

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

DAVANTIC, LLC,

Plaintiff,

v.

**MICHAEL P. THOMPSON, REALCORP,
LLC, VAL YOUNG, MPT REALTY, LLC, and
TOP PROPERTIES, LLC,**

Defendants.

2016 JUL 13 PM 2:44
CATHY L. KING
KANAWHA COUNTY CLERK OF COURT

**Civil Action No. 16-C-304
Judge King**

**PLAINTIFF'S ANSWER TO COUNTERCLAIM FOR DECLARATORY JUDGMENT ASSERTED
BY MICHAEL P. THOMPSON, REALCORP, LLC, AND VAL YOUNG**

Now into Court through undersigned counsel comes the Plaintiff, Davantic, LLC to file this Answer, Affirmative Defenses, and Motion to Dismiss to the Counterclaim for Declaratory Judgment filed by Michael P. Thompson, Realcorp, LLC, and Val Young (hereinafter collectively the "Defendants"), and asserts the following:

Answer

1. The Plaintiff admits paragraphs 2, 7, 8, 9, 12, 13, 15, 20, and 21 of the Counterclaim for Declaratory Judgment.
2. The Plaintiff denies for lack of sufficient information paragraphs 1, 14, 18, 19, 22, 24, 25, 26, and 28 of the Counterclaim for Declaratory Judgment.
3. The Plaintiff denies paragraphs 3, 4, 5, 6, 10, 11, 23, 27, and 29 of the Counterclaim for Declaratory Judgment. The Plaintiff denies any allegations contained in the Defendants' Counterclaim for Declaratory Relief which are not specifically addressed in paragraphs 1 and 2 above. The Plaintiff denies that Ronald McCowan is the sole member of Davantic, LLC and asserts that Karlene McCowan is the proper member of Davantic, LLC.

4. As to paragraph 16, the Plaintiff denies that it was filed on September 15, 2015 by the Plaintiff. However, the West Virginia Secretary of State filed on said date. Further, the Plaintiff states that the company has not been terminated because the Secretary of State retroactively corrected the Articles of Termination, and further reinstated the Plaintiff's corporate status as being proper and in good standing. Further, the allegations contained in paragraph 17 are admitted only to the extent that the West Virginia Secretary of State issued a Certificate of Termination. However, this Plaintiff denies said termination was effective due to the retroactive effect of correction and reinstatement, as specifically set forth in the West Virginia Code.

Affirmative Defenses

5. The Plaintiff corrected the filed termination record pursuant to West Virginia Code §31B-2-207, and the correction was effective retroactively pursuant to subsection c. Further, the West Virginia Secretary of State also issued the Plaintiff a full Certificate of Reinstatement. See Exhibit A reinstating Davantic, LLC to full proper status. The West Virginia Secretary of State also issued a Certificate of Existence after the faulty termination was properly corrected. See Exhibit B showing that the Plaintiff is a proper entity in good status under West Virginia law. All of this occurred long before the Plaintiff filed this civil action. West Virginia Code §31B-2-207 provides:

§31B-2-207. Correcting filed record.

(a) A limited liability company or foreign limited liability company may correct a record filed by the secretary of state if the record contains a false or erroneous statement or was defectively signed.

(b) A record is corrected:

(1) By preparing articles of correction that:

(i) Describe the record, including its filing date, or attach a copy of it to the articles of correction;

(ii) Specify the incorrect statement and the reason it is incorrect or the manner in which the signing was defective; and

(iii) Correct the incorrect statement or defective signing; and

(2) By delivering the corrected record to the secretary of state for filing.

(c) Articles of correction are effective retroactively on the effective date of the record they correct except as to persons relying on the uncorrected record and adversely affected by the correction. As to those persons, articles of correction are effective when filed. (emphasis added)

6. Pursuant to West Virginia Code §31B-2-207, the faulty termination was corrected, and a Certificate of Existence was issued by the West Virginia Secretary of State on both November 13, 2015, and on February 3, 2016, showing the company in proper standing and not defunct as alleged by the Defendants further showing that the Plaintiffs limited liability company status had not been revoked or administratively dissolved. See Exhibits B and C. Further, the West Virginia State Tax Department issued a Statement of Good Standing for the Plaintiff effective January 29, 2016, and June 30, 2016. See Exhibits D and E. The Plaintiff further asserts that it submitted Articles of Correction for Limited Liability Company to the West Virginia Secretary of State in accordance with West Virginia Code §31B-2-207, resulting in correction of the faulty termination and its return to full and proper status. See the Articles of Correction attached as Exhibit F. See also the attached exhibits showing good standing and full reinstatement, which existed both prior to and after the filing of this civil action.
7. The Plaintiff further asserts as an Affirmative Defense the provisions contained in West Virginia Code §31B-8-811, entitled Reinstatement following administrative dissolution, which provides as follows:

§31B-8-811 Reinstatement following administrative dissolution.

(a) A limited liability company administratively dissolved may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must:

- (1) Recite the name of the company and the effective date of its administrative dissolution;
- (2) State that the ground for dissolution either did not exist or have been eliminated;
- (3) State that the company's name satisfies the requirements of section 1-105; and
- (4) Contain a certificate from the tax commissioner reciting that all taxes owed by the company have been paid.

(b) If the secretary of state determines that the application contains the information required by subsection (a) of this section and that the

information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate.

(c) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the company may resume its business as if the administrative dissolution had never occurred.
(emphasis added)

8. The Plaintiff asserts that it complied with the process of administrative reinstatement, which provided a retroactive effect, and that the Plaintiff was returned to good standing with the West Virginia Secretary of State and the West Virginia State Tax Department, both prior to and after the filing of this lawsuit. See Certificate of Reinstatement attached as Exhibit A. Moreover, the Plaintiff is currently in good standing with the West Virginia Secretary of State and the West Virginia State Tax Department. See Exhibits A-E attached hereto.
9. The Plaintiff asserts that the Declaratory Judgment by the Defendants should be denied because the Plaintiff properly filled out Articles of Correction pursuant to West Virginia Code §31B-2-207. See Exhibit F. The Articles of Correction were submitted by the proper member of the limited liability company. See Exhibit G showing Karlene McCowan as the company member of the Plaintiff, Davantic LLC. Therefore, the Plaintiff was returned to good standing and thereafter reinstated by the West Virginia Secretary of State pursuant to §31B-8-811 prior to the filing of this civil action. The Plaintiff complied with any and all provisions of the Uniform Limited Liability Act as promulgated by the West Virginia Legislature. Therefore, as a matter of law, the Plaintiff is not a defunct company, and is a viable entity as set forth in the Certificates of Reinstatement and Certificates of Good Standing attached hereto as Exhibits A, B, C, D, and E.
10. The Plaintiff further hereby asserts as affirmative defenses, laches, unclean hands, breach of contract, failure of consideration, equitable estoppel, promissory estoppel, waiver, contributory negligence, comparative negligence, mistake, error, inadvertence, lack of proximate cause, fraud in the inducement, breach of the duty of good faith and fair dealing, misrepresentation, lack of standing, failure to exhaust

administrative remedies, collateral estoppel, res judicata, ultra vires, impossibility of termination prior to winding up or dissolution of entity, as well as each and every defense set forth in Rules 8,9, and 12 of the West Virginia Rules of Civil Procedure.

Motion to Dismiss

11. Pursuant to Rule 12(b) of the West Virginia Rules of Civil Procedure, the Plaintiff respectfully moves this Court for entry of an Order dismissing the Counterclaim for Declaratory Judgment against the Plaintiff, on the grounds that (1) the Defendants have failed to exhaust their administrative remedies and appeals with the West Virginia Secretary of State by failing to file any appeal from the Plaintiff's reinstatement and the acceptance of the Plaintiff's Articles of Correction by the West Virginia Secretary of State; (2) this Court lacks jurisdiction and the power to administratively liquidate and/or enter an Order adjudicating the Plaintiff as defunct because such termination, under the facts and circumstances set forth in the Defendants' Counterclaim allow only the West Virginia Secretary of State to make such a determination, and said determination was already made to allow the Plaintiff to maintain its full status and good standing; (3) the West Virginia Secretary of State is an indispensable party and/or necessary party to this litigation, and the Defendants have failed to join the West Virginia Secretary of State as a party. The Defendants seek to set aside the ruling and determinations of the West Virginia Secretary of State in a collateral manner, and instead are required to join the West Virginia Secretary of State when challenging the authority and actions of the West Virginia Secretary of State; (4) the counterclaim fails to state a claim because the record before this court demonstrates that the Plaintiff is in good standing with the West Virginia Secretary of State and therefore there is no issue or controversy properly pending before this court.

Wherefore, the Plaintiff prays that the Declaratory Judgment filed by the Defendants be dismissed, and that this Court recognize the proper actions by the West Virginia Secretary of State and the State Tax Department in recognizing the Plaintiff as being in

good standing and that an Order be entered by this Court denying the Defendants' claim for Declaratory Relief as well as any other relief this court deems just and equitable.



John W. Alderman, III, Esq. (6216)
Law Offices of John W. Alderman
3 Monticello Place
Charleston, West Virginia 25314
Bar ID 6216
Phone: 304-531-8029
Fax: 877-656-8622

State of West Virginia



Certificate

*I, Natalie E. Tennant, Secretary of State of the
State of West Virginia, hereby certify that*

DAVANTIC, LLC

has met the requirements for reinstatement of their organization as required by the
West Virginia Code.

Therefore, I hereby issue this

CERTIFICATE OF REINSTATEMENT



*Given under my hand and the
Great Seal of the State of
West Virginia on this day of
February 3, 2016*

Natalie E. Tennant

Secretary of State



State of West Virginia



Certificate

*I, Natalie E. Tennant, Secretary of State of the
State of West Virginia, hereby certify that*

DAVANTIC, LLC

made application to the West Virginia Secretary of State's Office to be a registered limited liability company in the State of West Virginia on March 20, 2007. The application was received and found to conform to law.

The company is filed as an at-will company, for an indefinite period.

I further certify that the company has not been revoked or administratively dissolved by the State of West Virginia nor has the West Virginia Secretary of State issued a Certificate of Cancellation or Termination to the company.

Accordingly, I hereby issue this

CERTIFICATE OF EXISTENCE



*Given under my hand and the
Great Seal of the State of
West Virginia on this day of
November 13, 2015*

Natalie E. Tennant



State of West Virginia



Certificate

*I, Natalie E. Tennant, Secretary of State of the
State of West Virginia, hereby certify that*

DAVANTIC, LLC

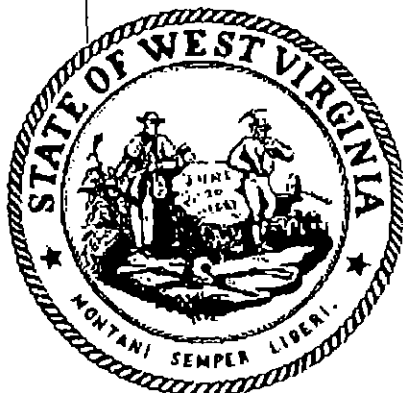
made application to the West Virginia Secretary of State's Office to be a registered limited liability company in the State of West Virginia on March 20, 2007. The application was received and found to conform to law.

The company is filed as an at-will company, for an indefinite period.

I further certify that the company has not been revoked or administratively dissolved by the State of West Virginia nor has the West Virginia Secretary of State issued a Certificate of Cancellation or Termination to the company.

Accordingly, I hereby issue this

CERTIFICATE OF EXISTENCE



*Given under my hand and the
Great Seal of the State of
West Virginia on this day of
February 3, 2016*

Natalie E. Tennant





STATE OF WEST VIRGINIA
State Tax Department, Excise and Support Unit
P. O. Box 885
Charleston, WV 25323-0885



Earl Ray Tomblin, Governor

Mark W. Malkovich, Tax Commissioner

RONALD MCCOWAN
DAVANTIC, LLC
11 CARRIAGE RD
CHARLESTON WV 25314-2158

Letter Id: L1396677440
Issued: 01/29/2016

West Virginia State Tax Department Statement of Good Standing

EFFECTIVE DATE: January 29, 2016

A review of tax accounts indicates that the above named taxpayer is in good standing as of the effective date of this document.

The issuance of this Statement of Good Standing shall not bar any audits, investigations, assessments, refund or credits with respect to the taxpayer named above and is based only on a review of the tax returns and not on a physical audit of records.

Sincerely,

Crystal G. Peal, Tax Unit Supervisor
Excise and Support Unit
Tax Account Administration Division





STATE OF WEST VIRGINIA
State Tax Department, Excise and Support Unit
P. O. Box 885
Charleston, WV 25323-0885



Earl Ray Tomblin, Governor

Mark W. Matkovich, Tax Commissioner

RONALD MCCOWAN
DAVANTIC, LLC
11 CARRIAGE RD
CHARLESTON WV 25314-2158

Letter Id: L0873975616
Issued: 06/30/2016

West Virginia State Tax Department Statement of Good Standing

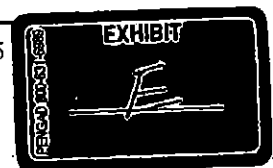
EFFECTIVE DATE: June 30, 2016

A review of tax accounts indicates that the above named taxpayer is in good standing as of the effective date of this document.

The issuance of this Statement of Good Standing shall not bar any audits, investigations, assessments, refund or credits with respect to the taxpayer named above and is based only on a review of the tax returns and not on a physical audit of records.

Sincerely,

Crystal G. Peal, Tax Unit Supervisor
Excise and Support Unit
Tax Account Administration Division



FILED

Natalie E. Tennant
Secretary of State

NOV 09 2015

1900 Kanawha Blvd E.
Bldg 1, Suite 157-KN THE OFFICE OF
Charleston, WV SECRETARY OF STATE



Penney Barker, Manager
Corporations Division

Tel: (304)558-8000

Fax: (304)558-8381

Website: www.wvsos.com

E-mail: business@wvsos.com

FILE ONE ORIGINAL

(Two if you want a filed
stamped copy returned to you)
FEE: \$25.00

WEST VIRGINIA
ARTICLES OF CORRECTION
FOR LIMITED LIABILITY COMPANY

Office Hrs: Monday - Friday
8:30 a.m. - 5:00 p.m. ET

**** In accordance with WV Code §31B-2-207, the undersigned organization adopts the following ****
Articles of Correction:

1. The name of the organization is: Davantic, LLC
2. Date of filing Articles of Organization
or Certificate of Authority with the WV
Secretary of State: 3/20/2007: Effective Date
3. Specify and describe the incorrect statement and reason it is incorrect:
Improperly filed Articles of Termination on 9/8/2015 stating that the
company was terminated on 7/21/2015. The company should not be terminated
on 7/21/2015.

Correct and specify how the statement should read:

That the company is not terminated and desires to be in good standing.
Please reinstate the company.

4. Contact name and phone number to reach in case of a problem with filing: (Optional, however,
listing one may help to avoid a return or rejection of filing if there is a problem with the document.)

Carol A. Talbert

304-925-2100

Contact Name

Phone Number

Business e-mail address, if any: caroltalbert@frontier.com

5. Signature of person executing document *(See below Important Legal Notice Regarding Signature):

Signature: Garlene McCowan

Title: MEMBER

*Important Legal Notice Regarding Signature: Per West Virginia Code §31B-2-209, Liability for false
statement in filed record. If a record authorized or required to be filed under this chapter contains a false statement,
one who suffers loss by reliance on the statement may recover damages for the loss from a person who signed the
record or caused another to sign it on the person's behalf and knew the statement to be false at the time the record was signed.

289385
\$25



Betty Ireland
Secretary of State
State Capitol
1900 Kanawha Blvd, East
Charleston, WV 25305
Hrs. 8:30 am - 5:00 pm



FILED

DEC 11 2007

Penney Barker, Manager
Business & Licensing
Tel: (304) 558-6000
Toll Free: (866) 767-8683
Fax: (304) 558-8381
email: process@wvsos.com
web: www.wvsos.com

Fee: \$15 per application

IN THE OFFICE OF
SECRETARY OF STATE

FILE ONE ORIGINAL (Send two originals if you want a filed copy returned to you)

APPLICATION TO APPOINT OR CHANGE PROCESS,
OFFICERS, MEMBERS, MANAGERS and/or OFFICE ADDRESSES

1. The company filing this change
is registered as a:

- ☒ Corporation
☒ Limited Liability Company
☐ Limited Liability Partnership
☐ Limited Partnership
☐ Voluntary Association
☐ Business Trust

2. The change is filed for:
(Note: Enter information as previously
filed. No change can be accepted
without this information.)

Company name: DAVANTIC, LLC
Principal Office: 11 Carriage Rd
Address: Charleston, WV 25314
As Listed: _____

Access current company record
at www.wvsos.com

Home State: W.V. WV Formation Date: March 20, 2007

3. Change of Address (use appropriate lines for the type of address to be changed):

Address Type

New Address

a. Principal Office

b. Local Office (WV)

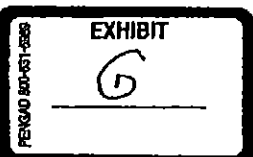
c. Designated Office (LLC)
(must be physical address)

Form A/O

SECRETARY OF STATE, STATE CAPITOL, CHARLESTON WV 25305

Revised 1/05

802 k 115.00 12/11/2007 783932



4. Change of Agent for Service of Process:

New Agent Name and Address

The agent named here has given consent to appointment as agent to accept service of process on behalf of this company.

Karlene McLowan
11 Carriage Rd
Charleston, W.V. 25314

Karlene McLowan
New Agent Signature

5. Complete the Change of Officers or Other Persons in Authority:

Officer Type (check one for each new officer)	New Officer Name	New Officer Address
a. <input type="checkbox"/> President (Corp. VA)	<u>Karlene McLowan</u>	<u>11 Carriage Rd</u>
<input type="checkbox"/> Manager (LLC)		<u>Charleston, W.V. 25314</u>
<input type="checkbox"/> General Partner (LP, LLP)		
<input type="checkbox"/> Trustee (Bus. Trust)	Remove <u>Ronald McLowan</u>	(Previous officer name, if any.)
<input checked="" type="checkbox"/> Other <u>member</u>		
b. <input type="checkbox"/> Vice-President (Corp. VA)		
<input type="checkbox"/> Manager (LLC)		
<input type="checkbox"/> General Partner (LP, LLP)		
<input type="checkbox"/> Trustee (Bus. Trust)	Remove	(Previous officer name, if any.)
<input type="checkbox"/> Other		
c. <input type="checkbox"/> Secretary (Corp. VA)		
<input checked="" type="checkbox"/> Member (LLC)		
<input type="checkbox"/> Limited Partner (LP)		
<input type="checkbox"/> General Partner (LLP)	Remove <u>Ronald McLowan</u>	(Previous officer name, if any.)
<input type="checkbox"/> Trustee (Bus. Trust)		
<input type="checkbox"/> Other		
d. <input type="checkbox"/> Treasurer (Corp. VA)		
<input type="checkbox"/> Member (LLC)		
<input type="checkbox"/> Limited Partner (LP)		
<input type="checkbox"/> General Partner (LLP)		
<input type="checkbox"/> Trustee (Bus. Trust)	Remove	(Previous officer name, if any.)
<input type="checkbox"/> Other		
e. <input type="checkbox"/> Director (Corp. VA)		
<input type="checkbox"/> Member (LLC)		
<input type="checkbox"/> Limited Partner (LP)		
<input type="checkbox"/> General Partner (LLP)		
<input type="checkbox"/> Trustee (Bus. Trust)	Remove	(Previous officer name, if any.)
<input type="checkbox"/> Other		
	<u>Ronald McLowan</u>	<u>Ronald McLowan</u>
	Name (please print)	Signature
	<u>member</u>	
	Title	