholder of Propst Plumbing and Heating, Inc.

50. The Defendant, Paul D. Propst, Jr., admits the allegations contained in Paragraph 50 of the Complaint only insofar as Paul, Jr., owed a duty of good faith, honesty, candor, due care and loyalty to every shareholder; and denies that Paul, Jr., was, at any time, a director or shareholder of Propst Plumbing and Heating, Inc.

51. The Defendant, Paul D. Propst, Jr., admits the allegations contained in Paragraph 51 of the Complaint only insofar as Paul, Jr., owed a duty of good faith, honesty, candor, due care and loyalty to every shareholder; and denies that Paul, Jr., was, at any time, a director or shareholder of Propst Plumbing and Heating, Inc.

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53. The Defendant, Paul D. Propst, Jr., admits the allegations contained in Paragraph 53 of the Complaint only insofar as Paul, Jr., owed a duty of good faith, honesty, candor, due care and loyalty to every shareholder; and denies that Paul, Jr., was, at any time, a director or shareholder of Propst Plumbing and Heating, Inc., or that he ever breached those fiduciary duties.

54. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 54 of the Complaint and specifically denies that any fiduciary duties were breached.

55. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 55 of the Complaint.

56. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 56 of the Complaint.

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62. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 62 of the Complaint.

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66. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 66 of the Complaint.

**Count Three – Fraud and Constructive Fraud**

67. The Defendant, Paul D. Propst, Jr., incorporates all of the answers to Allegations 1 through 66 hereinabove set forth.

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75. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 75 of the Complaint.

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86. The Defendant, Paul D. Propst, Jr., denies the allegations contained in Paragraph 86 of the Complaint.

### **FIRST DEFENSE**

87. The Complaint fails to state a claim upon which relief may be granted and should be dismissed.

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**SEVENTH DEFENSE**

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**EIGHTH DEFENSE**

94. The claims in the Complaint are barred because Plaintiff and her husband, Ronald Propst, who acted as an officer, director and manager of the business, participated in, accepted and ratified the actions of the Defendants and the corporation.

**NINTH DEFENSE**

95. Plaintiff lacks standing to assert the claims set forth in the Complaint.

**TENTH DEFENSE**

96. Plaintiff's claims are barred by the failure to plead fraud with sufficient particularity pursuant to the legal requirements of West Virginia law.

**ELEVENTH DEFENSE**

97. The Plaintiff's claims are barred by payments from the corporation.

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100. The Plaintiff's claims are barred by the gist of the action doctrine.

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**SIXTEENTH DEFENSE**

102. Plaintiff may have failed to mitigate her damages, if any.

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103. Plaintiff's and/or her predecessor's negligence may have contributed in whole or in part to cause any alleged damages. Plaintiff's claims may be barred and/or reduced by Plaintiff's and/or her predecessor's contributory or comparative negligence. This Defendant reserves all affirmative defenses and the right to amend this Answer to assert the same as discovery proceeds.

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106. Any alleged damages may have been the result of the intervening or superseding conduct of Plaintiff and/or her agents and representatives, independent third-parties or events over whom or over which Defendant had no control and no duty to control.

### **TWENTY FIRST DEFENSE**

108. Plaintiff's claimed damages, if any, may have been caused, in whole or in part, by the actions or omissions of non-parties for whose conduct this Defendant is not responsible.

### **TWENTY SECOND DEFENSE**

109. Plaintiff's claims for punitive damages fail to state a claim upon which relief can be granted because no claim for punitive damages is alleged with the requisite specificity and further no act or omission by this Defendant was willful, unconscionable, oppressive, fraudulent, wanton, malicious, reckless, intentional or with actual malice, with reckless disregard for the safety of Plaintiff or with conscious disregard and difference to the rights, safety and welfare of Plaintiff. Additionally, any such claim would violate the excessive fines clauses of the United States Constitution, Defendant's right to due process under the Fifth and Fourteenth Amendments to the United States Constitution, and his rights to equal protection under the Fourteenth Amendment to the United States Constitution and relevant portions of the West Virginia Constitution.

### **Jury Trial Demand**

This Defendant demands trial by jury on all matters properly tried before a jury.

WHEREFORE, Defendant Paul D. Propst, Jr., prays that Plaintiff's Complaint be dismissed, that he be awarded its costs and attorney fees incurred in this matter, and for such other and further relief as this Court deems appropriate.

Respectfully submitted:

P.D. Propst Enterprises, LLC and  
Paul D. Propst, Jr,  
Defendants, by counsel.

/s/ Richard G. Gay  
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**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA**

**LINDA PROPST,  
Individually and on behalf of  
Propst Plumbing and Heating, Inc.,**

**Plaintiff,**

**v.**

**CIVIL ACTION NO. 21-C-141  
Judge David Hammer**

**PROPST PLUMBING AND HEATING,  
INC., P.D. PROPST ENTERPRISES,  
LLC, PAUL D. PROPST, SR., and PAUL  
D. PROPST, JR.,**

**Defendants.**

**CERTIFICATE OF SERVICE**

I, Richard G. Gay, Esquire, counsel for Defendants, P.D. Propst Enterprises, LLC, and Paul D. Propst, Jr., do hereby certify that a true and accurate copy of the **ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS, P.D. PROPST ENTERPRISES, LLC AND PAUL D. PROPST, JR., TO THE COMPLAINT and CERTIFICATE OF SERVICE** was served via the Court's electronic filing system this 24<sup>th</sup> day of March, 2022, upon the following:

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