

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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CLERK
KANAWHA COUNTY CIRCUIT COURT

DORAN H. FRAME, III, and HIDDEN TRAILS
MOTORSPORTS AND RENTALS, LLC,
a West Virginia limited liability company, and
HIDDEN TRAILS MOTORSPORTS, LLC,
a West Virginia limited liability company,
Plaintiffs,

v.

CIVIL ACTION NO: 15-C-

ERIC HOLCOMB; HIDDEN TRAILS POWER
SPORTS AND RENTALS, LLC, a West Virginia
limited liability company; HIDDEN TRAILS
RECREATIONAL VEHICLES, MOTORCYCLES
& TRAILERS, LLC, a West Virginia limited liability
company; and BLAKE PROPERTIES, LLC,
a West Virginia limited liability company
Defendants.

VERIFIED COMPLAINT

NOW COME plaintiffs, Doran H. Frame, III and Hidden Trails Motorsports and Rentals, LLC, a West Virginia limited liability corporation, and for their Complaint, state as follows:

PARTIES

1. At all times relevant herein, plaintiff Doran H. Frame, III ("Frame") was a resident of Charleston, Kanawha County, West Virginia.

2. At all times relevant herein, plaintiff Hidden Trails Motorsports and Rentals, LLC ("HTMR"), was a West Virginia limited liability company, with its principal place of business at Post Office Box 3426, Charleston, Kanawha County, West Virginia 25334.

3. At all times relevant herein, plaintiff Hidden Trails Motorsports, LLC ("HTM"), was a West Virginia limited liability company, with its principal place of business at Post Office Box 3426, Charleston, Kanawha County, West Virginia 25334 (HTMR and HTM hereafter collectively "New Hidden Trails").

4. At all times relevant herein, defendant Eric Holcomb ("Holcomb") was a resident of Belle, Kanawha County, West Virginia.

5. At all times relevant herein, defendant Hidden Trails Recreational Vehicles, Motorcycles & Trailers, LLC, ("HTRVMT") was a limited liability company organized under the laws of the State of West Virginia, with its principal place of business at 3014 East DuPont Avenue, Belle, West Virginia 25015. Defendant Holcomb is, upon information and belief, the sole member, manager and controller of HTR, and it is liable for all his conduct as stated herein under the doctrine of "*respondeat superior*."

6. At all times relevant herein, defendant Hidden Trails Powersports and Rentals, LLC ("HTP") was a limited liability company organized under the laws of the State of West Virginia, with its principal place of business at 3014 East DuPont Avenue, Belle, West Virginia 25015. Defendant Holcomb is, upon information and belief, the sole member, manager and controller of HTM, and it is liable for all his conduct as stated herein under the doctrine of "*respondeat superior*."

7. At all times relevant herein, defendant Blake Properties, LLC ("Blake"), was a West Virginia limited liability company organized under the laws of the State of West Virginia, with its principal place of business as 1 Riverview Drive, Pratt, West Virginia 25162. Defendant Holcomb is, upon information and belief, the sole member,

manager and controller of Blake Properties, and it is liable for all his conduct as stated herein under the doctrine of "*respondeat superior*."

VENUE

8. Venue is appropriate in this Court pursuant to W.Va. Code §51-1-1 because the defendants are all residents of Kanawha County, West Virginia, and the claims brought herein are based upon tortious actions and breaches of contract which occurred in Kanawha County, West Virginia.

BACKGROUND

9. In the fall of 2012, defendant Holcomb, approached plaintiff Frame with a proposal to sell Frame his equity ownership in HTP and HTRVMT (hereafter collectively "Old Hidden Trails") an all-terrain vehicle retailer and service provider situated in Shrewsbury, Kanawha County, West Virginia.

10. The parties entered into negotiations, and on or about December 5, 2012, defendant Holcomb, acting in his capacity as the owner, controller, and agent of Old Hidden Trails and Blake, caused Frame to be provided with certain financial information regarding Old Hidden Trails, including a Consolidated Income Statement purporting to reflect revenues from January 1, 2011, through December 31, 2011, a Balance Sheet dated October 31, 2012, and a "P&A Inventory Detail" as of November 30, 2012, which purported to individually list and value all parts and accessories owned by Old Hidden Trails as of that day.

11. Both the aforesaid Balance Sheet and P&A Inventory Detail represented that the value of the aforesaid parts and accessory inventory owned by Old Hidden Trails was valued at a total of Five Hundred Five Thousand Fourteen Dollars and Thirty-Nine Cents (\$505,014.39). The Consolidated Income Statement further stated and represented that in 2011, Old Hidden Trails had total parts and accessories sales revenues of Four hundred Fifteen Thousand One Hundred Twenty-Nine Dollars and Forty Cents (\$415,129.40) and total service revenues of Eighty-One Thousand Three Hundred Ninety-Four Dollars and Thirteen Cents (\$81,394.13).

12. In reliance upon the aforesaid information provided by defendants, plaintiff Frame entered into a Buy-Sell Agreement dated December 6, 2012, ("Buy-Sell") with Holcomb acting individually and as "one hundred percent (100%) owner" of the Old Hidden Trails, and on their behalf. The Buy-Sell was drafted by Holcomb and/or his paid consultants. Contemporaneously therewith plaintiff made a "good faith" payment toward the agreed purchase price in the amount of Twenty Thousand Dollars (\$20,000.00)

13. Pursuant to paragraph 1 of the aforesaid Buy-Sell Agreement, plaintiff Frame agreed to pay an aggregate amount of Five Hundred Fifteen Thousand Dollars (\$515,000.00), which value was substantially predicated upon the value of inventory as stated represented by the documents provided to plaintiff Frame by the defendants, as aforesaid.

14. The Buy-Sell Agreement at paragraph 3, further provides that "following the consummation of the buy-sell agreement," that the businesses operated by Old Hidden Trails, reformed under new ownership entities, would continue to lease the premises "where [Old Hidden Trails] operations' are currently located and execute new

lease agreements with terms included on a Schedule C." The premises where Old Hidden Trails was then located consisted of two buildings situated in Shrewsbury, West Virginia, of which each of which is owned by defendant Blake.

15. Schedule C to the Buy-Sell provides, in relevant part, that the "parties hereto will enter into a new lease agreement for a period of eight years beginning January 1, 2013, for the sum of Eight Thousand Dollars per month due on the first month." This rental amount was negotiated and agreed to by plaintiff in reliance upon the aforesaid financial information provided to plaintiff Frame by defendants, as aforesaid including the aforesaid inventory valuation and service revenue figures.

16. In paragraph 4 of the Buy-Sell, it was further agreed that plaintiffs would "agree to employ" defendant Holcomb for a period of twelve (12) months, and that Holcomb would remain so employed for at least twelve months to assist during the transition period.

17. In paragraph 10, the Buy-Sell Agreement further provides that Holcomb will execute a non-compete agreement at the time of closing for a period of not less than eight (8) years, unless sooner terminated by the termination of the lease agreement discussed in Schedule C.

18. On January 1, 2013, in order to fulfill his obligations under the Buy-Sell Agreement, plaintiff Frame established New Hidden Trails as the entities acquiring Old Hidden Trails in order to fulfill obligations undertaken in the Buy-Sell.

19. In fulfillment of his aforesaid obligations under the Buy-Sell, plaintiff Frame also caused plaintiff HTMR to enter into two separate lease agreements drafted by Holcomb and/or his consultants, each dated December 31, 2012, leasing the location

premises their housing the Old Hidden Trails operations from defendant Blake for a term of eight years (8) at a total rental rate of Eight Thousand Dollars (\$8,000.00) per month due on the first of each month. These leases were entered into in reliance the aforesaid financial information provided by defendant including the inventory valuations and other statements made to plaintiff Frame by defendants all as aforesaid.

20. Following the execution of the Buy-Sell in December 2012, defendant Holcomb and his paid consultants prepared and submitted credit applications on behalf of New Hidden Trails to Old Hidden Trails' product line suppliers and manufacturers on behalf of plaintiff, in accordance with paragraph five (5) of the Buy-Sell.

21. In early January of 2013, defendant Holcomb represented to plaintiff Frame that he had performed a hand counted "hard inventory" at the end of calendar year 2012, which he further represented that the results of the aforesaid "hard inventory" confirmed a total value of the parts and accessory inventory owned by Old Hidden Trails on December 31, 2012, which was "well over \$505,000.00."

22. On March 4, 2013, the parties executed two additional agreements related to the Buy-Sell Agreement entitled "Bill of Sale" and "Covenant Not to Compete," both of which were drafted by defendant Holcomb and/or his hired consultants. Contemporaneous therewith, plaintiff paid the balance of the purchase price of Five Hundred Fifteen Thousand Dollars (\$515,000.00) due under the Buy-Sell.

23. The Bill of Sale, which was drafted by defendants and their paid consultants provides, in relevant part, that in consideration of the payment of the sum of Five Hundred and Fifteen Thousand Dollars (\$515,000.00), defendants "do hereby sell and transfer" to plaintiff New Hidden Trails, the various described personal property

located in the County of Kanawha, State of West Virginia, listed in attachments A and B. Attachment A is the aforementioned inventory list dated December 1, 2012, in which defendants stated that the total inventory being sold was valued at Five Hundred Five Thousand Fourteen Dollars and Thirty-Nine Cents (\$505,014.39). Accordingly, the Bill of Sale repeats the statements and representations regarding the value of Old Hidden Trails inventory which defendants made in December 2012.

24. In the body of the Bill of Sale, defendants further expressly warrant that they are "the lawful owner in every respect of all the described property, and that the property is free and clear of all liens." They further agree to "warrant and defend the title to the described property to the buyer."

25. The covenant not to compete provides, in relevant part:

3. Agreement Not To Compete.

The Seller, Shareholder and Shareholder's Spouse covenant and agree that for a period of eight years (8) after the date of this Agreement they will not, without the prior written consent of the Purchaser, directly or indirectly compete with Purchaser within the territory comprised of Two Hundred (200) air miles of 3014 DuPont Avenue, Belle, Kanawha County, West Virginia, (the "Territory") whether:

- (a) For themselves;
- (b) As a consultant, owner, shareholder, director, officer, member, partner, manager, supervisor, employee of a Competing Business;
- (c) As an independent contractor for a Competing Business or all or any part of any Competing Business; or
- (d) Be associated in any capacity with any Competing Business.

4. Agreement Not To Solicit Customers.

The Member and Seller covenant and agree that for a period of Eight (8) years following the date of this Agreement they will not, without the prior written consent of the Purchaser, either directly or indirectly on their own behalf or on the behalf of others:

- (a) solicit, service, divert, or appropriate to any Competing Business;
- (b) attempt to solicit, divert, or appropriate to or for any Competing Business; or
- (c) agree to provide, accept an offer to provide, or provide services which are the same or are essentially the same as the services constituting the Business to or from those persons or entities who are now or who were within Eight (8) years preceding the date of this Agreement or who were solicited to be but were not actually, within Eight (8) years preceding the date of this Agreement, customers of the Business of Seller.

26. At the time they were made by the defendants, the statements and representations made orally by defendant Holcomb and contained in the aforesaid financial statements provided on December 1, 2012, and repeated in the Bill of Sale in March of 2013, that Old Hidden Trails' inventory had a value of Five Hundred Five Thousand Fourteen Dollars and Thirty-Nine Cents (\$505,014.39) were materially false, and known to be materially false by the defendants.

27. From January 21, 2013, through May, 2013, defendant Holcomb worked at New Hidden Trails, managing its operations including management of its inventory and inventory tracking system. During this time he took steps to actively conceal the material misrepresentations that had been made both orally and on the documents dated December 1, 2012, and repeated in March of 2013, all as aforesaid.

28. In April 2013, New Hidden Trails switched dealer management software systems, which included a new inventory tracking system. Beginning on April 1st New Hidden Trails attempted to perform a so-called hard inventory, hand counting parts and accessories, as they were moved from their previous location to a newly built out space in defendant Blake's building. As the aforesaid "hard inventory" was performed plaintiffs began to notice that many items listed on the December 5, 2012, P&A inventory were.

not part of the physical inventory purchased by New Hidden Trails and others were materially different than represented and valued therein. Shortly thereafter, defendant Holcomb departed New Hidden Trails in May of 2013.

29. In October of 2014, a hand counted inventory review was finally completed by plaintiffs, which showed inventory valued at over Two Hundred Thousand Dollars (\$200,000.00) less than represented by defendants as aforesaid. This discrepancy cannot be accounted for with regard to sales that occurred since January 1, 2013. The results of the hand counted inventory were confirmed by a second "hard inventory" completed by New Hidden Trails in December of 2014.

30. The hard inventory further revealed that many items listed on the inventory sheet provided in December of 2012, and repeated in March of 2013, were not owned by and did not exist in the inventory of old Hidden Trails at that time. It was only following this hard inventory in 2014, that plaintiffs were reasonably able to determine that they had been defrauded and that the scope of the misrepresentations that had been made to them in and the negotiations leading up to the Buy-Sell Agreement.

31. Plaintiff has further become aware, through conversations with individuals who worked for Old Hidden Trails, that the service department revenues listed on the consolidated statements provided by defendants in December of 2012 were significantly inflated as well.

**COUNT I – FRAUD AND MISREPRESENTATION AGAINST ALL
DEFENDANTS**

32. Plaintiffs restate and incorporate each and every allegation contained herein in paragraphs 1 through 31.

33. The information provided plaintiffs, both orally and in the financial statements, all as aforesaid, including the statements regarding the valuation of the parts and accessories inventory being sold and the Old Hidden Trails revenues from parts and service operations, all as aforesaid, constituted intentional material misrepresentations made by the defendants to plaintiff known to be false.

34. Plaintiffs reasonably relied to their detriment upon the aforesaid material misrepresentations in deciding to enter into and execute the Buy-Sell Agreement and the related leases and Bill of Sale, and to make payments thereunder.

35. As a result of these fraudulent misrepresentations, plaintiffs have suffered losses, damages in excess of Two Hundred Thousand Dollars (\$200,000.00), including financial losses, for which the defendants liable jointly and severally.

COUNT II – BREACH OF WARRANTY AGAINST ALL DEFENDANTS

36. Plaintiffs restate and incorporate each and every allegation contained herein in paragraphs 1 through 35.

37. The material misrepresentations contained in the financial statements regarding the value of the inventory being sold of all as aforesaid, constitute breaches of the warranties given by defendants to plaintiffs in the March 4, 2013 Bill of Sale.

38. As a result of these breaches of warranty, plaintiffs have suffered financial losses in excess of Two Hundred Thousand Dollars (\$200,000.00) for which the all the defendants are liable jointly and severally.

COUNT III - NEGLIGENT MISREPRESENTATION AGAINST ALL DEFENDANTS

39. Plaintiffs restate and incorporate each and every allegation contained herein in paragraphs 1 through 38.

40. In the alternative, defendant was negligent in making the aforesaid misrepresentations regarding revenues from the parts and services operations in the financial statements provided to plaintiffs in December of 2012, all as aforesaid.

41. The aforesaid misrepresentations have caused financial harm and damage to plaintiffs in excess of Two Hundred Thousand Dollars (\$200,000.00) and for which defendants are liable jointly and severally.

COUNT IV - UNJUST ENRICHMENT AGAINST ALL DEFENDANTS

42. Plaintiffs restate and incorporate each and every allegation contained herein in paragraphs 1 through 41.

43. Defendants have been unjustly enriched by the fraudulent misrepresentations and wrongful actions of defendants, all as aforesaid.

44. As a result thereof, plaintiffs have suffered financial damages in excess of Two Hundred Thousand Dollars (\$200,000.00) for which defendants are liable jointly and severally.

COUNT V - BREACH OF NONCOMPETE AGREEMENT AGAINST DEFENDANT ERIC HOLCOMB

45. Plaintiffs restate and incorporate each and every allegation contained herein in paragraphs 1 through 44.

46. In spite of the contractual obligations assumed by defendant Holcomb under the covenant not to compete on information and belief, since his departure from HTP, on information and belief, defendant has engaged in activities that violate and breach terms of said agreement, including to wit: soliciting customers; offering ATV repair services out of his home and connected outbuildings; and manufacturing and selling ATV parts to individuals who would otherwise be customers of New Hidden Trails.

47. As a result of defendants wrongful actions plaintiffs have suffered financial damages and loss for which defendant Holcomb is liable.

WHEREFORE, plaintiffs demand judgment of and from defendants, jointly and severally, for:

- 1) compensatory damages in an amount to be determined by the Court sufficient to compensate plaintiffs for their damages as aforesaid;
- 2) punitive damages in an amount to be determined by the Court;
- 3) an order, pursuant to the equitable powers enjoining enforcement of the aforesaid leases, and cancelling and terminating the same as procured by fraud and/or re-forming the same to give credit/offset for which it has lost as a result of the actions of the defendants of the aforesaid;
- 4) an order enjoining defendant Holcomb from further breaches of the aforesaid Non-Compete Agreement;

5) disgorgement of unjust monetary benefits enjoyed by defendants as a result of their wrongful conduct; and

6) interest from the date the damages occurred, their costs of this action, statutory fees and penalties, and such other relief as the Court may deem just.

PLAINTIFFS DEMAND A TRIAL BY JURY.

DORAN H. FRAME, III, HIDDEN
TRAILS MOTORSPORTS AND
RENTALS, LLC, and HIDDEN TRAILS
MOTORSPORTS, LLC,
By Counsel,



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STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

VERIFICATION

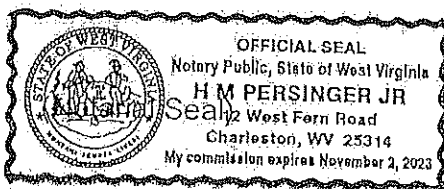
I, Doran H. Frame, III, personally appeared before the undersigned attesting officer duly qualified to administer oaths, and after being duly sworn, depose and state on oath that the information contained in the "Verified Complaint" was assembled at my direction and is believed to be true and correct to the best of my knowledge, information and belief. Further, the word usage and sentence structure may be that of the attorney assisting in the preparation of the Complaint and do not necessarily purport to be my precise language.

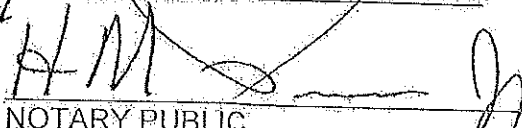
This 8 day of April, 2015.


Doran H. Frame, III

Taken, subscribed and sworn to before me this 8th day of April, 2015.

My commission expires: 11/02/23




NOTARY PUBLIC