

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

F.K. EVEREST, INC. and
J. MIKE MARTIN,

Plaintiffs,

v.

RYAN L. EDDY, DAVID BRYTE,
INFINITY ELECTRIC, INC., and
ORANGE CONSTRUCTION
CORPORATION,

Defendants.

CIVIL ACTION NO. 15-C-134

COMPLAINT

COMES NOW the Plaintiffs F.K. Everest, Inc. ("FKE") and J. Mike Martin ("Martin") (collectively "Plaintiffs"), by and through their undersigned counsel, and for their Complaint in this civil action state and aver as follows:

PARTIES

1. Plaintiff FKE is a corporation organized under the laws of the state of West Virginia and operating at its principal office at 140 Business Park Drive, Fairmont, West Virginia 26554.
2. Plaintiff Martin is a natural person and citizen and resident of the State of West Virginia.
3. Defendant Infinity Electric, Inc. ("Infinity") is a corporation organized under the laws of the state of West Virginia and operating at its principal office at 170 Old Cheat Road, Morgantown, West Virginia 26508.

EXHIBIT
A

4. Defendant Orange Construction Corporation ("Orange") is a corporation organized under the laws of the state of West Virginia and operating at its principal office at 170 Old Cheat Road, Morgantown, West Virginia 26508.

5. Defendant Ryan L. Eddy ("Eddy") is a natural person and citizen and resident of the State of West Virginia.

6. Defendant David Bryte ("Bryte") is a natural person and citizen and resident of the State of West Virginia.

7. Defendants Infinity, Orange, Eddy, and Bryte are collectively referenced in this Complaint as "Defendants."

VENUE AND JURISDICTION

8. This Court has jurisdiction and venue over the parties to this civil action inasmuch as the acts and conduct giving rise to this Complaint occurred in this county and Infinity's and Orange's principal offices are located in this county.

FACTS APPLICABLE TO ALL COUNTS

A. Background on FKE, Martin, and Eddy

9. FKE has been engaged in business as an electrical contractor in the State of West Virginia since 1924.

10. FKE is a closely held corporation, and it employs over 50 employees in the State of West Virginia.

11. At all times material, Martin has been FKE's President.

12. Eddy was previously employed as FKE's Vice President and held a minority ownership interest consisting of 49 shares of common stock.

13. In October 2014, Martin and Eddy agreed that Eddy would leave the employ of FKE and sell his ownership interest in the company to Martin.

B. The Stock Transfer Agreement

14. On or about October 22, 2014, Martin, FKE, and Eddy executed a written agreement entitled "Stock Transfer and Assignment of Membership Interest" (the "Stock Transfer Agreement"). See Exhibit "A" attached hereto.

15. Pursuant to the Stock Transfer Agreement, Eddy agreed to sell the entirety of his ownership interest in FKE to Martin in exchange for \$281,130.28.

16. The Stock Transfer Agreement included a payment schedule providing installment payments to Eddy on October 30, 2014, November 17, 2014, and January 15, 2015.

17. Martin honored his contractual payment obligations under Stock Transfer Agreement by making timely installment payments to Eddy. Accordingly, Eddy was paid-in-full on January 15, 2015.

18. Paragraph no. 7 of the Stock Transfer Agreement includes a non-solicitation restrictive covenant provision:

Non-Solicitation of Employees. Assignor shall not, during the one-year period immediately following execution of this Assignment, directly or indirectly, by himself or on behalf of any other person, partnership, corporation or business entity, solicit or recruit any employees of the Companies.

19. Paragraph no. 7 plainly and unambiguously prohibits Eddy from soliciting or recruiting any of FKE's employees for a period of one year running from October 22, 2014 to October 22, 2015.

20. On multiple occasions following his last day of work at FKE, Martin discussed paragraph no. 7 with Eddy, and Martin specifically reminded Eddy of his obligation to refrain from solicitation of FKE's employees.

C. Eddy, Acting in Concert with the Other Defendants, Breaches the Non-Solicitation Covenant

21. Just before leaving the employ of FKE, Eddy and Defendant Bryte established a competing business, Infinity.

22. FKE and Infinity are direct competitors, providing the same electrical contracting services to the same types of customers in the same geographic locations.

23. Eddy is Infinity's President, and Bryte is its Vice President.

24. Eddy and Bryte own Infinity.

25. Bryte also owns and operates Defendant Orange, a site development and utility subcontractor which has been in business since 1999.

26. Eddy was initially introduced to Bryte because Orange has performed a substantial amount of work for FKE as one of its subcontractors.

27. Infinity and Bryte share and pool their resources, including office space at 170 Old Cheat Road, Morgantown, West Virginia 26508.

28. Eddy, acting in concert with Bryte, Infinity, and/or Orange, has intentionally and wantonly breached paragraph no. 7 of the Stock Transfer Agreement by soliciting and recruiting numerous FKE employees to leave their employment at FKE and accept positions at Infinity.

D. Eddy, acting in Concert with the Other Defendants, Successfully Recruited Six FKE Employees Inside of a Thirty-Day Period

Jarod Graffius

29. Jarod Graffius ("Graffius") worked as an Assistant Project Manager at FKE. He began working for FKE on or about February 25, 2008.

30. On January 26, 2015, i.e., just eleven days after Eddy received his final installment payment under the Stock Transfer Agreement, Graffius notified FKE that he was

resigning his employment. When asked about his future employment plans, Graffius refused to respond.

31. Upon leaving the employ of FKE, Graffius immediately began working for Infinity and Eddy.

32. Eddy, directly or indirectly, and acting in concert with Bryte, Infinity, and/or Orange solicited and/or recruited Graffius to leave his employment at FKE to accept a position at Infinity.

Jason Tomaro

33. Jason Tomaro ("Tomaro") worked as a Project Manager at FKE in its CW-CE¹ division. He began working for FKE in or about October 2011.

34. Eddy was always well aware of the profit margins associated with using CW-CE electricians to perform work, which Tomaro managed for FKE.

35. Additionally, Tomaro managed FKE's strategic plans regarding the acquisition and performance of CW-CE work in the future.

36. Accordingly, Eddy was aware of Tomaro's skill and experience in managing FKE's CW-CE work and understood that Infinity's employment of Tomaro in a similar capacity would harm both FKE's ability to obtain future CW-CE work and FKE's ability to manage its existing CW-CE work, while giving Infinity a competitive advantage over FKE.

37. Tomaro became the second FKE employee to leave for infinity on February 2, 2015, just seven days after Graffius gave his notice of resignation. Tomaro sent FKE an email indicating that was resigning his employment and accepting an offer of employment at Infinity.

¹ CW-CE is a union classification for an electrician.

38. In an attempt to cover-up Defendants' wrongdoing, Tomaro's notice of resignation claimed that he approached Infinity about the possibility of employment (and not the other way around).

39. Upon leaving the employ of FKE, Tomaro immediately began working for Infinity and Eddy.

40. Eddy, directly or indirectly, and acting in concert with Bryte, Infinity, and/or Orange, solicited and/or recruited Tomaro to leave his employment at FKE to accept a position at Infinity.

41. Upon information and belief, Tomaro prepared a bid for Infinity while he was still employed by FKE.

Rocky Hardesty

42. Rocky Hardesty ("Hardesty") worked as a CW-CE Foreman at FKE. He began working for FKE in or about December 2011.

43. On February 17, 2015, Hardesty notified FKE that he was resigning his employment at FKE to accept a position at Infinity effective February 20, 2015.

44. Upon leaving the employ of FKE, Hardesty will immediately begin working for Infinity.

45. Eddy, directly or indirectly, and acting in concert with the Bryte, Infinity, and/or Orange, solicited and/or recruited Hardesty to leave his employment at FKE to accept a position at Infinity.

Donovan Sova

46. Donovan Sova ("Sova") worked as a CW-CE Electrician at FKE.

47. On February 18, 2015, Sova notified FKE that he was resigning his employment at FKE to accept a position at Infinity.

48. Eddy, directly or indirectly, and acting in concert with the Bryte, Infinity, and/or Orange, solicited and/or recruited Sova to leave his employment at FKE to accept a position at Infinity.

Matthew Davis

49. Matthew Davis ("Davis") worked as a CW-CE Electrician at FKE.

50. On February 18, 2015, Davis notified FKE that he was resigning his employment at FKE to accept a position at Infinity.

51. Eddy, directly or indirectly, and acting in concert with Bryte, Infinity, and/or Orange, solicited and/or recruited Davis to leave his employment at FKE to accept a position at Infinity.

Joshua Monroe

52. Joshua Monroe ("Monroe") worked as a CW-CE Foreman at FKE. He began working for FKE in or about September 2011.

53. On February 17, 2015 (the same day that Hardesty provided his notice of resignation) Monroe notified FKE that he was solicited to leave his employment at FKE to accept a position at Infinity.

54. On February 18, 2015, Monroe used a FKE cell phone to text Tomaro, who had been an employee of Infinity since on or around February 3, 2015, to confirm a meeting between the two, at which, upon information and belief, Infinity and Eddy directly or indirectly solicited and recruited Monroe.

55. On or about February 19, 2015, Monroe notified FKE that he was ending his employment with FKE on February 20, 2015 and that he would begin working for Infinity on February 23, 2015.

56. Eddy, directly or indirectly, and acting in concert with Bryte, Infinity, and/or Orange, have solicited and/or recruited Monroe to leave his employment at FKE to accept a position at Infinity.

E. Defendants Have Ignored FKE's Cease and Desist Letter

57. On February 4, 2015, upon learning that Defendants had solicited FKE employees Graffius and Tomoaro, Plaintiffs, by and through their counsel, sent a letter to Eddy reminding him of his contractual non-solicitation obligations and demanding that he cease and desist from other unlawful solicitation (hereinafter the "Cease and Desist Letter"). See Exhibit "B" attached hereto.

58. By virtue of the Cease and Desist Letter, Eddy and the other Defendants had actual knowledge of Eddy's contractual non-solicitation obligations under the Stock Transfer Agreement.

59. None of the Defendants responded to the Cease and Desist Letter in any way.

60. Instead, Defendants continued to carry out their perfidious scheme, and as set forth above, solicited and/or recruited four additional FKE employees (Hardesty, Monroe, Sova, and Davis).

F. Irreparable Harm

61. Defendants' actions are intentional, wanton, and malicious, and are designed to cause immediate and irreparable injury to Plaintiffs.

62. Defendants are causing Plaintiffs irreparable harm and injury, including without limitation the loss of employees, profits, good will, and business reputation.

63. These losses and injuries will continue if the Court does not enjoin Defendants' actions.

64. The damages caused by Defendants, as suffered by Plaintiffs, cannot be calculated with certainty or precision, and a monetary value cannot be placed on the extent of the damages suffered by Plaintiffs.

65. Plaintiffs have no adequate remedy of law.

66. Injunctive relief is necessary to compel Defendants to cease and desist from causing irreparable damage to Plaintiffs.

COUNT I
BREACH OF CONTRACT (AGAINST EDDY)

67. Plaintiffs incorporate herein by reference all of the preceding paragraphs.

68. By the actions described above, Eddy has breached and continues to breach the express terms of the non-solicitation provisions set forth in the Stock Transfer Agreement.

69. By such actions, Eddy has caused Plaintiffs immediate irreparable harm to which Plaintiffs have no adequate remedy of law.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendants and enter an Order (a) enjoining Eddy, directly, or indirectly through Bryte, Infinity, Orange, or any of his or their agents or employees, from soliciting, recruiting, or otherwise communicating with any FKE employee of FKE; (b) enjoining Eddy from employing or otherwise engaging any FKE employee, including but not limited to Graffius, Tomaro, Hardesty, Monroe, Soza, and Davis; (c) awarding damages to Plaintiffs in an amount to

be determined at trial; (d) awarding interest and costs to Plaintiffs; and (e) awarding any other remedies at law and in equity deemed appropriate by this Court.

COUNT II
TORTIOUS INTERFERENCE (AGAINST BRYTE, INFINITY, AND ORANGE)

70. Plaintiffs incorporate herein by reference all of the preceding paragraphs.

71. By the actions described above, including but not limited to by intentionally acting in concert with Eddy to solicit and recruit FKE's employees, Bryte, Infinity, and Orange have intentionally interfered with the Stock Transfer Agreement.

72. There is no justification or privilege for the actions of Bryte, Infinity, and/or Orange, and they have acted with an intent to cause harm to Plaintiffs by depriving Plaintiffs of key employees with years of experience and expertise.

73. By such actions, Bryte, Infinity, and Orange have caused Plaintiffs immediate and irreparable harm to which Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendants and enter an Order (a) enjoining Defendants from directly, or indirectly through any of their agents or employees, soliciting, recruiting, or otherwise communicating with any FKE employee; (b) enjoining Defendants from employing or otherwise engaging any FKE employee, including but not limited to Graffius, Tomaro, Hardesty, Monroe, Sova, and Davis; (c) awarding damages to Plaintiffs in an amount to be determined at trial; (d) awarding interest and costs to Plaintiffs; and (e) awarding any other remedies at law and in equity deemed appropriate by this Court.

COUNT III
BREACH OF FIDUCIARY DUTY (AGAINST EDDY)

74. Plaintiffs incorporate herein by reference all of the preceding paragraphs.

75. As a key employee, officer, and shareholder in a closely held corporation, Eddy stood as a fiduciary with respect to FKE and Martin.

76. Eddy owed a fiduciary duty of loyalty to FKE and Martin to disclose matters material to the business of FKE, including liabilities incurred by FKE in the course of conducting its business.

77. In an email dated January 26, 2015, Eddy claimed – for the first time – that while still in the employ of FKE, he, acting as an agent of FKE, engaged Orange to perform certain work on the following four projects: Elkins AFRC, Jackson Mill, State Office Building, and WVU Milan Stadium. See Exhibit “C” attached hereto.

78. Martin was previously unaware that FKE, through Eddy, allegedly engaged Orange as a subcontractor on any of these specific projects because prior to January 26, 2015, Eddy had intentionally concealed his alleged engagement of Orange in connection with four above-referenced projects.

79. Eddy concealed FKE's alleged hiring of Orange as a subcontractor by leaving the amounts FKE allegedly owes to Orange off of the “work in progress” or “WIP” reports that Eddy created.

80. The “work in progress” reports were accounting reports that reflected FKE's financial position on a project, showing the amounts it had paid and been paid, and the amounts it would be paid and have to pay to achieve completion of the project.

81. The “work in progress” reports tied into FKE's overall accounting of its financial position, e.g. its assets, receivables, and liabilities: incurred or future.

82. As a consequence of leaving the amounts allegedly due to Orange off the "work in progress" reports, FKE's financial position was overstated, which artificially inflated the purchase price paid to him under the Stock Transfer Agreement.

83. Orange has submitted three invoices to FKE on the State Office Building, WVU Milan Stadium, and Jackson Mill project, which total more than \$62,000.

84. To the extent that FKE is liable to pay anything to Orange for work it allegedly performed in connection with the aforesaid projects, FKE will suffer financial harm.

85. Such financial harm will be the direct and proximate result of Eddy's breach of his fiduciary duties, *i.e.*, his intentional concealment of the alleged work performed by Orange.

86. Eddy acted intentionally and maliciously, and with a specific intent to deceive and harm Plaintiffs – all in direct violation of his fiduciary duty to act in the best interest of FKE and Martin.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Eddy and enter an Order (a) awarding damages to Plaintiffs in an amount to be determined at trial; (b) awarding punitive damages to Plaintiffs; (c) awarding interest and costs to Plaintiffs; and (d) awarding any other remedies at law and in equity deemed appropriate by this Court.

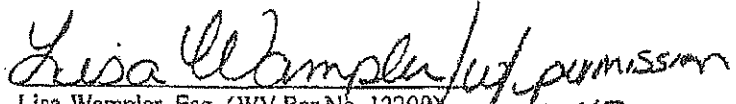
DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury for all issues so triable.

Date: February 20, 2015

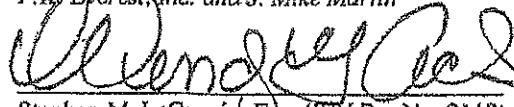
Respectfully submitted,

E.K. EVEREST, INC. and
J. MIKE MARTIN,


Lisa Wampler, Esq. (WV Bar No. 12209)
Jonathan Landesman, Esq. (*Pro Hac Vice* #9412
Application Forthcoming)

COHEN SEGLIAS PALLAS GREENHALL &
FURMAN, P.C.
525 William Penn Place, Suite 3005
Pittsburgh, PA 15219
(412) 434-5534
lwampler@cohenseglias.com
jlandesman@cohenseglias.com

*Appearing as Lead Counsel for Plaintiffs
F.K. Everest, Inc. and J. Mike Martin*



Stephen M. LaCagnin, Esq. (WV Bar No. 2118)
Wendy G. Adkins, Esq. (WV Bar No. 9412)
JACKSON KELLY PLLC
150 Clay Street, Suite 500
P.O. Box 619
Morgantown, WV 26507-0619
(304) 284-4136
wadkins@jacksonkelly.com
slacagnin@jacksonkelly.com
Appearing as Local Counsel for Plaintiffs

EXHIBIT "A"

STOCK TRANSFER AND ASSIGNMENT OF MEMBERSHIP INTERESTS

This Stock Transfer and Assignment of Membership Interests Agreement (the "Assignment") is made this 22 day of October 2014, by and among RYAN L. EDDY, (the "Assignor"), J. MIKE MARTIN (the "Assignee") and F.K. EVEREST, INC., a West Virginia corporation ("Everest") and VIP VENTURES, LLC, a West Virginia limited liability company ("VIP Ventures"), collectively the "Parties."

Recitals:

A. Everest, an electrical contractor, was incorporated in West Virginia on December 19, 1949;

B. Ryan L. Eddy is the owner of forty-nine (49) shares of common stock in Everest and executed a Key-Man Stock Repurchase Agreement dated May 16, 2008, 2000 (the "Repurchase Agreement");

C. VIP Ventures was formed on March 31, 2004 as a West Virginia limited liability company; VIP Ventures is the owner of the real estate and improvements located at 140 Business Park Drive, Fairmont, WV 26554 (the "Property");

D. Ryan L. Eddy is the owner of 33 1/3 % membership interest in VIP Ventures and executed an Operating Agreement, with a Buy-Out Agreement, dated September 6, 2005, as amended February 26, 2014 (collectively, the "Operating Agreement"); and

E. Ryan L. Eddy, as Assignor, desires to transfer all of his entire right, title and interest in and to Everest and VIP Ventures including his stock and membership interests to J. Mike Martin, or his nominee, as Assignee, under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto, intending to be legally bound, mutually agree as follows:

1. Assignment.

(a) Assignor hereby assigns, transfers, sells and conveys unto Assignee all of his entire right, title and membership interest in and to VIP Ventures, including any rights, title or interest (i) in any profits, losses and capital of VIP Ventures; (ii) the Property; and (iii) under the Operating Agreement (collectively, the "LLC Interest");

(b) Assignor hereby assigns, transfers, sells and conveys unto Assignee all of his entire right, title and interest in and to forty-nine (49) shares of common stock in Everest, including any rights, title or interest in Everest and under the Repurchase Agreement (collectively, the "Stock Interest"); and

(c) The LLC Interest and Stock Interest may hereinafter be collectively referred to as "Interests." Everest and VIP Ventures may hereinafter be collectively referred to as the "Companies."

2. Payment.

(a) Assignee shall pay to Assignor the total amount of Three Hundred Forty Thousand One Hundred Two Dollars and Twenty Eight Cents (\$340,102.28) (the "Purchase Price"), as set forth on Exhibit A, pursuant to the following schedule and allocation:

<u>Payment Date</u>	<u>FKE</u>	<u>VIP</u>	<u>Total</u>
10/30/2014	\$70,000.00	\$29,486.00	\$99,486.00
11/17/2014	\$40,000.00	\$29,486.00	\$69,486.00
1/15/2015	\$171,130.28		\$171,130.28
	<u>\$281,130.28</u>	<u>\$58,972.00</u>	<u>\$340,102.28</u>

3. Limited Representations. Assignor hereby represents and warrants that he owns the Interests free and clear of any all liens, encumbrances and security interests and he has not assigned, transferred, sold and conveyed the Interests, or any part of them, prior to the execution of this Assignment.

4. Limited Indemnifications.

(a) Assignor agree to indemnify, defend and hold harmless the Assignee and Companies, and their agents, heirs, employees and assigns from and against any and all liabilities, claims, losses, damages, penalties, costs or expenses (including but not limited to court costs and reasonable attorney's fees) relating to or arising by reason of the Interests; provided that these (i) arose before the date of this Assignment; (ii) were caused by the acts and omissions of Assignor; and (iii) were not caused by the acts and omissions of Assignee or Companies; and

(b) Assignee and the Companies Everest agree to indemnify, defend and hold harmless the Assignor, and his agents, heirs, employees and assigns from and against any and all liabilities, claims, losses, damages, penalties, costs or expenses (including but not limited to court costs and reasonable attorney's fees), provided that these (i) relate to or arise by reason of the Interests after the date of this Assignment and Assignor's ownership of the Interests; and (ii) were not caused by the acts and omissions of Assignor

5. Mutual Releases. The Parties hereby forever release and discharge each other, and their heirs, predecessors, successors, assigns, employees, directors, and officers, from all claims (whether at equity or law, realized or not) relating to and/or arising out of or related to the Interests, the Companies or the Assignor's acquisition, ownership and assignment of the Interests, except the Parties do not release or discharge any claims they may have relating to any breach of this Assignment.

6. Resignation. Assignor does hereby resign as director, officer and employee of Everest and as manager and officer of VIP Ventures.

7. Non-Solicitation of Employees. Assignor shall not, during the one-year period immediately following execution of this Assignment, directly or indirectly, by himself or on behalf of any other person, partnership, corporation or business entity, solicit or recruit any employees of the Companies.

8. Stock and Membership Certificates. Assignor hereby irrevocably constitutes and appoints Assignee to transfer the Interests on the books of the Companies, with full power of substitution. Assignor shall deliver to Assignee the certificates, if any, representing the Interests, duly endorsed in proper form for transfer. If the certificates representing his Interests are not currently in his possession, Assignor certifies that they were not indorsed and that, until execution of this Assignment, he remained the registered and beneficial owner of the Interests.

9. Miscellaneous.

(a) This Assignment shall be construed and enforced under the laws of the laws of the State of West Virginia and all disputes that arise or relate to this Assignment shall be litigated in the state or federal courts of West Virginia located in Morgantown, West Virginia, unless the parties agree otherwise.

(b) This Assignment supersedes all prior and contemporaneous oral or written communications between the parties related to the terms or subject matter of this Assignment, except such written communications as shall have been incorporated herein by reference. The written terms of this Assignment are intended by the parties to be a final written expression of their agreement with respect to such terms, and as a complete and exclusive statement of the terms of the agreement between them. Modifications or amendments may be made in writing and shall only be valid when signed by both parties.

(c) The recitals are incorporated by reference into this Assignment as though the same were fully set forth herein.

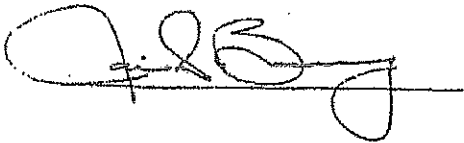
(d) This Assignment shall be executed in two counterparts, each of which shall constitute an original. A telefax signature shall be deemed an original for all

uses and purposes except this shall not be construed as relieving any party from an obligation of executing and forwarding the original signature pages.

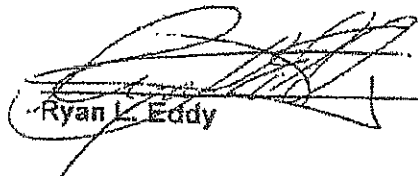
(e) This Assignment shall be deemed to have been drafted by each of the parties to the Assignment.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed this Assignment this 22 day of October 2014.

ATTEST/WITNESS:


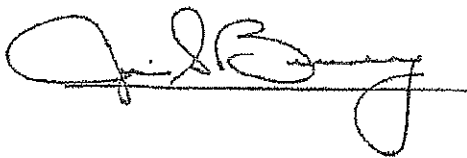


ASSIGNOR:



(SEAL)
Ryan L. Eddy

ASSIGNEE:



(SEAL)
J. Mike Martin

VIP Ventures, LLC



By: (SEAL)
J. Mike Martin, Managing Member

F.K. Everest, Inc.



By: (SEAL)
J. Mike Martin, President

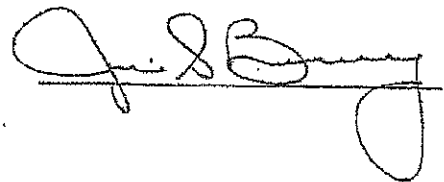


EXHIBIT “B”



COHEN SEGLIAS

PALLAS GREENHALL & FURMAN PC

Roy S. Cohen
Attorney At Law

United Plaza, 19th Floor
30 South 17th Street
Philadelphia, PA 19103

T: 215.564.1700 | F: 267.238.4401
rcohen@cohenseglia.com
www.cohenseglia.com

February 4, 2015

VIA OVERNIGHT DELIVERY & FIRST CLASS MAIL

Mr. Ryan Eddy
4303 Mason Dixon Highway
Core, WV 26541

Re: Unlawful Solicitation of Employees

Dear Mr. Eddy:

This law firm represents J. Mike Martin and F.K. Everest, Inc. I write regarding an urgent matter.

As you know, on or about October 22, 2014, you and Mr. Martin executed a Stock Transfer and Assignment of Membership Interests Agreement. A true and correct copy of this Agreement is attached to this letter. Paragraph 7 of the Agreement provides as follows: "Assignor shall not, during the one-year period immediately following execution of this Assignment, directly or indirectly, by himself or on behalf of any other person, partnership, corporation or business entity, solicit or recruit any employees of the companies."

It has come to our attention that you have breached paragraph 7 of the Agreement by soliciting not one but two employees of F.K. Everest to work for you. Notably, you choose to breach paragraph 7 of the Agreement almost immediately after you received final payment under paragraph 2 of the Agreement. The conduct is unacceptable and it must cease and desist immediately. In other words, going forward you may not speak with any of F.K. Everest employees about working for you or any company in which you have an ownership interest. Nor may you induce or suggest that any F.K. Everest employee leave their employment.

Mr. Martin and F.K. Everest are not waiving any of their rights with respect to this matter. On the contrary, they have instructed us to vigorously protect their legal rights under the Agreement, and to commence litigation against you if necessary.

Mr. Ryan Eddy
February 4, 2015
Page 2

Please be guided accordingly.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Roy S. Cohen", written in a cursive style.

ROY S. COHEN

RSC:jh
Enclosure

EXHIBIT "C"

**STOCK TRANSFER AND ASSIGNMENT OF
MEMBERSHIP INTERESTS**

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D. Ryan L. Eddy is the owner of 33 1/3 % membership interest in VIP Ventures and executed an Operating Agreement, with a Buy-Out Agreement, dated September 6, 2005, as amended February 26, 2014 (collectively, the "Operating Agreement"); and

E. Ryan L. Eddy, as Assignor, desires to transfer all of his entire right, title and interest in and to Everest and VIP Ventures including his stock and membership interests to J. Mike Martin, or his nominee, as Assignee, under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto, intending to be legally bound, mutually agree as follows:

1. Assignment.

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(b) Assignor hereby assigns, transfers, sells and conveys unto Assignee all of his entire right, title and interest in and to forty-nine (49) shares of common stock in Everest, including any rights, title or interest in Everest and under the Repurchase Agreement (collectively, the "Stock Interest"); and

(c) The LLC Interest and Stock Interest may hereinafter be collectively referred to as "Interests." Everest and VIP Ventures may hereinafter be collectively referred to as the "Companies."

2. Payment.

(a) Assignee shall pay to Assignor the total amount of Three Hundred Forty Thousand One Hundred Two Dollars and Twenty Eight Cents (\$340,102.28) (the "Purchase Price"), as set forth on Exhibit A, pursuant to the following schedule and allocation:

<u>Payment Date</u>	<u>FKE</u>	<u>VIP</u>	<u>Total</u>
10/30/2014	\$70,000.00	\$29,486.00	\$99,486.00
11/17/2014	\$40,000.00	\$29,486.00	\$69,486.00
1/15/2015	\$171,130.28		\$171,130.28
	<u>\$281,130.28</u>	<u>\$58,972.00</u>	<u>\$340,102.28</u>

3. Limited Representations. Assignor hereby represents and warrants that he owns the Interests free and clear of any all liens, encumbrances and security interests and he has not assigned, transferred, sold and conveyed the Interests, or any part of them, prior to the execution of this Assignment.

4. Limited Indemnifications.

(a) Assignor agree to indemnify, defend and hold harmless the Assignee and Companies, and their agents, heirs, employees and assigns from and against any and all liabilities, claims, losses, damages, penalties, costs or expenses (including but not limited to court costs and reasonable attorney's fees) relating to or arising by reason of the Interests; provided that these (i) arose before the date of this Assignment; (ii) were caused by the acts and omissions of Assignor; and (iii) were not caused by the acts and omissions of Assignee or Companies; and

(b) Assignee and the Companies Everest agree to indemnify, defend and hold harmless the Assignor, and his agents, heirs, employees and assigns from and against any and all liabilities, claims, losses, damages, penalties, costs or expenses (including but not limited to court costs and reasonable attorney's fees), provided that these (i) relate to or arise by reason of the Interests after the date of this Assignment and Assignor's ownership of the Interests; and (ii) were not caused by the acts and omissions of Assignor.

5. Mutual Releases. The Parties hereby forever release and discharge each other, and their heirs, predecessors, successors, assigns, employees, directors, and officers, from all claims (whether at equity or law, realized or not) relating to and/or arising out of or related to the Interests, the Companies or the Assignor's acquisition, ownership and assignment of the Interests, except the Parties do not release or discharge any claims they may have relating to any breach of this Assignment.

6. Resignation. Assignor does hereby resign as director, officer and employee of Everest and as manager and officer of VIP Ventures.

7. Non-Solicitation of Employees. Assignor shall not, during the one-year period immediately following execution of this Assignment, directly or indirectly, by himself or on behalf of any other person, partnership, corporation or business entity, solicit or recruit any employees of the Companies.

8. Stock and Membership Certificates. Assignor hereby irrevocably constitutes and appoints Assignee to transfer the Interests on the books of the Companies, with full power of substitution. Assignor shall deliver to Assignee the certificates, if any, representing the Interests, duly endorsed in proper form for transfer. If the certificates representing his Interests are not currently in his possession, Assignor certifies that they were not indorsed and that, until execution of this Assignment, he remained the registered and beneficial owner of the Interests.

9. Miscellaneous.

(a) This Assignment shall be construed and enforced under the laws of the laws of the State of West Virginia and all disputes that arise or relate to this Assignment shall be litigated in the state or federal courts of West Virginia located in Morgantown, West Virginia, unless the parties agree otherwise.

(b) This Assignment supersedes all prior and contemporaneous oral or written communications between the parties related to the terms or subject matter of this Assignment, except such written communications as shall have been incorporated herein by reference. The written terms of this Assignment are intended by the parties to be a final written expression of their agreement with respect to such terms, and as a complete and exclusive statement of the terms of the agreement between them. Modifications or amendments may be made in writing and shall only be valid when signed by both parties.

(c) The recitals are incorporated by reference into this Assignment as though the same were fully set forth herein.

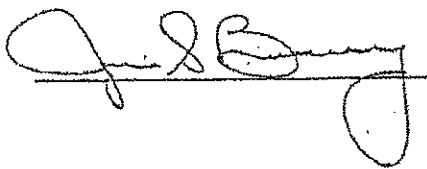
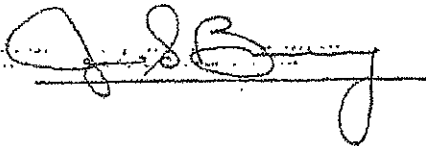
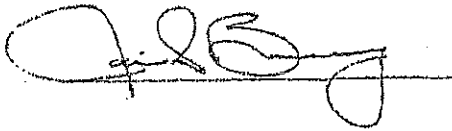
(d) This Assignment shall be executed in two counterparts, each of which shall constitute an original. A telefax signature shall be deemed an original for all

uses and purposes except this shall not be construed as relieving any party from an obligation of executing and forwarding the original signature pages.

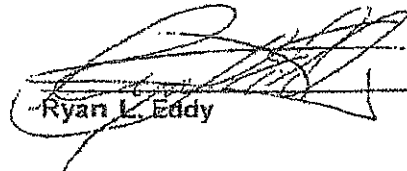
(e) This Assignment shall be deemed to have been drafted by each of the parties to the Assignment.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed this Assignment this 22 day of October 2014.

ATTEST/WITNESS:




ASSIGNOR:



(SEAL)
Ryan L. Eddy

ASSIGNEE:



(SEAL)
J. Mike Martin

VIP Ventures, LLC

By:  (SEAL)
J. Mike Martin, Managing Member

F.K. Everest, Inc.

By:  (SEAL)
J. Mike Martin, President

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

F.K. EVEREST, INC. and
J. MIKE MARTIN,

Plaintiffs,

v.

RYAN L. EDDY, DAVID BRYTE,
INFINITY ELECTRIC, INC., and
ORANGE CONSTRUCTION
CORPORATION,

Defendants.

CIVIL ACTION NO. 15-C-134

MOTION FOR PRELIMINARY INJUNCTION

COMES NOW Plaintiffs F.K. Everest, Inc. and J. Mike Martin (collectively "Plaintiffs"), by and through their undersigned counsel, and move this Honorable Court for a preliminary injunction barring Defendants' further solicitation of F.K. Everest, Inc.'s (hereinafter "FKE") employees and enjoining Defendants' continued employment of FKE employees that Defendants' unlawfully solicited from FKE.

In support of their motion, Plaintiffs allege and argue as follows:

INTRODUCTION AND FACTUAL BACKGROUND

The essential fact of this litigation is that Defendant Ryan L. Eddy ("Eddy") breached a non-solicitation agreement, for which he received nearly \$300,000, by poaching Plaintiffs' employees. In doing so, Eddy acted in concert with the remaining Defendants in an intentional scheme to gut their competitor—and the entity in which Eddy was a prior owner and officer—FKE of its financial and human resources. To date, Eddy has solicited six skilled employees from FKE, from both management and labor, causing immediate and irreparable harm to Plaintiffs. Plaintiffs request that this Court immediately issue a preliminary injunction barring

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EXHIBIT
B

the further solicitation and recruitment of FKE's employees by Defendants and returning the parties to the *status quo* by terminating Defendants' employment of the six wrongfully-recruited former FKE employees.

Eddy was previously employed as FKE's Vice President and also held a minority ownership interest consisting of forty-nine shares of common stock (Compl. ¶ 12.) In October of 2014, Martin and Eddy agreed that Eddy would leave the employ of FKE and sell his ownership interest in the company to Martin (Compl. ¶ 13.) On or about October 22, 2014, Martin, FKE, and Eddy executed a written agreement entitled "Stock Transfer and Assignment of Membership Interest" (the "Stock Transfer Agreement") (Compl. ¶ 14.) *See* Exhibit "A" attached hereto. Pursuant to the Stock Transfer Agreement, Eddy received \$281,130.28 from Martin in exchange for his ownership interest in FKE. (Compl. ¶ 15.) Martin and FKE performed their obligations under the Stock Transfer Agreement (Compl. ¶¶ 16 – 17.) As additional consideration for the buyout, Eddy agreed not to solicit any of FKE's employees for one year (Compl. ¶¶ 18 – 20.)

Immediately upon leaving FKE, Eddy started his own electrical contracting business, Infinity Electric, Inc. ("Infinity") (Compl. ¶ 21.) Infinity is a direct competitor of FKE (Compl. ¶ 22.) After accepting nearly \$300,000 from FKE, much of which undoubtedly provided the initial financing necessary to open Infinity, Eddy wanted the skilled and talented workforce of FKE to operate Infinity, even if it meant breaching his non-solicitation agreement.

Less than two weeks after receiving full payment for his minority interest in FKE, Eddy began soliciting key employees from FKE (Compl. ¶ 31; *see generally* Compl. ¶¶ 29 – 56.) Eddy has so far solicited a project manager, an assistant project manager, two foremen, and two electricians (*see generally* Compl. ¶¶ 29 – 56.) In doing so, Eddy simultaneously deprived a competitor—and his former employer—of key management and labor personnel, while instantly

giving Infinity a skilled and talented workforce to immediately begin competing with FKE. Eddy is intent on destroying FKE by depriving FKE of its goodwill, reputation, and its liquid and human capital, without fulfilling his obligations under the Stock Transfer Agreement.

Eddy is not acting alone. Eddy formed Infinity with Defendant David Bryte ("Bryte") (Compl. ¶ 21.) Bryte also owns Defendant Orange Construction Company ("Orange"), which operates at the same address as Infinity and shares resources with Infinity (Compl. ¶¶ 25 - 27.)¹ Despite having received a cease and desist letter from FKE's counsel, Eddy and Bryte, acting as Infinity and Orange, have conspired to willfully and wantonly plunder FKE's financial and human resources, disregarding Eddy's contractual obligations to FKE (*See, e.g.* Compl. ¶ 28, 57 - 60.) The Court should enforce the terms of the Stock Transfer Agreement and immediately enjoin Defendants' tortious and predatory business practices. Specifically, Plaintiffs respectfully ask that the Court issue a preliminary injunction which (i) prohibits Defendants' continued solicitation and recruitment of FKE's employees; and (ii) requires Defendants to cease employing the six FKE employees which they have already hired.

LEGAL ARGUMENT

The Court should immediately issue a preliminary injunction barring Defendants' solicitation of FKE's employees and terminating Defendants' employment of any already solicited FKE employees. The express terms of the Stock Transfer Agreement, agreed to by Eddy, are clear and unambiguous. Eddy's direct and indirect solicitations of FKE's employees are inconsistent with and in clear violation of the express terms of the Stock Transfer Agreement. Accordingly, Plaintiffs are likely to prevail on their complaint. Furthermore, if Defendants continue taking FKE's key personnel unabated, FKE's ability to operate will be severely diminished, if not altogether destroyed. Monetary damages cannot compensate for such a loss of

¹ Collectively, one or more of Eddy, Bryte, Infinity, and Orange may be referred to as the "Defendants."

business reputation and goodwill in the industry. Thus, FKE's need for injunctive relief is urgent.

A. Legal Standard

The discretion to issue an injunction rests with the trial court. *Sams v. Goff*, 540 S.E.2d 532, 534 (W.Va. 1999). The trial court must exercise its discretion "according to the facts and circumstances of the particular case." *Id.* (quoting *Stuart v. Washington Lake Realty Corporation*, 92 S.E.2d 891 (W.Va. 1956)). The Court must balance the hardships to the parties. *Jefferson County Bd. of Educ. v. Jefferson County Teachers Ass'n.*, 393 S.E.2d 653, 662 (W.Va. 1990) (citing *Severt v. Beckley Coals, Inc.*, 170 S.E.2d 577 (W.Va. 1969)). The *Jefferson County* court recognized the four-part test for issuing a preliminary injunction, as applied in federal courts. *Jefferson County*, 393 S.E.2d at 662. Those four parts are: "(1) the likelihood of irreparable harm to the plaintiff without the injunction; (2) the likelihood of harm to the defendant with an injunction; (3) the plaintiff's likelihood of success on the merits; and (4) the public interest." *Id.* (quoting *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bradley*, 756 F.2d 1048, 1054 (4th Cir. 1985)); accord *State ex rel. East End Ass'n. v. McCoy*, 481 S.E.2d 764, 779 (W.Va. 1996).

In issuing an injunction necessary to enforce a contract, the court will give written contractual terms that are "clear and free from ambiguity...force and effect." *Sams*, 540 S.E.2d at 535. Injunctions enforcing contractual terms, as in *Sams*, are "mandatory" if "the right of an applicant seeking relief is clear and the necessity for such relief is urgent." *Id.* Finally, a legal remedy is only a bar to injunctive relief if the "legal remedy is as practical and efficient to secure the ends of justice and its prompt administration as injunctive relief." *Id.*

B. The Stock Transfer Agreement's Non-Solicitation Terms are Clear and Unambiguous

The Stock Transfer Agreement's non-solicitation terms are clear and unambiguous.

Paragraph No. 7 of the Stock Transfer Agreement provides:

Non-Solicitation of Employees. Assignor shall not, during the one-year period immediately following execution of this Assignment, directly or indirectly, by himself or on behalf of any other person, partnership, corporation or business entity, solicit or recruit any employees of the Companies.

Compl. ¶ 18. As the "Assignor," Eddy is unambiguously barred from directly or indirectly (*i.e.* through Bryte or Orange) soliciting any of FKE's employees for the one-year period from the date of the Stock Transfer Agreement (October 22, 2014) (Compl. ¶ 19.) The Court must give effect to this unambiguous provision and enforce it by granting Plaintiffs the injunctive relief they seek. *Sams*, 540 S.E.2d at 535.

C. The Court Should Grant Plaintiffs a Preliminary Injunction Because Plaintiffs are Likely to Succeed on the Merits and Will Suffer Irreparable Harm if the Injunction is Not Granted

The Court should grant Plaintiffs a preliminary injunction because Plaintiffs' right to relief is clear (*i.e.* they are likely to succeed on the merits), and Plaintiffs are in urgent need of injunctive relief (*i.e.* they are presently suffering irreparable harm, which will continue if a preliminary injunction is not granted). Plaintiffs' right to injunctive relief on both its breach of contract and tortious interference counts (*see* Compl. ¶¶ 67 – 73) is clear. Thus, Plaintiffs' need for injunctive relief is urgent.

1. *Plaintiffs' right to relief under their breach of contract count is clear because Plaintiffs are likely to prevail on the merits; further, the damages caused by Eddy's persistent and ongoing breach of the Stock Transfer Agreement constitute irreparable harm to Plaintiffs*

The facts alleged by Plaintiffs demonstrate a clear and indisputable breach of the Stock Transfer Agreement's non-solicitation provision, and the damages resulting therefrom constitute

irreparable harm to Plaintiffs. A valid and enforceable contract (the Stock Transfer Agreement) existed between Plaintiffs and Eddy (*see* Ex. A.) The existence of the contract is an essential element to a breach of contract claim. *Meade v. Slonaker*, 394 S.E.2d 50, 53 n.2 (W.V. 1990). The remaining elements are breach of the contract and damages arising from the breach. *See Wetzel County Sav. & Loan Co. v. Stern Bros., Inc.*, 195 S.E.2d 732, 736 (W.V. 1973). Plaintiffs' allegations establish a clear right to relief under a breach of contract theory.

First, Plaintiffs' allegations unequivocally establish a breach of the Stock Transfer Agreement's non-solicitation provision. No FKE employee left to join Eddy and Infinity until after FKE paid Eddy all amounts due and owing under the Stock Transfer Agreement (Compl. ¶ 31.) It is not coincidence that Eddy and Defendants waited to solicit FKE's employees until FKE could not retaliate by withholding payments to Eddy. Second, FKE's former employees have admitted that Eddy and Defendants solicited them (Compl. ¶ 53) or refused to answer FKE's questions to this effect (Compl. ¶ 30.) In any event, the loss of six individuals to Eddy and Defendants in less than a month, coupled with the admissions and silence described above provide clear and substantial evidence of Eddy's breach of the Stock Transfer Agreement (and Defendants' tortious interference with it).

Second, West Virginia courts have recognized the validity and enforceability of non-solicitation agreements (sometimes called "non-piracy" agreements) like the one quoted *supra*. *See Wood v. Acordia of West Virginia, Inc.*, 618 S.E.2d 415, 421 - 22 (citing with approval several cases from other jurisdictions enforcing various non-solicitation/non-piracy agreements including *Balasco v. Gulf Auto Holding, Inc.*, 707 So.2d 858 (Fla. Dist. Ct. App. 1998) which, in the *Acordia* court's words, "up[held] a non-piracy agreement prohibiting former sales manager from soliciting or influencing other employees to leave the employer's automobile dealership.")

Because Eddy's non-solicitation clause was given in exchange for consideration of nearly \$300,000 and is for a reasonable period of time, the Court should have no hesitation in enforcing it. *Balasco*, 707 So.2d 858.

Third, Plaintiffs' allegations unequivocally establish that they have suffered irreparable harm as a consequence of Eddy's breach of the Stock Transfer Agreement. Plaintiffs have been irreparably harmed by the loss of six experienced employees to Defendants in less than a month and are in urgent need of injunctive relief because they can ill afford further losses.

Defendants' successful solicitation of two project managers from FKE has caused significant and irreparable harm to FKE. In addition to overseeing projects and ensuring the timely and efficient completion thereof, FKE's project managers were a key repository of its goodwill with clients. FKE's project managers also had access to FKE's confidential and sensitive business information, such as strategic plans to obtain new work and FKE's profit margins (Compl. ¶¶ 34 - 35.) The loss of two experienced project managers, Graffius and Tomaro (*see, e.g.* Compl. ¶¶ 29 - 41), in such a short period of time has caused FKE to suffer the irreparable loss of goodwill, institutional knowledge, skilled project administration, and future business. It would be impossible for FKE, at this point, to quantify the harm Defendants have caused to FKE by breaching and/or interfering with the Stock Transfer Agreement's non-solicitation provision. Any further losses from FKE's project management ranks could be devastating, if not fatal. Injunctive relief is necessary.

Plaintiffs are in further need of injunctive relief because they cannot afford to lose any more labor personnel to Defendants. Defendants have solicited and recruited two foremen, Hardesty and Monroe (*see, e.g.* Compl. ¶¶ 42 - 45, 52 - 56) and two electricians, Sova and Davis (*see, e.g.* Compl. ¶¶ 46 - 51.) The foremen are responsible for supervising multiple

laborers on a project. Without their supervision, FKE's laborers may not work, causing delays to FKE's projects. Without skilled electricians, FKE's ability to timely complete its current labor obligations is in jeopardy. It is impossible for FKE to quantify the harm caused by losing crucial members of its labor force. If FKE suffers additional losses of skilled labor, it may be unable to timely fulfill its contractual obligations on existing projects, exposing FKE to potential consequential and liquidated damages that would constitute irreparable harm to FKE, as FKE would not just suffer financial damages, but significant, yet unquantifiable, losses in goodwill and reputation.² FKE is in urgent need of injunctive relief to maintain its labor force and ability to meet its existing contractual obligations.

Plaintiffs have proven they are likely to prevail on their breach of contract count. Plaintiffs have satisfied every element of a breach of contract claim. Further, Plaintiffs are entitled to injunctive relief because it is urgent that Eddy cease his direct or indirect solicitations of FKE's employees. Additional losses may cripple or destroy FKE's business, which would constitute irreparable harm. Already, the loss of so many skilled employees in such a short period of time will diminish Plaintiffs' reputations and goodwill, constituting irreparable harm. Plaintiffs are entitled to an injunction that enforces the non-solicitation term of the Stock Transfer Agreement and that bars employment of any former FKE employee with Defendants. Such an injunction would, as best as possible, return the parties the *status quo* as it should have been if Eddy had complied with his non-solicitation obligations under the Stock Transfer Agreement.

² A contractor's ability to complete its work on time and in a skilled and professional matter is essential to the contractor's reputation in the marketplace and goodwill with clients. The loss of several skilled managers and laborers is bound to be noticed by others and diminish Plaintiffs' reputation and goodwill, causing irreparable harm to Plaintiffs.

2. *Plaintiffs' right to relief under the tortious interference count is clear because they are likely to prevail on the merits; further, the damages caused by Defendants' persistent and ongoing tortious interference with the Stock Transfer Agreement constitute irreparable harm to Plaintiffs*

Plaintiffs' right to injunctive relief under the tortious interference count is clear. A claim for tortious interference has four elements: "(1) existence of a contractual or business relationship or expectancy; (2) an intentional act of interference by a party outside that relationship or expectancy; (3) proof that the interference caused the harm sustained; and (4) damages." *Torbett v. Wheeling Dollar Sav. & Trust Co.*, 314 S.E.2d 166 (W.V. 1983) (Syllabus point 2). Bryte, Infinity, and Orange have individually, and/or collectively, interfered with the Stock Transfer Agreement.

Plaintiffs have already established the existence of the Stock Transfer Agreement and the enforceability of its non-solicitation clause. Bryte, Infinity, and Orange were aware of the agreement no later than their receipt of Plaintiffs' February 4, 2015 cease and desist letter (Compl. ¶ 57.) Bryte's, Infinity's, and Orange's continued solicitation of—or participation with Eddy in the scheme of soliciting—FKE's employees constitutes an intentional, willful, and malicious act of interference by parties outside of the Stock Transfer Agreement. Plaintiffs' discussion of the harm it has sustained by losing both key management and labor personnel, and resulting damages, in the breach of contract section immediately *supra* satisfies the final elements of Plaintiffs' tortious interference claim. Accordingly, the Court should issue the injunction Plaintiffs seek. See *Melbourne Bros. Const. Co. v. Pioneer Co.*, 384 S.E.2d 857, 860 (W.V. 1989) (discussing circumstances in which defendant tortiously interfered with plaintiff's performance of a construction contract and a preliminary injunction barring further interference was issued.)

In sum, the Court should enjoin Defendants' tortious and wrongful solicitation of Plaintiffs' employees. Plaintiffs have proven a clear right to relief under both its breach of contract and tortious interference claim. Plaintiffs urgently need injunctive relief because any further loss from its management or labor ranks will have significant, but unquantifiable, short and long-term consequences for FKE. *See Sams*, 540 S.E.2d at 535.

D. Plaintiffs' Are Suffering from Irreparable Harm Because Legal Remedies (Damages) Cannot Fully Compensate Plaintiffs

In addition to the irreparable harm identified in Plaintiffs' damages analysis in Section C.1. *supra*, legal remedies cannot fully compensate FKE for Defendants' breach of and/or tortious interference with the Stock Transfer Agreement. Simply put, if Defendants continue soliciting FKE's employees at a rate of six or more a month, in violation of the Stock Transfer Agreement, FKE's operational abilities will become so degraded or altogether impaired that monetary damages could not fully compensate FKE. Plaintiffs' reputation in the marketplace and goodwill will be irreparably diminished by perceived turnover and turmoil. Moreover, Plaintiffs' ability to collect on a legal judgment is very speculative, not because of the merits of Plaintiffs' case, but because Infinity is a new venture and may fail itself or have funds insufficient to satisfy an eventual monetary judgment.

The Court, with an injunction, can end Defendants' unlawful poaching of FKE's employees. It can further return FKE to a level playing field with Defendants by terminating the employment of the former FKE employees now working for Defendants. In doing so, the Court can promptly "secure the ends of justice" by enforcing the Stock Transfer Agreement. *Sams*, 540 S.E.2d at 535. No award of monetary damages will be as prompt or effective as the injunction. Limiting FKE to a legal remedy right now would be impractical and inefficient. It would place FKE's future as a going concern in jeopardy, and it risks leaving a defunct or greatly

diminished FKE holding an empty judgment against Defendants. The Court should issue an injunction because it is the only practical and sure way to prevent Defendants' unlawful and tortious solicitation of FKE's employees, thereby avoiding additional legal damages in the first place.

E. Defendants Will Not be Meaningfully Harmed by Issuing an Injunction, and the Public Interest is Served by Issuing an Injunction

Defendants will not be meaningfully harmed by the Court issuing a preliminary injunction, because Defendants will not lose anything to which they are legally entitled. Eddy, by contract, is not legally entitled to directly or indirectly solicit or recruit FKE's employees. A preliminary injunction enforcing this aspect of the contract will only cement the parties' legitimate expectations and obligations under the Stock Transfer Agreement. Because the preliminary injunction enforces a valid contract, it is also in the public's interest, because the public has an interest in the Courts fairly enforcing contractual provisions when a party breaches a contract. Similarly, Bryte, Infinity, and Orange have no valid or protectable interest in tortuously interfering with the Stock Transfer Agreement. Thus, the injunction will not harm them. Furthermore, the public has an interest in the Court preventing outside parties from maliciously and intentionally causing irreparable harm to a business that has been part of its community for more than ninety years. The Court should not hesitate to grant Plaintiffs the injunctive relief it seeks.

CONCLUSION

The Court should issue an injunction barring Defendants' future solicitation of FKE's employees, consistent with the terms of the Stock Transfer Agreement. The Court should further enjoin Defendants' continued employment of the former FKE employees that Defendants' unlawfully solicited from FKE. Plaintiffs are clearly entitled to such injunctive relief because

they are likely to prevail on the merits of their breach of contract and tortious interference claims. Injunctive relief is urgent and necessary for Plaintiffs because they have suffered and continue to suffer irreparable harm as a consequence of Defendants' poaching of Plaintiffs' skilled managers and laborers. The harm to Plaintiffs is also irreparable because legal damages are insufficient to compensate Plaintiffs. Furthermore, an injunction will not infringe on any of the Defendants legitimate rights or interests, because it will only return the parties to a state of affairs as if Defendants never breached and/or interfered with the Stock Transfer Agreement. Finally, the public has an interest in the enforcement of valid contracts and in preventing irreparable harm to longstanding members of a business community, when such harm is caused by the malicious and tortious actions of competitors.

Accordingly, FKE has satisfied the legal standard for obtaining an injunction in West Virginia, and the Court should immediately issue the injunction Plaintiffs seek.

Date: February 23, 2015

Respectfully submitted,

E.K. EVEREST, INC. and
J. MIKE MARTIN,



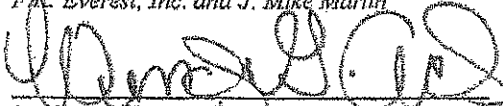
Jonathan Landesman, Esq. (*Pro Hac Vice*
Application Forthcoming)

COHEN SEGLIAS PALLAS GREENHALL &
FURMAN, P.C.

30 South 17th Street, 19th Floor
Philadelphia, PA 19103
(215) 564-1700

jlandesman@cohenseglias.com

Appearing as Lead Counsel for Plaintiffs
E.K. Everest, Inc. and J. Mike Martin



Stephen M. LaCagnin, Esq. (WV Bar No. 2118)

Wendy G. Adkins, Esq. (WV Bar No. 9412)

JACKSON KELLY PLLC

150 Clay Street, Suite 500

P.O. Box 619

Morgantown, WV 26507-0619

(304) 284-4136

wadkins@jacksonkelly.com

slacagnin@jacksonkelly.com

Appearing as Local Counsel for Plaintiffs

*at permission
#9412*

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

F.K. EVEREST, INC. and
J. MIKE MARTIN,

Plaintiffs,

v.

RYAN L. EDDY, DAVID BRYTE,
INFINITY ELECTRIC, INC., and
ORANGE CONSTRUCTION
CORPORATION,

Defendants.

CIVIL ACTION NO. 15-C-134

VERIFICATION

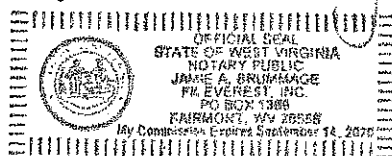
I, J. Mike Martin, after making an oath or affirmation to tell the truth, say that the facts I have stated in this Motion for Preliminary Injunction are true of my personal knowledge; and if I have set forth matters upon information given to me by others, I believe that information to be true.

J. Mike Martin
Signature

2/20/15
Date

This verification was sworn to or affirmed before me on the 20th day of February, 2015.

[Signature]
Notary Public/Other Official



My commission expires: September 14, 2020

EXHIBIT A

**STOCK TRANSFER AND ASSIGNMENT OF
MEMBERSHIP INTERESTS**

This Stock Transfer and Assignment of Membership Interests Agreement (the "Assignment") is made this 22 day of October 2014, by and among RYAN L. EDDY, (the "Assignor"), J. MIKE MARTIN (the "Assignee") and F.K. EVEREST, INC., a West Virginia corporation ("Everest") and VIP VENTURES, LLC, a West Virginia limited liability company ("VIP Ventures"), collectively the "Parties."

Recitals:

A. Everest, an electrical contractor, was incorporated in West Virginia on December 19, 1949;

B. Ryan L. Eddy is the owner of forty-nine (49) shares of common stock in Everest and executed a Key-Man Stock Repurchase Agreement dated May 16, 2008, 2000 (the "Repurchase Agreement");

C. VIP Ventures was formed on March 31, 2004 as a West Virginia limited liability company; VIP Ventures is the owner of the real estate and improvements located at 140 Business Park Drive, Fairmont, WV 26554 (the "Property");

D. Ryan L. Eddy is the owner of 33 1/3 % membership interest in VIP Ventures and executed an Operating Agreement, with a Buy-Out Agreement, dated September 6, 2005, as amended February 26, 2014 (collectively, the "Operating Agreement"); and

E. Ryan L. Eddy, as Assignor, desires to transfer all of his entire right, title and interest in and to Everest and VIP Ventures including his stock and membership interests to J. Mike Martin, or his nominee, as Assignee, under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto, intending to be legally bound, mutually agree as follows:

1. Assignment.

(a) Assignor hereby assigns, transfers, sells and conveys unto Assignee all of his entire right, title and membership interest in and to VIP Ventures, including any rights, title or interest (i) in any profits, losses and capital of VIP Ventures; (ii) the Property; and (iii) under the Operating Agreement (collectively, the "LLC Interest");

(b) Assignor hereby assigns, transfers, sells and conveys unto Assignee all of his entire right, title and interest in and to forty-nine (49) shares of common stock in Everest, including any rights, title or interest in Everest and under the Repurchase Agreement (collectively, the "Stock Interest"); and

(c) The LLC Interest and Stock Interest may hereinafter be collectively referred to as "Interests." Everest and VIP Ventures may hereinafter be collectively referred to as the "Companies."

2. Payment.

(a) Assignee shall pay to Assignor the total amount of Three Hundred Forty Thousand One Hundred Two Dollars and Twenty Eight Cents (\$340,102.28) (the "Purchase Price"), as set forth on Exhibit A, pursuant to the following schedule and allocation:

<u>Payment Date</u>	<u>FKE</u>	<u>VIP</u>	<u>Total</u>
10/30/2014	\$70,000.00	\$29,486.00	\$99,486.00
11/17/2014	\$40,000.00	\$29,486.00	\$69,486.00
1/15/2015	\$171,130.28		\$171,130.28
	\$281,130.28	\$58,972.00	\$340,102.28

3. Limited Representations. Assignor hereby represents and warrants that he owns the Interests free and clear of any all liens, encumbrances and security interests and he has not assigned, transferred, sold and conveyed the Interests, or any part of them, prior to the execution of this Assignment.

4. Limited Indemnifications.

(a) Assignor agree to indemnify, defend and hold harmless the Assignee and Companies, and their agents, heirs, employees and assigns from and against any and all liabilities, claims, losses, damages, penalties, costs or expenses (including but not limited to court costs and reasonable attorney's fees) relating to or arising by reason of the Interests; provided that these (i) arose before the date of this Assignment; (ii) were caused by the acts and omissions of Assignor; and (iii) were not caused by the acts and omissions of Assignee or Companies; and

(b) Assignee and the Companies Everest agree to indemnify, defend and hold harmless the Assignor, and his agents, heirs, employees and assigns from and against any and all liabilities, claims, losses, damages, penalties, costs or expenses (including but not limited to court costs and reasonable attorney's fees), provided that these (i) relate to or arise by reason of the interests after the date of this Assignment and Assignor's ownership of the Interests; and (ii) were not caused by the acts and omissions of Assignor

5. Mutual Releases. The Parties hereby forever release and discharge each other, and their heirs, predecessors, successors, assigns, employees, directors, and officers, from all claims (whether at equity or law, realized or not) relating to and/or arising out of or related to the Interests, the Companies or the Assignor's acquisition, ownership and assignment of the Interests, except the Parties do not release or discharge any claims they may have relating to any breach of this Assignment.

6. Resignation. Assignor does hereby resign as director, officer and employee of Everest and as manager and officer of VIP Ventures.

7. Non-Solicitation of Employees. Assignor shall not, during the one-year period immediately following execution of this Assignment, directly or indirectly, by himself or on behalf of any other person, partnership, corporation or business entity, solicit or recruit any employees of the Companies.

8. Stock and Membership Certificates. Assignor hereby irrevocably constitutes and appoints Assignee to transfer the Interests on the books of the Companies, with full power of substitution. Assignor shall deliver to Assignee the certificates, if any, representing the Interests, duly endorsed in proper form for transfer. If the certificates representing his Interests are not currently in his possession, Assignor certifies that they were not indorsed and that, until execution of this Assignment, he remained the registered and beneficial owner of the Interests.

9. Miscellaneous.

(a) This Assignment shall be construed and enforced under the laws of the laws of the State of West Virginia and all disputes that arise or relate to this Assignment shall be litigated in the state or federal courts of West Virginia located in Morgantown, West Virginia, unless the parties agree otherwise.

(b) This Assignment supersedes all prior and contemporaneous oral or written communications between the parties related to the terms or subject matter of this Assignment, except such written communications as shall have been incorporated herein by reference. The written terms of this Assignment are intended by the parties to be a final written expression of their agreement with respect to such terms, and as a complete and exclusive statement of the terms of the agreement between them. Modifications or amendments may be made in writing and shall only be valid when signed by both parties.

(c) The recitals are incorporated by reference into this Assignment as though the same were fully set forth herein.

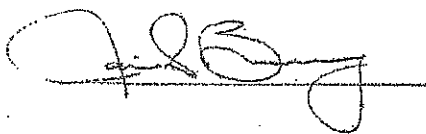
(d) This Assignment shall be executed in two counterparts, each of which shall constitute an original. A telefax signature shall be deemed an original for all

uses and purposes except this shall not be construed as relieving any party from an obligation of executing and forwarding the original signature pages.


(e) This Assignment shall be deemed to have been drafted by each of the parties to the Assignment.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed this Assignment this 22 day of October 2014.

ATTEST/WITNESS:


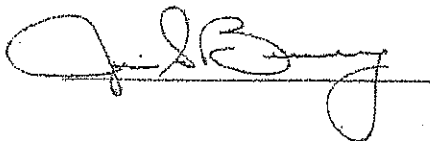


ASSIGNOR:



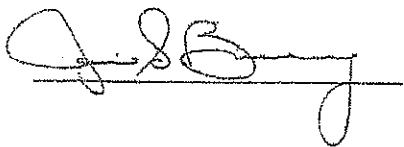
Ryan L. Eddy (SEAL)

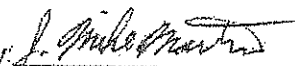
ASSIGNEE:



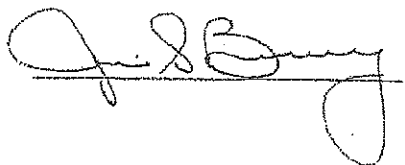
J. Mike Martin (SEAL)

VIP Ventures, LLC



By:  (SEAL)
J. Mike Martin, Managing Member

F.K. Everest, Inc.



By:  (SEAL)
J. Mike Martin, President

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

F.K. EVEREST, INC.,
and J. MIKE MARTIN,

Plaintiffs,

v.

CIVIL ACTION NO.: 15-C-134

RYAN L. EDDY, DAVID BRYTE,
INFINITY ELECTRIC, INC., and
ORANGE CONSTRUCTION CORPORATION,


Defendants.

CERTIFICATE OF SERVICE

I, Wendy G. Adkins, do hereby certify that I served the foregoing, "MOTION FOR PRELIMINARY INJUNCTION," upon the following, *via* personal service, hand-delivery, on the 24th day of February, 2015:

Ryan Eddy
Infinity Electric, Inc.
170 Old Cheat Road
Morgantown, WV 26508
Pro Se Defendants

David Bryte
Orange Construction Corporation
170 Old Cheat Road
Morgantown, WV 26508
Pro Se Defendants


Wendy G. Adkins, Esquire
WVSB LD. #9412