

IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

**AMY S. PEASLEE,
Plaintiff,**

v.

**//CIVIL ACTION NO. 22-C-11
Honorable Steven L. Shaffer**

**PEASLEE SERVICE CENTER, LLC,
and MIKEL PEASLEE,
Defendants,**

and

**ANITA PEASLEE
PEASLEE SERVICE CENTER, LLC,
JASON PEASLEE, and
MIKEL D. PEASLEE
Intervenor Plaintiffs and
Third-Party Plaintiffs,**

v.

**MIKEL PEASLEE,
Intervenor Defendant and
Third-Party Defendant.**

TO: THE HONORABLE CHIEF JUSTICE

MOTION TO REFER CASE TO BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, the Circuit Court of Preston County, with no objections from any party, respectfully requests that the above-styled case be referred to the Business Court Division. The Court states as follows in support of this motion:

1. The original action involves the following issues:
 - a. Breach of Contract/Breach of Covenant of Good Faith and Fair Dealing
 - b. Action for Subrogation
 - c. Right of Contribution and/or Indemnification
 - d. Fraud/Constructive Fraud
 - e. Detrimental Reliance

f. Tortious Interference with a Contractual and/or Business Relationship

g. Unjust Enrichment

2. The above claims are in connection with the alleged agreement between Defendant/Intervenor Defendant/Third-Party Defendant Mikel Peaslee (hereinafter “Defendant Mikel Peaslee”) and Plaintiff Amy S. Peaslee (hereinafter “Plaintiff”) to use Plaintiff’s certificates of deposit, totaling \$245,000.00 at the time, as collateral for two commercial lines of credit with United National Bank for Defendant/Intervenor Plaintiff/Third-Party Plaintiff Peaslee Service Center, LLC (hereinafter “Peaslee Service Center, LLC”), payments for which were later defaulted, resulting in a loss of \$178,198.34, plus fees, penalties, and losses of approximately \$2,728.39, from Plaintiff’s certificates of deposit.
3. In the course of the proceeding, Anita Peaslee and Peaslee Service Center, LLC, intervened in the action requesting a declaratory judgment as to what persons are the legal owners of Peaslee Service Center, LLC, because of a divorce proceeding in Case No. 21-D-81, which has been stayed pending the resolution of the intervenor’s request for declaratory judgment.
4. Anita Peaslee and Peaslee Service Center, LLC, also issued a Third-Party Complaint against Defendant Mikel Peaslee. This Third Party-Complaint contains the following issues:
 - a. Breach of Fiduciary Duty
 - b. Fraud and/or Constructive Fraud
 - c. Action for Indemnification/Contribution
 - d. Unjust Enrichment
 - e. Accounting
 - f. Conversion; and

g. Tort of Outrage

5. The original action was stayed prior to the beginning of discovery pending the resolution of the intervenor's request for declaratory judgment.
6. The ownership of Peaslee Service Center, LLC, involves the following issues:
 - a. Defendant Mikel Peaslee and Anita Peaslee were married in 1974.
 - b. The business was originally run as a DBA between 1978 and 1997.
 - c. In 1997, Peaslee Service Center, LLC, was formed, listing Intervenor Plaintiff/Third-Party Plaintiff Anita Peaslee (hereinafter "Anita Peaslee") as owning 52%, and Intervenor Plaintiff/Third-Party Plaintiff Mikel D. Peaslee (hereinafter "Mikel D. Peaslee") and Intervenor Plaintiff/Third-Party Plaintiff Jason Peaslee (hereinafter "Jason Peaslee"), the sons of Anita Peaslee and Defendant Mikel Peaslee, as owning 24% each.
 - d. In 1997, Anita Peaslee and Defendant Mikel Peaslee filed a Joint Tax Return, listing Peaslee Service Center, LLC, as a partnership from which they recorded income.
 - e. The U.S. Partnership Return of Income for 1997 through 2000 list Defendant Mikel Peaslee as a "General Partner."
 - f. K-1 forms, titled as Partner's Share of Income Credits, Deductions, Etc., for 1997 through 2000 were filed listing Anita Peaslee as owning 52% of Peaslee Service Center, LLC; Mikel D. Peaslee as owning 24%; and Jason Peaslee as owning 24%.
 - g. Certificates showing that Anita Peaslee owned 52 "fully paid and non-assessable units of the organization equity" of Peaslee Service Center LLC; that Mikel D. Peaslee owned 24 units; and Jason Peaslee owned 24 units, were provided as exhibits. These Certificates were not signed or dated.
 - h. In 2001, a Business Franchise Tax Return was filed for Peaslee Service Center,

LLC, listing Anita Peaslee and Defendant Mikel Peaslee as “Partners.”

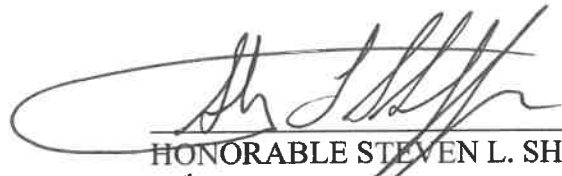
- i. In 2001, Anita Peaslee and Defendant Mikel Peaslee both began filing tax returns listing each of them as 50% owner of Peaslee Service Center, LLC.
 - j. A K-1 form, titled as Partner’s Share of Income Credits, Deductions, Etc., for 2001 was filed listing Anita Peaslee as owning 50% of Peaslee Service Center, LLC and Defendant Mikel Peaslee was listed as owning 50% of Peaslee Service Center, LLC.
 - k. No changes were made to the West Virginia Secretary of State’s office regarding this change in ownership until June 2023, when a change from “Mikel D. Peaslee” to “Mikel Peaslee” was reported.
 - l. Anita Peaslee, Mikel D. Peaslee, and Jason Peaslee claim they continue to hold the original ownership share of 52%, 24% and 24%, respectively.
 - m. Defendant Mikel Peaslee claims he owns 50% of Peaslee Service Cetner, LLC, and Anita Peaslee holds the other 50%.
7. This matter contains issues significant to businesses, and presents novel and/or complex commercial or technological issues for which specialized treatment will be helpful, as more fully described in the Complaint, attached hereto as **Exhibit A**; the Intervenor Plaintiffs’ Petition for Declaratory Relief against Intervenor Defendant Mikel Peaslee and Third-Party Complaint, attached hereto as **Exhibit B**; the Intervenor Plaintiffs’ Amended Petition for Declaratory Relief against Intervenor Defendant Mikel Peaslee, attached hereto as **Exhibit C**; and the Intervenor Plaintiff, Anita Peaslee’s Motion for Summary Judgment, attached hereto as **Exhibit D**. Review of the record showed that no Answer has been filed to the Complaint or the Third-Party Complaint.
8. In regard to additional related actions, the following related actions have been stayed in

part pending the resolution of the intervenor's request for declaratory judgment:

- a. In re The Marriage of Anita Sue Peaslee v. Mikel Peaslee, Civil Action No. 21-D-81, as it relates to the division of assets, including the alleged ownership of Peaslee Service Center LLC;
 - b. James H. Hunt v. Peaslee Service Center, Civil Action No. 22-M39C-00163 in the Preston County Magistrate Court.
9. All parties, including Plaintiff Amy S. Peaslee; Defendant/Intervenor Defendant/Third-Party Defendant Mikel Peaslee; Defendant/Intervenor Plaintiff/Third-Party Plaintiff Peaslee Service Center, LLC; Intervenor Plaintiff/Third-Party Plaintiff Anita Peaslee; Intervenor Plaintiff/Third-Party Plaintiff Mikel D. Peaslee; and Intervenor Plaintiff/Third-Party Plaintiff Jason Peaslee; did not object to the Court's recommendation for this *Motion to Refer Case to Business Court Division* during a hearing on April 17, 2024.
10. The undersigned Court hereby REQUESTS that the Chief Justice grant this *Motion to Refer Case to Business Court Division* without responses, pursuant to Rule 29.06(a)(4), and contends that the nature of the actions constitutes good cause to do so.

WHEREFORE, the undersigned Court hereby requests, pursuant to *W. VA. Trial Court Rule 29.06* and other applicable law that the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division.

Respectfully submitted, this 18th Day of April, 2024.


HONORABLE STEVEN L. SHAFFER
18th Judicial Circuit
Circuit Court of Preston County

IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

**AMY S. PEASLEE,
Plaintiff,**

v.

**//CIVIL ACTION NO. 22-C-11
Honorable Steven L. Shaffer**

**PEASLEE SERVICE CENTER, LLC,
and MIKEL PEASLEE,
Defendants,**

and

**ANITA PEASLEE
PEASLEE SERVICE CENTER, LLC,
JASON PEASLEE, and
MIKEL D. PEASLEE
Intervenor Plaintiffs and
Third-Party Plaintiffs,**

v.

**MIKEL PEASLEE,
Intervenor Defendant and
Third-Party Defendant.**

CERTIFICATE OF SERVICE

I, Judge Stephen L. Shaffer, do hereby certify that on this 18th day of April, 2024, I have caused to be served a true and correct copy of the foregoing "*Motion to Refer Case to the Business Court Division*" with attachments by depositing the same in the United States Mail, postage prepaid, to the following counsel of record:

David M. Jecklin, Esq.
Lewis Gianola PLLC
1714 Mileground Road
Morgantown, WV 26505
Counsel for Intervenor Plaintiff/Third-Party Plaintiff Anita Peaslee

Amy L. Lanham, Esq.
Family Law Associates Amy Lanham/Delby Pool
230 Court Street
Clarksburg, WV, 26301
Counsel for Intervenor Plaintiff/Third-Party Plaintiff Anita Peaslee

Virginia J. Hopkins, Esq.
101 East Main Street
Kingwood, WV 26537

Counsel for Defendant/Intervenor Defendant/Third-Party Defendant Mikel Peaslee

Chad C. Groome, Esq.
Angotti and Straface
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Morgantown, WV 26505
Counsel for Plaintiff Amy S. Peaslee

Michael C. Cardi, Esq.
Bowles Rice LLP
125 Granville Square, Suite 400
Morgantown, WV 26501
*Counsel for Intervenor Plaintiff/Third-Party Plaintiff Jason Peaslee and Intervenor
Plaintiff/Third-Party Plaintiff Mikel D. Peaslee*

Lisa Leishman, Clerk
Preston County Circuit Clerk
101 West Main Street, Room 301
Kingwood, WV 26537

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

A handwritten signature in black ink, appearing to read 'S. Shaffer', is written over a horizontal line.

HONORABLE STEVEN L. SHAFFER
18th Judicial Circuit
Circuit Court of Preston County

IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

AMY S. PEASLEE,

PLAINTIFF,

VS.

CIVIL ACTION NO. 22-C-11

**PEASLEE SERVICE CENTER, LLC and
MIKEL PEASLEE,**

DEFENDANTS.

COMPLAINT

NOW COMES, the plaintiff, Amy S. Peaslee, by and through her counsel, John R. Angotti, David J. Straface, Chad C. Groome and Angotti & Straface, L.C., and for her Complaint against defendants, Peaslee Service Center, LLC, and Mikel Peaslee, hereby allege as follows:

1. The plaintiff, Amy S. Peaslee, is a resident of Kingwood, Preston County, West Virginia.
2. The defendant, Peaslee Service Center Limited Liability Company (hereinafter referred to as "Peaslee Service Center, LLC"), is a domestic, for-profit limited liability company organized in the State of West Virginia and which has registered with the West Virginia Secretary of State a principal business address of 16548 Veterans Memorial Hwy., Kingwood, WV 26537-8034 and a service of process address of c/o Antia S. Peaslee, 16548 Veterans Memorial Hwy., Kingwood, WV 26537-8034
3. The defendant, Mikel Peaslee, is a resident of Kingwood, Preston County, West Virginia.



4. The plaintiff, Amy S. Peaslee, is the biological daughter of defendant, Mikel Peaslee.
5. The defendant, Mikel Peaslee, is a member of the defendant, Peaslee Service Center, LLC, which provides automotive repair and maintenance service in Kingwood, West Virginia.
6. The biological mother of plaintiff, Amy S. Peaslee, is Anita S. Peaslee, and was, at all times material and relevant, the wife of defendant, Mikel Peaslee. Anita S. Peaslee is also a member of the defendant, Peaslee Service Center, LLC.
7. The Circuit Court of Preston County has subject matter jurisdiction over the plaintiff's claims and may properly exercise personal jurisdiction over the defendants.
8. The Circuit Court of Preston County is a proper venue for the instant civil action.
9. In or about September of 2015, the defendant, Peaslee Service Center, LLC, applied for two (2) commercial lines of credit through United National Bank at one of its Morgantown, West Virginia, locations.
10. The defendant, Peaslee Service Center, LLC, could obtain a better interest rate on its commercial lines of credit if it provided a security interest for the same.
11. The plaintiff, Amy S. Peaslee, held two (2) certificates of deposit at United National Bank. One of the certificates of deposit bore an Account Number of 856663177136 and held a principal value of \$130,000.00. The other certificate of deposit bore an Account Number of 8325696931 and held a principal value of \$115,000.00.

12. The aforementioned certificates of deposit are/were the sole property of plaintiff, Amy S. Peaslee.
13. The plaintiff, Amy S. Peaslee, does not have a business or financial interest in the defendant, Peaslee Service Center, LLC.
14. The defendant, Mikel Peaslee, individually and as member of defendant, Peaslee Service Center, LLC, asked the plaintiff, Amy S. Peaslee, to pledge her certificates of deposit at United National Bank, valued at a total of \$245,000.00, as collateral for the two (2) commercial lines of credit of defendant, Peaslee Service Center, LLC.
15. The plaintiff, Amy S. Peaslee, agreed to hypothecate and/or pledge her certificates of deposit as collateral for the lines of credit insofar as she knew that defendant, Peaslee Service Center, LLC, was a successful business and she was doing her father a favor.
16. The plaintiff, Amy S. Peaslee, also agreed to hypothecate and/or pledge her certificates of deposit as collateral for the lines of credit insofar as the defendant, Mikel Peaslee, represented that he would personally guarantee the subject commercial lines of credit. As such, the plaintiff, Amy S. Peaslee, was assured by the defendants that her certificates of deposit would never be consumed by the loan upon a default and that the same were purely being utilized to secure a favorable interest rate.
17. Relying upon the material representations of the defendants, Peaslee Service Center, LLC, and Mikel Peaslee, the plaintiff, Amy S. Peaslee, executed all

documents surrounding the aforementioned lines of credit hypothecating and/or pledging her subject certificates of deposit as collateral for the debt.

18. The applications and documents for the subject commercial lines of credit were likewise executed by the defendant, Peaslee Service Center, LLC, by and through its members, defendant, Mikel Peaslee, and Antia S. Peaslee.

19. Upon information and belief, in the years following the opening of the subject lines of credit, the defendant, Mikel Peaslee, and Anita S. Peaslee, his wife, began to suffer marital problems.

20. Defendant, Mikel Peaslee, and Anita S. Peaslee, are presently engaged in a divorce action in the Family Court of Preston County.

21. During the course of the divorce and/or subject marital strife, the plaintiff, Amy S. Peaslee, has become alienated and/or estranged from her father, defendant, Mikel Peaslee, and/or their relationship has otherwise soured due to the plaintiff's relationship to her mother.

22. In 2021, the parties obtained an extension of the maturity dates on the subject commercial lines of credit.

23. Relying upon the material representations of the defendants, Peaslee Service Center, LLC, and Mikel Peaslee, from the beginning of these transactions, the plaintiff, Amy S. Peaslee, executed all documents surrounding the aforementioned extension of the maturity dates on the subject commercial lines of credit.

24. In December of 2021, the defendant, Peaslee Service Center, LLC, after the commercial lines of credit matured, did cease paying the monthly payments on the subject commercial lines of credit and did permit the same to fall into default.
25. The defendant, Mikel Peaslee, guarantor of the subject commercial lines of credit, took no action to prevent the default and did not attempt to make any payments toward the debt.
26. Instead, the defendants, Peaslee Service Center, LLC and Mikel Peaslee, did negligently, recklessly, intentionally, and/or maliciously allow United National Bank to hypothecate the certificates of deposit of the plaintiff, Amy S. Peaslee, and pay off the entirety of the debts of defendants, Peaslee Service Center, LLC and Mikel Peaslee, on the subject commercial lines of credit.
27. At the time that plaintiff Amy S. Peaslee's certificates of deposit were hypothecated by United National Bank, those accounts had a total value of \$256,998.06.
28. United National Bank hypothecated \$178,198.34 of the \$256,998.06 held in the certificates of deposit.
29. As a result of the default by defendants, Peaslee Service Center, LLC, and Mikel Peaslee, the plaintiff, Amy S. Peaslee, lost \$178,198.34 plus additional fees, penalties, and losses of approximately \$2,728.39, and interest expectancies on said accounts, while the defendants, Peaslee Service Center, LLC and Mikel Peaslee, were unjustly enriched to her detriment.

COUNT I

Breach of Contract/Breach of the Covenant of Good Faith and Fair Dealing

30. The plaintiff, Amy S. Peaslee, incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 29.
31. The defendant, Peaslee Service Center, LLC, had a legal and contractual duty to pay the balances of the subject commercial lines of credit to United National Bank as the primary debtor on the subject accounts.
32. The defendant, Mikel Peaslee, had a legal and contractual duty to pay the balances of the subject commercial lines of credit to United National Bank as the manager of the defendant, Peaslee Service Center, LLC, and as the personal guarantor on the subject accounts.
33. The defendants, Peaslee Service Center, LLC, and Mikel Peaslee, did owe a legal and/or contractual duty to the plaintiff, Amy S. Peaslee, to pay the balances of the subject commercial lines of credit to United National Bank so as to protect her certificates of deposit pledged as collateral for the same.
34. The defendants, Peaslee Service Center, LLC, and Mikel Peaslee, did breach their legal and contractual duties under the subject commercial lines of credit toward all parties to the subject contracts, including the plaintiff, Amy S. Peaslee.
35. The defendants, Peaslee Service Center, LLC, and Mikel Peaslee, owed the parties to the subject contracts, including the plaintiff, Amy S. Peaslee, hypothecator for the subject commercial lines of credit, a duty of good faith and fair dealing at all times.

36. The defendants, Peaslee Service Center, LLC, and Mikel Peaslee, did negligently, recklessly, and/or maliciously permit the subject commercial lines of credit to fall into default and/or did fail and/or refuse to render payments to United National Bank so as to cause, in bad faith, plaintiff Amy S. Peaslee's certificates of deposit to pay their outstanding debts.

37. Upon further information and belief, the defendants, Peaslee Service Center, LLC, and Mikel Peaslee, did have the means and/or financial ability to render payments on the subject commercial lines of credit at the time of the default through the date of hypothecation.

38. As a direct and proximate result of the defendants' breach of their legal and/or contractual duties and/or their breach of the covenant of good faith and fair dealing, the plaintiff, Amy S. Peaslee suffered damages including, but not limited to a loss of \$178,198.34, a loss of additional funds of the certificates of deposit due to fees and penalties associated with early withdrawal, annoyance, inconvenience, emotional distress, damages for loss of use, interest, attorney's fees, and other direct, indirect, consequential general and/or special damages for which she should be compensated.

39. The acts and/or omissions of the defendants, Peaslee Service Center, LLC, and Mikel Peaslee, to the extent not merely negligent, were done with actual malice toward the plaintiff, Amy S. Peaslee, and/or they acted with a conscious, reckless, and outrageous indifference to the health, safety, and welfare of the plaintiff and/or others, such that an award of punitive damages is proper to punish the defendants,

Peaslee Service Center, LLC, and Mikel Peaslee, and to preclude the defendants and others similarly situated from acting in a like manner in the future.

COUNT II

Action for Subrogation

40. The plaintiff, Amy S. Peaslee, incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 29.

41. The assets of the plaintiff, Amy S. Peaslee, were hypothecated by United National Bank, creditor of the defendants, Peaslee Service Center, LLC, and Mikel Peaslee.

42. The plaintiff, Amy S. Peaslee, stands in the shoes of the defendants' creditor, United National Bank, has a legal and/or equitable right to subrogation against the primary debtors and/or guarantors, defendants, Peaslee Service Center, LLC, and Mikel Peaslee, and may exercise all rights of recovery held by the creditor against them for their default under the subject commercial lines of credit.

43. Accordingly, the plaintiff, Amy S. Peaslee, may recover all sums hypothecated from her certificates of deposit as against the defendants totaling \$178,198.34, a loss of additional funds of the certificates of deposit due to fees and penalties associated with early withdrawal, interest, attorney's fees, and other general and/or special damages for which she should be compensated.

COUNT III

Right of Contribution and/or Indemnification

44. The plaintiff, Amy S. Peaslee, incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 29.

45. The defendant, Mikel Peaslee, as individual guarantor of the subject commercial lines of credit, owes the plaintiff, Amy S. Peaslee, as hypothecator for the subject accounts, a legal duty of contribution and/or indemnity to guarantee the accounts and reimburse the plaintiff, Amy S. Peaslee, an equitable sum of money for the sums hypothecated from her by the defendants' default.

46. As a direct and proximate result of the defendants' breach of their legal and/or contractual duties, the plaintiff, Amy S. Peaslee suffered damages including, but not limited to a loss of \$178,198.34, a loss of additional funds of the certificates of deposit due to fees and penalties associated with early withdrawal, annoyance, inconvenience, emotional distress, damages for loss of use, interest, attorney's fees, and other direct, indirect, consequential general and/or special damages for which she should be compensated.

COUNT IV

Fraud/Constructive Fraud

47. The plaintiff, Amy S. Peaslee, incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 29.

48. The defendants, Peaslee Service Center, LLC, and Mikel Peaslee, did fraudulently represent to the plaintiff, Amy S. Peaslee, that her certificates of deposit, pledged as collateral for the defendants' commercial lines of credit, would not be utilized to pay the debts and was only being used to secure a more favorable interest rate.

49. The plaintiff, Amy S. Peaslee, relied upon these fraudulent representations when she pledged her certificates of deposit as collateral for the subject commercial lines of credit.

50. The plaintiff, Amy S. Peaslee, was justified in her reliance of these fraudulent representations insofar as the same were made by and through her father, Mikel Peaslee, and insofar as she understood the defendants, Peaslee Service Center, LLC, and Mikel Peaslee, to be financially stable.

51. The representations of the defendants, Peaslee Service Center, LLC, and Mikel Peaslee, were material to her decision to pledge her certificates of deposit as collateral and were false.

52. Additionally, the defendants, Peaslee Service Center, LLC, and Mikel Peaslee, at the time of making these representations, executing the subject contracts and agreements surrounding the commercial lines of credit, and/or executing the subject contracts and/or agreements in 2021 extending the maturity dates for the same, had no intention of paying the principle balance of said accounts and/or intended to default upon the same so as to pay those accounts with the funds of plaintiff Amy S. Peaslee's certificate of deposit hypothecated as collateral for the same.

53. To the extent that the defendants, Peaslee Service Center, LLC, and Mikel Peaslee, did not commit actual fraud, their acts and/or omissions amount to a constructive fraud insofar as the same has a tendency to deceive others, to violate public or private confidence, or to injure public interests, and/or amounts to

conduct, although not actually fraudulent, ought to be so treated, that is, in which conduct is a constructive or *quasi fraud*, which has all the actual consequences and legal effects of actual fraud.

54. As a direct and proximate result of the defendants' fraudulent and/or constructively fraudulent conduct, the plaintiff, Amy S. Peaslee suffered damages including, but not limited to a loss of \$178,198.34, a loss of additional funds of the certificates of deposit due to fees and penalties associated with early withdrawal, annoyance, inconvenience, emotional distress, damages for loss of use, interest, attorney's fees, and other direct, indirect, consequential general and/or special damages for which she should be compensated.

55. The acts and/or omissions of the defendants, Peaslee Service Center, LLC, and Mikel Peaslee, to the extent not merely negligent, were done with actual malice toward the plaintiff, Amy S. Peaslee, and/or they acted with a conscious, reckless, and outrageous indifference to the health, safety, and welfare of the plaintiff and/or others, such that an award of punitive damages is proper to punish the defendants, Peaslee Service Center, LLC, and Mikel Peaslee, and to preclude the defendants and others similarly situated from acting in a like manner in the future.

COUNT V

Detrimental Reliance

56. The plaintiff, Amy S. Peaslee, incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 29.

57. The defendants, Peaslee Service Center, LLC, and Mikel Peaslee, did promise the plaintiff, Amy S. Peaslee, that her certificates of deposit, pledged as collateral for the defendants' commercial lines of credit, would not be utilized to pay the debts and was only being used to secure a more favorable interest rate.

58. The defendants, Peaslee Service Center, LLC, and Mikel Peaslee, knew or should have known that said promise would be relied upon and/or acted upon by plaintiff, Amy S. Peaslee.

59. The plaintiff, Amy S. Peaslee, through no fault of her own, did reasonably rely upon the promise of the defendants, Peaslee Service Center, LLC, and Mikel Peaslee, to her detriment.

60. As a direct and proximate result of the defendants' acts and/or omissions, the plaintiff, Amy S. Peaslee suffered damages including, but not limited to a loss of \$178,198.34, a loss of additional funds of the certificates of deposit due to fees and penalties associated with early withdrawal, annoyance, inconvenience, emotional distress, damages for loss of use, interest, attorney's fees, and other direct, indirect, consequential general and/or special damages for which she should be compensated.

61. The acts and/or omissions of the defendants, Peaslee Service Center, LLC, and Mikel Peaslee, to the extent not merely negligent, were done with actual malice toward the plaintiff, Amy S. Peaslee, and/or they acted with a conscious, reckless, and outrageous indifference to the health, safety, and welfare of the plaintiff and/or others, such that an award of punitive damages is proper to punish the defendants,

Peaslee Service Center, LLC, and Mikel Peaslee, and to preclude the defendants and others similarly situated from acting in a like manner in the future.

COUNT VI

Tortious Interference with a Contractual and/or Business Relationship

62. The plaintiff, Amy S. Peaslee, incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 29.
63. The plaintiff, Amy S. Peaslee, has a contractual or business relationship or expectancy with United National Bank and/or defendant, Peaslee Service Center, LLC, as hypothecator of the subject commercial lines of credit and/or owner of the subject certificates of deposit.
64. The defendant, Mikel Peaslee, did intentionally interfere with plaintiff Amy S. Peaslee's contractual and/or business relationship with defendant, Peaslee Service Center, LLC, by defaulting on the subject commercial lines of credit, refusing to take action to pay or guarantee the subject commercial lines of credit, and allowing the plaintiff's certificates of deposit to pay the subject accounts.
65. The defendants, Peaslee Service Center, LLC, and Mikel Peaslee, did intentionally interfere with plaintiff Amy S. Peaslee's contractual and/or business relationship with United National Bank by defaulting on the subject commercial lines of credit, refusing to take action to pay or guarantee the subject commercial lines of credit, and allowing the plaintiff's certificates of deposit to pay the subject accounts.
66. As a direct and proximate result of the defendants' breach of their legal and/or contractual duties and/or their breach of the covenant of good faith and fair dealing,

the plaintiff, Amy S. Peaslee suffered damages including, but not limited to a loss of \$178,198.34, a loss of additional funds of the certificates of deposit due to fees and penalties associated with early withdrawal, annoyance, inconvenience, emotional distress, damages for loss of use, interest, attorney's fees, and other direct, indirect, consequential general and/or special damages for which she should be compensated.

67. The acts and/or omissions of the defendants, Peaslee Service Center, LLC, and Mikel Peaslee, to the extent not merely negligent, were done with actual malice toward the plaintiff, Amy S. Peaslee, and/or they acted with a conscious, reckless, and outrageous indifference to the health, safety, and welfare of the plaintiff and/or others, such that an award of punitive damages is proper to punish the defendants, Peaslee Service Center, LLC, and Mikel Peaslee, and to preclude the defendants and others similarly situated from acting in a like manner in the future.

COUNT VII

Unjust Enrichment

68. The plaintiff, Amy S. Peaslee, incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 29.

69. "Unjust enrichment" means that one party has unfairly kept some benefit that actually belonged to another party, that this benefit was not freely given to the party keeping it, and that there was no legal justification for keeping it.

70. When one party enriches itself unjustly at the expense of another, the law imposes an obligation upon the unjustly enriched party to pay the other party the value of that benefit.

71. The defendants, Peaslee Service Center, LLC, and Mikel Peaslee, unjustly enriched themselves to the detriment of the plaintiff, Amy S. Peaslee, and, as such, should be required by law to compensate the plaintiff, make her whole, and pay her the value of that benefit.

WHEREFORE, the plaintiff, Amy S. Peaslee, by and through her counsel, respectfully demands judgment against the defendants, Peaslee Service Center, LLC, and Mikel Peaslee, jointly and/or severally where allowable by law, for compensatory damages and/or equitable relief in an amount in excess of the jurisdictional threshold of the Court and sufficient to make her whole for her injuries and/or damages, for punitive damages relief in an amount in excess of the jurisdictional threshold of the Court and sufficient to punish the defendants, Peaslee Service Center, LLC, and Mikel Peaslee, and to preclude the defendants and others similarly situated from acting in a like manner in the future, for attorney's fees and costs where allowable by law, for pre- and post-judgment interest where allowable by law, and for such additional favorable relief as the Court deems just and appropriate.

A JURY TRIAL IS DEMANDED ON ALL ISSUES.

Respectfully Submitted,
Amy S. Peaslee, Plaintiff,

BY:

A large, stylized handwritten signature in dark ink, appearing to read "John R. Angotti", is written over a horizontal line.

JOHN R. ANGOTTI, ESQUIRE (#5068)
DAVID J. STRAFACE, ESQUIRE (#3634)
CHAD C. GROOME, ESQUIRE (#9810)
ANGOTTI & STRAFACE, LC
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Phone: (304) 292-4381
Facsimile: (304) 292-7775
Of Counsel for Plaintiffs

STATE OF WEST VIRGINIA,

COUNTY OF Preston, to-wit:

Amy S. Peaslee, the Plaintiff named in the foregoing Complaint, being duly sworn, says
that the facts and allegations herein contained are true, except as far as they are therein stated to be
upon information, and that so far as they are therein stated to be on information, she believes them to
be true.

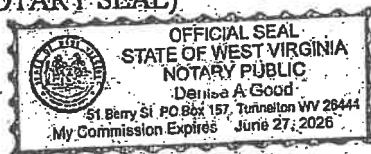
Amy S. Peaslee
Amy S. Peaslee

Taken, sworn to and subscribed before me in my said County, this 25th day of
MARCH, 2022.

My commission expires: JUNE 27, 2026.

Denise A. Good
Notary Public

(NOTARY SEAL)



IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

AMY S. PEASLEE,

Plaintiff,

v.

Civil Action No. 22-C-11

PEASLEE SERVICE CENTER, LLC and
MIKEL PEASLEE,

Defendants

and

ANITA PEASLEE and
PEASLEE SERVICE CENTER, LLC

Intervenor Plaintiffs and
Third-Party Plaintiffs,

v.

MIKEL PEASLEE,

Intervenor Defendant and
Third- Party Defendant.

THE INTERVENOR PLAINTIFFS' PETITION FOR DELARATORY RELIEF
AGAINST INTERVENOR DEFENDANT MIKEL PEASLEE
AND THIRD PARTY COMPLAINT

The Intervenor Plaintiffs, Anita Peaslee and Peaslee Service Center, LLC, by counsel, pursuant to Rule 57 of the West Virginia Rules of Civil Procedure and W. Va. Code § 55-13-1, *et seq.*, respectfully request that the Court declare who are the legal owners of the Peaslee Service Center, LLC.

PARTIES

1. The Intervenor Plaintiff, Anita Peaslee, (Peaslee) is an individual currently residing in Preston County, West Virginia, and a member-manager in the Intervenor Plaintiff, Peaslee Service Center, LLC.

GIANOLA,
BARNUM, & JECKLIN
Attorneys at Law

(304) 291-6300

EXHIBIT

B

FILED

Date 5-31-22 SLM

Lisa Leishman

Preston Co. Circuit Clerk

2. The Intervenor Plaintiff, Peaslee Service Center, LLC (Service Center) is a registered West Virginia limited liability company with a principal office address of 16548 Veterans Memorial Highway, Kingwood, Preston County, West Virginia.

3. The Intervenor Defendant, Mikel Peaslee, (Defendant Peaslee) is an individual currently residing in Preston County, West Virginia.

JURISDICTION AND VENUE

4. Jurisdiction in this case is appropriate pursuant to W. Va. Code § 55-13-1, *et seq.*

5. Venue in this case is proper pursuant to W. Va. Code § 56-1-1.

UNDERLYING FACTS

6. On or about July 1, 1988, the Defendant Mikel Peaslee started the "Peaslee Service Center" and ran it as a doing-business-as, i.e., DBA. Based on information and belief, the Defendant Peaslee ran the daily operations of the DBA service center (DBA Service Center) with the assistance of Peaslee and their family.

7. In 1997, the Defendant Peaslee went to work for U Haul and was prohibited by U Haul from maintaining an ownership interest in the DBA Service Center.

8. Based on information and belief, in 1997, the Defendant Peaslee gifted to Peaslee and her sons, Mikel D. Peaslee and Jason Peaslee, his full, One Hundred Percent (100%) interest in the DBA Service Center.

9. On April 11, 1997, Articles of Organization for a Limited Liability Company were filed with the West Virginia Secretary of State's Office referencing the newly created Service Center and its' three member-managed owners, Peaslee, and her sons, Mikel D. Peaslee and Jason C. Peaslee.

10. On July 8, 1997, Jason C. Peaslee executed a Transfer of Business form with the West Virginia Department of Employment Security transferring the predecessor, the DBA Service Center to the Defendant Service Center.

11. In or around 2001, the Defendant Peaslee stopped working for U Haul and returned to work at the Service Center and participating in its' daily business operations.

12. Since May 2021, the Defendant Peaslee and Peaslee have been engaged in a divorce action in The Family Court of Preston County, West Virginia (Family Court).

13. On August 16, 2021, the Family Court entered an Order which in Paragraph 1(a) gave the Defendant Peaslee the sole right to operate the Service Center (the August 2021 Order).

14. On January 19, 2022, the Family Court entered an Order reiterating that it had made the Defendant Peaslee responsible for operating the business while the divorce case was pending.

15. On or about March 29, 2022, the Plaintiff, Amy Peaslee, filed the underlying Complaint alleging Breach of Contract/Breach of the Covenant of Good Faith and Fair Dealing, Fraud/Constructive Fraud, Detrimental Reliance, Tortious Interference with a Contractual and/or Business Relationship, and Unjust Enrichment against the Defendant Peaslee and the Service Center. The Plaintiff also brought a claim for Contribution and/or Indemnification against the Defendant Peaslee and an Action for Subrogation.

16. The Plaintiff alleges that the Defendants allowed two (2) lines of credit (Credit Lines) with United National Bank (Bank) to go into default to which she had personally guaranteed, by pledging as collateral her ownership in two (2) certificates of deposit (CDs) that were being held at the Bank.

17. The Plaintiff alleges that due to the Defendants actions and/or inactions to cure the default, she suffered damages, up to and including \$178,198.34 when the Bank cured the default by levying on her CDs.

18. Ms. Peaslee states that when the Defendant Peaslee allegedly permitted the Credit Lines to go into default, he was the only person responsible for operating the business while the divorce case was pending per the Family Court's Orders, and failed to provide financially prudent Service Center assets as collateral to extend the maturity dates on the subject Credit Lines with the Bank and prevent a default.

OWNERSHIP OF THE PEASLEE SERVICE STATION, LLC

19. When the August 2021 Order was entered Peaslee believed, due to her lack of sophisticated knowledge of business ownership procedures, that both she and the Defendant Peaslee were the only member-managers of the Service Center after he returned from working at U Haul.

20. Because the Defendant Peaslee knew that he could not have any ownership in the Service Center while he worked at U Haul, Peaslee presumed when the Defendant Peaslee stopped working for U Haul that he, the Service Center, and its' member-managers had executed the appropriate documents making the Defendant Peaslee a member-manager in the Service Center and removing Mikel D. Peaslee and Jason Peaslee as member-managers.

21. Ms. Peaslee's presumptions were bolstered by the fact that both Mikel D. Peaslee and Jason Peaslee stopped working at the Service Center after the Defendant Peaslee stopped working at U Haul.

22. Accordingly, after the August 2021 Order was entered, Peaslee did not believe that she, Mikel D. Peaslee, nor Jason Peaslee could supersede and/or override the Defendant Peaslee's actions or inactions to extend the maturity date of the Credit Lines and prevent the Bank from declaring them as being in default and levying on the Plaintiff's CDs.

23. However, based upon documents recently provided by the West Virginia Secretary of State's Office evidencing its' entire file regarding the Service Center, the Intervenor Plaintiffs allege:

- a. That neither the Defendant Peaslee, the Service Center, nor its' member-managers have ever executed any documents making the Defendant Peaslee a member-manager in the Service Center.
- b. That the Defendant Peaslee is not now, nor has ever been, a member-manager of the Service Center;
- c. That Peaslee, Mikel D. Peaslee and Jason Peaslee are the only member-manager of the Service Center;
- d. That the August 2021 Order, never should have been prohibited Peaslee from participating in the daily operations of the Service Center;
- e. That the Service Center's member-managers have not hired Virginia E. Hopkins, Esq., to represent the Service Center's interests in the Plaintiff's lawsuit;
- f. That the Intervenor Plaintiffs, regardless of whether the Defendant Peaslee has any ownership interest in the Service Center, have claims against him for his alleged actions in the Plaintiff's lawsuit that they anticipate not being filed by Ms. Hopkins;

- g. That prior to the filing of this pleading, the Intervenor Plaintiffs sent a letter to Ms. Hopkins explaining these issues but to their knowledge she never responded; and
- h. That Ms. Hopkins has a conflict-of-interest representing both the Defendant Peaslee and the Service Center in the Plaintiff's lawsuit.

CONCLUSION

24. Based upon the foregoing, an actual controversy exists between and among the parties to this action with respect to who are the member-managers of the Service Center.

THEREFORE, the Intervenor Plaintiffs, Anita Peaslee and Peaslee Service Center, LLC, respectfully request that the Court grant the following declaratory relief in accordance with the West Virginia Declaratory Judgments Act, W. Va. Code § 55-13-1, *et seq.*:

- A. That this Court declare that the Defendant Mikel Peaslee is not a member-manager of the Intervenor Plaintiff, Peaslee Service Center, LLC;
- B. That this Court declare that the Intervenor Plaintiff, Anita Peaslee is a member-manager of the Intervenor Plaintiff, Peaslee Service Center, LLC; and
- C. That the Intervenor Plaintiffs is entitled to such further and additional relief as the Court may deem just and proper.

THIRD-PARTY COMPLAINT AGAINST MIKEL PEASLEE

The Third-Party Plaintiffs, Anita Peaslee and Peaslee Service Center, LLC, bring the following Third-Party Complaint against the Third-Party Defendant, Mikel Peaslee.

PARTIES

1. The Third-Party Plaintiff, Anita Peaslee, (Peaslee) is an individual currently residing in Preston County, West Virginia, and is a manager-member of the Third-Party Plaintiff, Peaslee Service Center, LLC.

2. The Third-Party Defendant, Mikel Peaslee, (Defendant Peaslee) is an individual currently residing in Preston County, West Virginia.

3. The Third-Party Plaintiff, Peaslee Service Center, LLC (the Service Center) is a registered West Virginia limited liability company with a principal office address of 16548 Veterans Memorial Highway, Kingwood, Preston County, West Virginia.

JURISDICTION AND VENUE

4. Jurisdiction and venue in this case is appropriate before this Court as the allegations contained herein occurred in Preston County, West Virginia.

FACTS

5. Since January 1, 1997, Peaslee has been a member-manager of the Service Center. The other member-managers are Mikel D. Peaslee and Jason C. Peaslee. Both Mikel D. Peaslee and Jason C. Peaslee are Peaslee and Defendant Peaslee's sons.

6. Based upon documents recently provided by the West Virginia Secretary of State's Office evidencing its' entire file on the Service Center, the Defendant Peaslee does not have any ownership interest as a member-manager of the Service Center.

7. Based on information and belief the Defendant Peaslee may claim to be a member-manager of the Service Center.

8. Since May 2021, the Defendant Peaslee and Peaslee have been engaged in a divorce action in The Family Court of Preston County, West Virginia (Family Court).

9. On August 16, 2021, the Family Court entered an Order which in Paragraph 1(a) gave the Defendant Peaslee the sole right to operate the Service Center (the August 2021 Order).

10. On January 19, 2022, the Family Court entered an Order reiterating that it had made the Defendant Peaslee solely responsible for operating the business while the divorce case was pending.

11. The Third-Party Plaintiffs incorporate paragraphs 9, 10, 11, 12 and 13 from the Plaintiff's Complaint into this Third-Party Complaint.

12. The Defendant Peaslee, acting in his individual capacity, asked the Plaintiff, to pledge her certificates of deposit (CDs) at United National Bank (the Bank), valued at a total of \$245,000.00, as collateral for the two (2) commercial lines of credit (Credit Lines) of the Service Center.

13. Based on information and belief, the Plaintiff agreed to pledge her CDs as collateral for the Credit Lines because she knew that Service Center was a successful business.

14. Based on information and belief, the Plaintiff also agreed to pledge her CDs as collateral for the Credit Lines insofar as the Defendant Peaslee, acting in his individual capacity, represented that he would personally guarantee the subject Credit Lines. As such, the Plaintiff was assured by the Defendant Peaslee, acting in his individual capacity, that the CDs would never be consumed by the loan upon a default and that the same were purely being utilized to secure a favorable interest rate.

15. Based upon information and belief, the Plaintiff, relying upon the material representations of the Defendant Peaslee, acting in his individual capacity, executed all documents surrounding the Credit Lines thereby pledging her CDs as collateral for the debt.

16. Based upon information and belief, the Plaintiff has become alienated and/or estranged from her father, the Defendant Peaslee, and/or their relationship has otherwise soured due to the Plaintiff's relationship to her mother, Peaslee.

17. In 2021, the parties obtained an extension of the maturity dates on the subject Credit Lines with the Bank to December 14, 2021.

18. Based upon information and belief, the Plaintiff, relying upon the material representations of the Defendants Peaslee, acting in his individual capacity, from the beginning of these transactions executed all documents surrounding the extension of the maturity dates on the Credit Lines.

19. Based upon information and belief, from May 2021 to September 7, 2021, while the Credit Lines were both solely under the Defendant Peaslee's control, one Credit Line loan grew from Eleven Thousand Dollars (\$11,000.00) to over One Hundred Thousand Dollars (\$100,000) and the other Credit Line loan grew from approximately Twenty-Nine Thousand Dollars (\$29,000.00) to over Seventy-Five Thousand Dollars (\$75,000.00).

20. Prior to the August 2021 Order, Peaslee was directly involved in the Service Center's daily operations and ensured that the Credit Lines remained in good standing with the Bank.

21. As the extension on the maturity date on the Credit Lines was ending, the Bank was demanding new and/or additional collateral be pledged to secure the Credit Lines.

22. On October 26, 2021, Kyle Hess (Hess), a commercial banker for the Bank sent an email to Peaslee and agreed that the Bank could accept her recommendation that the Service Center's tire inventory be utilized as new collateral to secure the Credit Lines and extend their maturity date beyond December 14, 2021.

23. However, after October 26, 2021, the Defendant Peaslee, acting in his individual capacity, knowingly, negligently, recklessly, intentionally, and/or maliciously did not execute any documents nor provide the Service Center's tire inventory as new/additional collateral to extend the maturity dates on the subject Credit Lines with the Bank.

24. In the Fall 2021, the Defendant Peaslee, acting in his individual capacity, knowingly, negligently, recklessly, intentionally, and/or maliciously only wanted to turn over the Plaintiff's CDs to pay off the balance owed on the Credit Lines.

25. By December 2021, due to the Defendant Peaslee's knowingly, negligently, recklessly, intentionally, and/or maliciously inactions the Bank would no longer accept the Service Center's tire inventory as new collateral to extend the maturity dates on the Credit Lines.

26. In December 2021, the Defendant Peaslee, knew or should have known, that the Service Center had business accounts with combined balanced of over Two Hundred Thirteen Thousand Dollars (\$213,000.00) and that the balance owed on the Credit Lines was One Hundred Seventy-Nine Thousand Dollars (\$179,000.00).

27. On December 2, 2021, Peaslee filed a Motion to Use Business Money to Pay Off Line of Credit with the Family Court. In the motion, Peaslee argued there was enough money in the Service Center's business accounts to pay of the Credit Lines in full thereby preventing them from going into default.

28. The Family Court denied Peaslee's Motion.

29. On both December 1, 2021, and December 9, 2021, Peaslee's counsel sent a letter to the Defendant Peaslee's counsel writing there was enough in the Service Center's business accounts to pay of the Credit Line debt.

30. On December 10, 2021, the Defendant Peaslee's counsel sent a letter to Peaslee's counsel that "The funds in the CDs are not Amy's [Plaintiff] and were never given to her. There is ample evidence that this money was never intended to be a gift to Amy." And defiantly claimed that CDs could be used as collateral for the extension of the line of credit as they have been for years."

31. On January 4, 2022, Peaslee sent an email to Hess agreeing that the Credit Lines could be paid off with the Service Center's checking accounts and it was her understanding that the Defendant Peaslee was already taking care of this.

32. On January 12, 2022, the Bank provided Notice of Default to the Plaintiff, Peaslee, and the Defendant Peaslee regarding the Credit Lines.

33. On January 18, 2022, Peaslee filed a Renewed Motion to Use Business Money to Pay Off Line of Credit (Renewed Motion) with the Family Court. In the Renewed Motion, Peaslee argued there was enough money in the Service Center's business accounts to pay of the Credit Lines in full thereby preventing them from going into default.

34. On January 19, 2022, the Family Court denied the Renewed Motion stating that the Defendant Peaslee remained responsible for operating the business. The Family Court also wrote (1) that the Renewed Motion was essentially identical to the motion filed by Peaslee in December 2021; and (2) that Peaslee could not file "the same motion next month or any other month thereafter while this case is pending."

35. The Defendant Peaslee, acting in his individual capacity, knowingly, negligently, recklessly, intentionally, and/or maliciously allowed the Bank to declare the Credit Lines in default, hypothecate the Plaintiff's pledged CDs and pay off the entirety of the Service Center's Credit Line debts.

36. Based on information and belief, the Bank hypothecated \$178,198.34 of the \$256,998.06 held in the Plaintiff's CDs.

37. Based on information and belief, based upon the unilateral actions of the Defendant Peaslee, acting in his individual capacity, the Plaintiff alleges she lost \$178,198.34 plus additional fees, penalties, and losses of approximately \$2,728.39, and interest expectancies on said CDs.

38. On or about March 29, 2022, the Plaintiff filed the underlying Complaint against the Defendant Peaslee and the Service Center.

COUNT I
BREACH OF FIDUCIARY DUTY

39. The Third-Party Plaintiffs, incorporate by reference as it fully set forth herein the allegations contained in Paragraphs 1 through 38 above.

a. The Defendant Peaslee as a Member-Manager of the Service Center.

40. If the Defendant Peaslee is found, pursuant to the Declaratory Judgment action, to be a member-manager of the Service Center, he owed a fiduciary duty, pursuant to W. Va. Code § 31B-4-409 to the Third-Party Plaintiffs of loyalty and care in the Service Center's business decisions and daily operations.

41. The Defendant Peaslee's fiduciary duties to the Third-Party Plaintiffs included, but were not limited to:

- a. Making reasonable and prudent business decisions to the use and/or drawing from the funds available under the Credit Lines to ensure that the debt owed to the Credit Line did not overextend the Service Center thereby protecting from garnishment the Third-Party Plaintiff's interests and assets and the Plaintiff's CDs if the Credit Lines were ever declared in default;
- b. Negotiating and executing documents with the Bank to provide assets as new and/or additional collateral to secure and extend the maturity of the Credit Lines thereby protecting from garnishment the Third-Party Plaintiff's interests and assets and the Plaintiff's CDs;
- c. Paying off the Credit Lines, in full, from money in the Service Center's financial accounts thereby preventing the Credit Lines from being declared in default and protecting the Third-Party Plaintiff's interests and assets and the Plaintiff's CDs from garnishment by the Bank;

42. The Defendant Peaslee breached his fiduciary duties of loyalty and care to the Third-Party Plaintiffs by knowingly, recklessly, intentionally, maliciously, and/or negligently taking no action to prevent the Bank from declaring the Credit Lines in default.

43. The Defendant Peaslee breached his duty of loyalty and care to the Third-Party Plaintiffs as he (1) competed against the Service Center; (2) took an interest adverse to the Service Center; and (3) engaged in reckless conduct, intentional misconduct, gross negligence and/or negligence.

44. Due to the Defendant Peaslee's actions/and or inactions he failed to discharge his fiduciary duties to the Third-Party Plaintiffs consistent with his obligation of good faith and fair dealing.

45. Due to the Defendant Peaslee's breach of his fiduciary duties the Bank hypothecated \$178,198.34 of the \$256,998.06 held in the Plaintiff's CDs. The Plaintiff then sued the Service Center in the underlying Complaint.

46. The Defendant Peaslee's breach of his fiduciary duties as a member-manager of the Service Center caused substantial losses to the Third-Party Plaintiffs.

47. The Defendant Peaslee's breach of his fiduciary duties as a member-manager of the Service Center is the proximate cause of damages incurred by the Third-Party Plaintiffs.

b. The Defendant Peaslee as an Agent of the Service Center.

48. If the Defendant Peaslee is found, pursuant to the Declaratory Judgment action, to not be a member-manager of the Service Center, he was arguably an agent authorized with direct and/or implied authority by the Third-Party Plaintiffs (and the Family Court Orders) to conduct the daily operations of the Service Center.

49. As an agent the Defendant Peaslee owed a fiduciary duty as an agent of the Third-Party Plaintiffs of good faith, loyalty, honesty, the exercise of fair discretion, and to not use his agency position to his advantage detrimental to the interests of the Third Party Plaintiffs.

50. The Defendant Peaslee's fiduciary duties as an agent to the Third-Party Plaintiffs included; but were not limited to:

- a. Making reasonable and prudent business decisions to the use and/or drawing from the funds available under the Credit Lines to ensure that the debt owed to the Credit Line did not overextend the Service Center thereby protecting from garnishment the Third-Party Plaintiff's interests and assets and the Plaintiff's CDs if the Credit Lines were ever declared in default;
- b. Negotiating and executing documents with the Bank to provide assets as new and/or additional collateral to secure and extend the maturity of the Credit Lines thereby protecting from garnishment the Third-Party Plaintiff's interests and assets and the Plaintiff's CDs;
- c. Paying off the Credit Lines, in full, from money in the Service Center's financial accounts thereby preventing the Credit Lines from being declared in default and protecting the Third-Party Plaintiff's interests and assets and the Plaintiff's CDs from garnishment by the Bank;

51. The Defendant Peaslee breached his fiduciary duties as an agent of the Third-Party Plaintiffs of good faith, loyalty, honesty, the exercise of fair discretion, and to not use his agency position to his advantage detrimental to the interests of the Third Party Plaintiffs by knowingly, recklessly, intentionally, maliciously, and/or negligently taking no action to prevent the Bank from declaring the Credit Lines in default.

52. Due to the Defendant Peaslee's breach of his fiduciary duties as an agent of the Third-Party Plaintiffs, the Bank hypothecated \$178,198.34 of the \$256,998.06 held in the Plaintiff's CDs. The Plaintiff then sued the Service Center in the underlying Complaint.

53. The Defendant Peaslee's breach of his fiduciary duties as an agent of the Third-Party Plaintiffs caused them substantial losses.

54. The Defendant Peaslee's breach of his fiduciary duties as an agent of the Third-Party Plaintiffs is the proximate cause of their damages.

**COUNT II
FRAUD AND/OR
CONSTRUCTIVE FRAUD**

55. The Third-Party Plaintiffs, incorporate by reference as it fully set forth herein the allegations contained in Paragraphs 1 through 54 above.

56. If the Defendant Peaslee is found, pursuant to the Declaratory Judgment action above, to NOT be a member-manager of the Service Center, he knowingly, intentionally, maliciously, and recklessly represented to the Third-Party Plaintiffs and the Family Court an ownership interest in the Service Center that did not exist.

57. The Third-Party Plaintiffs, as well as the Family Court, relied upon the Defendant Peaslee's fraudulent representations that he had an ownership interest in the Service Center when he committed the actions and inactions pled in the Plaintiff's Complaint and this Third-Party Complaint.

58. The Defendant Peaslee's knowingly, intentionally, maliciously, and recklessly representations induced the Family Court to not permit the Third-Party Plaintiff from intervening into the Service Center's daily operations when the

Defendant Peaslee committed the actions and inactions pled in the Plaintiff's Complaint and this Third-Party Complaint.

59. The Third-Party Plaintiffs were justified in their reliance of the Defendant Peaslee's fraudulent representations as they were made by their respective husband and father with whom they were justified in trusting.

60. To the extent that the Defendant Peaslee, did not commit actual fraud, his acts and/or omissions amount to a constructive fraud insofar as the same has a tendency to deceive others, to violate public or private confidence, or to injure public interests, and/or amounts to conduct, although not actually fraudulent, ought to be so treated, that is, in which conduct is a constructive or *quasi fraud*, which has all the actual consequences and legal effects of actual fraud.

61. As a direct and proximate result of the Defendant Peaslee's fraudulent and/or constructively fraudulent conduct, the Third-Party Plaintiffs were damaged, including but not limited to the loss of assets, attorney fees, and expenses and other direct, indirect, consequential general and/or special damages for which they should be compensated.

62. The acts and/or omissions of the Defendant Peaslee, to the extent not merely negligent, were done with actual malice toward the Third-Party Plaintiffs, and/or he acted with a conscious, reckless, and outrageous indifference to the financial health and stability, safety, and welfare of the Third-Party Plaintiffs, such that an award of punitive damages is proper to punish the Defendant Peaslee, and to preclude him and others similarly situated from acting in a like manner in the future.

COUNT III
ACTION FOR INDEMNIFICATION/CONTRIBUTION

63. The Third-Party Plaintiffs, incorporate by reference as it fully set forth herein the allegations contained in Paragraphs 1 through 62 above.

64. Regardless of whether the Defendant Peaslee is found, pursuant to the Declaratory Judgment action, to be a member-manager of the Service Center, the Third-Party Plaintiffs deny any liability or fault for the damages alleged by the Plaintiff, and affirmatively assert that, in the event the court or jury in this matter should determine that they are liable to the Plaintiff for damages, then any such loss, damage or injury incurred by them as a result of such determination is the direct and proximate acts, omissions, unconscionable conduct, fraud, breach of fiduciary duty, misrepresentation, misfeasance, malfeasance, negligence, and/or other breach of the duty on the part of the Defendant Peaslee, such that the Third-Party Plaintiffs are entitled to indemnification from the Defendant Peaslee, for all monetary damages paid to the Plaintiff; recovery of their attorney fees, costs, and expenses; and any other and further relief as justice may require.

COUNT IV
UNJUST ENRICHMENT

65. The Third-Party Plaintiffs incorporate by reference as if fully set forth herein the allegations contained in paragraphs 1 through 64.

66. "Unjust enrichment" means that one party has unfairly kept some benefit that actually belonged to another party, that this benefit was not freely given to the party keeping it, and that there was no legal justification for keeping it.

67. When one party enriches itself unjustly at the expense of another, the law imposes an obligation upon the unjustly enriched party to pay the other party the

value of that benefit.

68. The Defendant Peaslee unjustly enriched himself to the detriment of the Third-Party Plaintiffs and, as such, should be required by law to compensate them, make them whole, and pay them the value of that benefit.

COUNT V
ACCOUNTING

69. The Third-Party Plaintiffs incorporate by reference as if fully set forth herein the allegations contained in paragraphs 1 through 68.

70. The Defendant Peaslee has a duty and obligation to account to the Third-Party Plaintiffs for all Service Center assets and money he received from the Service Center's business accounts when he was solely responsible for its' daily operations pursuant to the Family Court Orders.

71. The Third-Party Plaintiffs have a right to receive an accounting from the Defendant Peaslee for all Service Center assets and money he received from the Service Center's business accounts when he was solely responsible for its' daily operations pursuant to the Family Court Orders.

72. The Third-Party Plaintiffs have a right to be compensated and receive the full value of all Service Center assets and money from the Service Center's business accounts that the Defendant Peaslee received when he was responsible for the Service Center's daily operations pursuant to the Family Court Order that affected the Third-Party Plaintiffs' interest in the Service Center's assets and business accounts.

73. The Defendant Peaslee has a duty and obligation to pay and remit to the Third-Party Plaintiffs all Service Center assets and money from the Service Center's business accounts that the Defendant Peaslee received when he was responsible for the Service Center's daily operations pursuant to the Family Court Order that affected the Third-Party Plaintiffs' interest in the Service Center's assets and business accounts.

COUNT VI
CONVERSION

74. The Third-Party Plaintiffs incorporate by reference as if fully set forth herein the allegations contained in paragraphs 1 through 73.

75. The Defendant Peaslee while acting as either member-manager or agent of the Service Center had authority of control over Service Center assets.

76. Based on information and belief, the Defendant Peaslee exceeded his authority of control over Service Center assets when he exercised dominion and control over the assets and took them for his personal use and gain.

77. The Third-Party Defendants never consented to the Defendant Peaslee exceeding his authority of control and taking Service Center assets for his personal use and gain.

78. The Defendant Peaslee's taking of Service Center's assets for his personal use and gain without authority, consent, or invitation from the Third-Party Plaintiffs was inconsistent with their rights and title in the assets.

79. As a result of the Defendant Peaslee's actions he seriously and substantially caused damage to the Third-Party Plaintiffs by converting the Service Center's assets to his personal use and gain.

COUNT VII
TORT OF OUTRAGE

80. The Third-Party Plaintiffs incorporate by reference as if fully set forth herein the allegations contained in paragraphs 1 through 79.

81. The intentional acts and/or omissions of the Defendant Peaslee as alleged in the Plaintiff's Complaint and this Third-Party Complaint were so extreme and outrageous so as not to be tolerated in a civilized society.

82. As a direct and proximate result of the acts and/or omissions of the Defendant Peaslee, as alleged herein, the Third-Party Plaintiffs were caused to be damaged and injured:


WHEREFORE, the Third-Party Plaintiffs, Anita Peaslee and the Peaslee Service Center LLC, respectfully demand judgment against the Third-Party Defendant, Mikel Peaslee and that they be awarded the following:

- a. Compensatory damages and/or equitable relief in an amount in excess of the jurisdictional threshold of the Court and sufficient to make them whole for their injuries and/or damages;
- b. For punitive damages relief in an amount in excess of the jurisdictional threshold of the Court and sufficient to punish the Third-Party Defendant, Mikel Peaslee, and to preclude the defendants and others similarly situated from acting in a like manner in the future;
- c. For the Third-Party Defendant, Mikel Peaslee to disgorge all assets to which he was unjustly enriched;
- d. For the Third-Party Defendant, Mikel Peaslee to provide an accounting of all Service Center assets and money from its' business accounts that he received when he was responsible for the Service Center's daily operations pursuant to the Family Court Order.
- e. For attorney's fees and costs where allowable by law;
- f. For pre-and post-judgment interest where allowable by law; and

g. For such additional favorable relief as the Court deems just and appropriate.

THE THIRD-PARTY PLAINTIFFS DEMAND A JURY TRIAL.

Respectfully submitted,
INTERVENOR PLAINTIFFS AND
THIRD-PARTY PLAINTIFFS, ANITA
PEASLEE and THE PEASLEE
SERVICE CENTER, LLC
By Counsel,



David M. Jecklin, Esq. (WV Bar No. 9678)
Gianola, Barnum & Jecklin, L.C.
1714 Mileground Road
Morgantown, WV 26505
Phone: 304-291-6300
Fax 304-291-6307

SUMMONS
IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

AMY S. PEASLEE,

Plaintiff,

v.

Civil Action No. 22-C-11

**PEASLEE SERVICE CENTER, LLC and
MIKEL PEASLEE,**

Defendants

and

**ANITA PEASLEE and
PEASLEE SERVICE CENTER, LLC**

**Intervenor Plaintiffs and
Third-Party Plaintiffs,**

v.

MIKEL PEASLEE,

**Intervenor Defendant and
Third- Party Defendant.**

TO THE ABOVE NAMED INTERVENOR & THIRD-PARTY DEFENDANT:

**MIKEL PEASLEE
c/o PEASLEE SERVICE CENTER
16548 VETERANS MEMORIAL HWY
KINGWOOD, WV 26537**

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon David M. Jecklin, Plaintiff's attorneys, whose address is 1714 Mileground, Morgantown, WV 26505, an answer including any related counterclaim you may have to the complaint filed against you in the above-styled civil action, a copy of which is herewith delivered to you. You are required to serve your answer within **20 days** after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above styled action.

DATED: May 31, 2022

Lisa Leishman
Clerk of Circuit Court

By: J. Murray
Deputy Clerk

** Return **

SUMMONS
IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

AMY S. PEASLEE,

Plaintiff,

v.

Civil Action No. 22-C-11

**PEASLEE SERVICE CENTER, LLC and
MIKEL PEASLEE,**

Defendants

and

**ANITA PEASLEE and
PEASLEE SERVICE CENTER, LLC**

**Intervenor Plaintiffs and
Third-Party Plaintiffs,**

v.

MIKEL PEASLEE,

**Intervenor Defendant and
Third- Party Defendant.**

TO THE ABOVE NAMED INTERVENOR & THIRD-PARTY DEFENDANT:

**MIKEL PEASLEE
c/o PEASLEE SERVICE CENTER
16548 VETERANS MEMORIAL HWY
KINGWOOD, WV 26537**

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon David M. Jecklin, Plaintiff's attorneys, whose address is 1714 Mileground, Morgantown, WV 26505, an answer including any related counterclaim you may have to the complaint filed against you in the above-styled civil action, a copy of which is herewith delivered to you. You are required to serve your answer within **20 days** after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above styled action.

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IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

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**PEASLEE SERVICE CENTER, LLC and
MIKEL PEASLEE,**

Defendants

and

**ANITA PEASLEE,
PEASLEE SERVICE CENTER, LLC,
JASON PEASLEE, and
MIKEL D. PEASLEE,**

**Intervenor Plaintiffs and
Third-Party Plaintiffs,**

v.

MIKEL PEASLEE,

**Intervenor Defendant and
Third- Party Defendant.**

**THE INTERVENOR PLAINTIFFS' AMENDED PETITION FOR DECLARATORY RELIEF
AGAINST INTERVENOR DEFENDANT MIKEL PEASLEE**

The Intervenor Plaintiffs, Anita Peaslee and Peaslee Service Center, LLC, by counsel, pursuant to Rule 57 of the West Virginia Rules of Civil Procedure and W. Va. Code § 55-13-1, *et seq.*, bring this Amended Petition for Declaratory Relief (the Petition) and respectfully request that the Court declare who are the legal owners of the Peaslee Service Center, LLC.



PARTIES

1. The Intervenor Plaintiff, Anita Peaslee, (Peaslee) is an individual currently residing in Preston County, West Virginia, and a member-manager in the Intervenor Plaintiff, Peaslee Service Center, LLC.

2. The Intervenor Plaintiff, Peaslee Service Center, LLC (Service Center) is a registered West Virginia limited liability company with a principal office address of 16548 Veterans Memorial Highway, Kingwood, Preston County, West Virginia.

3. The Intervenor Plaintiff Mikel D. Peaslee, is an individual residing in Preston County, West Virginia. Based on this Court's August 23, 2022, Order, Jason Peaslee is added as an indispensable party to the Petition.

4. The Intervenor Plaintiff, Jason Peaslee, is an individual residing in Preston County, West Virginia. Based on this Court's August 23, 2022, Order, Jason Peaslee is added as an indispensable party to the Petition.

5. The Intervenor Defendant, Mikel Peaslee, (Defendant Peaslee) is an individual currently residing in Preston County, West Virginia.

6. During an August 9, 2022, hearing the Court found that the Petition could not proceed until all potential owners in the Service Station were enjoined into this action. Accordingly, in the Court's August 23, 2022, Order, the Intervenor Plaintiffs, Mikel D. Peaslee and Jason Peaslee were added as indispensable parties to the Petition based upon their alleged ownership interest in the Service Center.

JURISDICTION AND VENUE

7. Jurisdiction in this case is appropriate pursuant to W. Va. Code § 55-13-1, *et seq.*

8. Venue in this case is proper pursuant to W. Va. Code § 56-1-1.

UNDERLYING FACTS

9. On or about July 1, 1988, the Defendant Mikel Peaslee started the "Peaslee Service Center" and ran it as a doing-business-as, i.e., DBA. Based on information and belief, the Defendant Peaslee ran the daily operations of the DBA service center (DBA Service Center) with the assistance of Peaslee and their family.

10. In 1997, the Defendant Peaslee went to work for U Haul and was prohibited by U Haul from maintaining an ownership interest in the DBA Service Center.

11. Based on information and belief, in 1997, the Defendant Peaslee gifted to Peaslee and her sons, Mikel D. Peaslee and Jason Peaslee, his full, One Hundred Percent (100%) interest in the DBA Service Center.

12. On April 11, 1997, Articles of Organization for a Limited Liability Company were filed with the West Virginia Secretary of State's Office referencing the newly created Service Center and its' three member-managed owners, Peaslee, and her sons, Mikel D. Peaslee and Jason C. Peaslee.

13. On July 8, 1997, Jason C. Peaslee executed a Transfer of Business form with the West Virginia Department of Employment Security transferring the predecessor, the DBA Service Center to the Defendant Service Center.

14. In or around 2001, the Defendant Peaslee stopped working for U Haul and returned to work at the Service Center and participating in its' daily business operations.

15. Since May 2021, the Defendant Peaslee and Peaslee have been engaged in a divorce action in The Family Court of Preston County, West Virginia (Family Court).

16. On August 16, 2021, the Family Court entered an Order which in Paragraph 1(a) gave the Defendant Peaslee the sole right to operate the Service Center (the August 2021 Order).

17. On January 19, 2022, the Family Court entered an Order reiterating that it had made the Defendant Peaslee responsible for operating the business while the divorce case was pending.

18. On or about March 29, 2022, the Plaintiff, Amy Peaslee, filed the underlying Complaint alleging Breach of Contract/Breach of the Covenant of Good Faith and Fair Dealing, Fraud/Constructive Fraud, Detrimental Reliance, Tortious Interference with a Contractual and/or Business Relationship, and Unjust Enrichment against the Defendant Peaslee and the Service Center. The Plaintiff also brought a claim for Contribution and/or Indemnification against the Defendant Peaslee and an Action for Subrogation.

19. The Plaintiff alleges that the Defendants allowed two (2) lines of credit (Credit Lines) with United National Bank (Bank) to go into default to which she had personally guaranteed, by pledging as collateral her ownership in two (2) certificates of deposit (CDs) that were being held at the Bank.

20. The Plaintiff alleges that due to the Defendants actions and/or inactions to cure the default, she suffered damages, up to and including \$178,198.34 when the Bank cured the default by levying on her CDs.

21. Ms. Peaslee states that when the Defendant Peaslee allegedly permitted the Credit Lines to go into default, he was the only person responsible for operating the business while the divorce case was pending per the Family Court's Orders and failed to

provide financially prudent Service Center assets as collateral to extend the maturity dates on the subject Credit Lines with the Bank and prevent a default.

OWNERSHIP OF THE PEASLEE SERVICE STATION, LLC

22. When the August 2021 Order was entered Peaslee believed, due to her lack of sophisticated knowledge of business ownership procedures, that both she and the Defendant Peaslee were the only member-managers of the Service Center after he returned from working at U Haul.

23. Because the Defendant Peaslee knew that he could not have any ownership in the Service Center while he worked at U Haul, Peaslee presumed when the Defendant Peaslee stopped working for U Haul that he, the Service Center, and its' member-managers had executed the appropriate documents making the Defendant Peaslee a member-manager in the Service Center and removing Mikel D. Peaslee and Jason Peaslee as member-managers.

24. Ms. Peaslee's presumptions were bolstered by the fact that both Mikel D. Peaslee and Jason Peaslee stopped working at the Service Center after the Defendant Peaslee stopped working at U Haul.

25. Accordingly, after the August 2021 Order was entered, Peaslee did not believe that she, Mikel D. Peaslee, nor Jason Peaslee could supersede and/or override the Defendant Peaslee's actions or inactions to extend the maturity date of the Credit Lines and prevent the Bank from declaring them as being in default and levying on the Plaintiff's CDs.

26. However, based upon documents recently provided by the West Virginia Secretary of State's Office evidencing its' entire file regarding the Service Center, the Intervenor Plaintiffs allege:

- a. That neither the Defendant Peaslee, the Service Center, nor its' member-managers have ever executed any documents making the Defendant Peaslee a member-manager in the Service Center.
- b. That the Defendant Peaslee is not now, nor has ever been, a member-manager of the Service Center;
- c. That Peaslee, Mikel D. Peaslee and Jason Peaslee are the only member-manager of the Service Center;
- d. That the August 2021 Order, never should have been prohibited Peaslee from participating in the daily operations of the Service Center;
- e. That the Service Center's member-managers have not hired Virginia E. Hopkins, Esq., to represent the Service Center's interests in the Plaintiff's lawsuit;
- f. That the Intervenor Plaintiffs, regardless of whether the Defendant Peaslee has any ownership interest in the Service Center, have claims against him for his alleged actions in the Plaintiff's lawsuit that they anticipate not being filed by Ms. Hopkins;
- g. That prior to the filing of this pleading, the Intervenor Plaintiffs sent a letter to Ms. Hopkins explaining these issues but to their knowledge she never responded; and
- h. That Ms. Hopkins has a conflict-of-interest representing both the Defendant Peaslee and the Service Center in the Plaintiff's lawsuit.

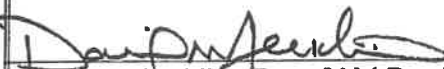
CONCLUSION

27. Based upon the foregoing, an actual controversy exists between and among the parties to this action with respect to who are the member-managers of the Service Center.

THEREFORE, the Intervenor Plaintiffs, Anita Peaslee and Peaslee Service Center, LLC, respectfully request that the Court grant the following declaratory relief in accordance with the West Virginia Declaratory Judgments Act, W. Va. Code § 55-13-1, et seq.:

- A. That this Court declare that the Defendant Mikel Peaslee is not a member-manager of the Intervenor Plaintiff, Peaslee Service Center, LLC;
- B. That this Court declare that the Intervenor Plaintiff, Anita Peaslee is a member-manager of the Intervenor Plaintiff, Peaslee Service Center, LLC;
- C. That this Court declare that the Intervenor Plaintiffs, Jason Peaslee and Mikel D. Peaslee are member-managers of the Intervenor Plaintiff, Peaslee Service Center, LLC, and
- D. That the Intervenor Plaintiffs are entitled to such further and additional relief as the Court may deem just and proper.

Respectfully submitted,
INTERVENOR PLAINTIFFS ANITA
PEASLEE and THE PEASLEE
SERVICE CENTER, LLC
By Counsel,


David M. Jecklin, Esq. (WV Bar No. 9678)
Gianola, Barnum & Jecklin, L.C.
1714 Mileground Road
Morgantown, WV 26505
Phone: 304-291-6300
Fax 304-291-6307

IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

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**Intervenor Plaintiffs and
Third-Party Plaintiffs,**

v.

MIKEL PEASLEE,

**Intervenor Defendant and
Third- Party Defendant.**

**THE INTERVENOR PLAINTIFF, ANITA PEASLEE'S
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56 of the West Virginia Rules of Civil Procedure and West Virginia Code §§ 31B-6-601, 31B-7-701, § 47B-6-1, and 47B-7-1, the Intervenor Plaintiff, Anita Peaslee (Peaslee) respectfully moves the Court to find that there is no genuine issue of material fact in dispute regarding the ownership of the Peaslee Service Center, LLC (Service Center). Accordingly, this Court should declare that the legal owners of the Service Center are Mikel D. Pealsee and Jason Peaslee at twenty-four percent (24%)



each and Peaslee at fifty-two percent (52%). In support of Peaslee's Motion, she states as follows:

FACTUAL BACKGROUND

On or about July 1, 1988, the Defendant, Mikel Peaslee (the Defendant Peaslee) started the "Peaslee Service Center" and ran it as a doing-business-as, i.e., DBA. Based on information and belief, the Defendant Peaslee ran the daily operations of the DBA service center (DBA Service Center) with the assistance of Peaslee and their family. In 1997, the Defendant Peaslee went to work for U Haul and was prohibited by U Haul from maintaining an ownership interest in the DBA Service Center. Based on information and belief, in 1997, the Defendant Peaslee gifted to Peaslee and her sons, Mikel D. Peaslee and Jason Peaslee, his full, One Hundred Percent (100%) interest in the DBA Service Center.

On April 11, 1997, Articles of Organization for a Limited Liability Company were filed with the West Virginia Secretary of State's Office referencing the newly created Service Center and its' three member-managed owners, Peaslee, and her sons, Mikel D. Peaslee and Jason C. Peaslee. See Exhibit A.

On July 8, 1997, Jason C. Peaslee executed a Transfer of Business form with the West Virginia Department of Employment Security transferring the predecessor, the DBA Service Center to the Defendant Service Center. See Exhibit B.

Unit Certificates were issued to Mikel D. Peaslee and Jason C. Peaslee for their individual 24% interest in the Service Center. See Exhibit C. Mrs. Peaslee is a 52% owner of the Service Center.

From 1997 through 2000, the Service Center filed tax returns, that were created by a third-party accountant, listing the owners as Peaslee: fifty-two percent (52%), Jason

Peaslee: twenty-four percent (24%); and Mikel D. Peaslee: twenty-four percent (24%). See Exhibits D. Beginning in 2001, the Service Center filed tax returns, that were created by a third-party accountant, listing Peaslee and the Defendant Peaslee as each owning fifty percent (50%) of the company. See Exhibit E.

There is no documentation providing for Peaslee relinquishing two percent (2%) of her ownership in the Service Center to the Defendant Peaslee; nor documentation for Mikel D. Peaslee and Jason Peaslee relinquishing their twenty-four percent (24%) ownership in the Service Center to the Defendant Peaslee. However, the Defendant Peaslee claims to be a fifty percent (50%) owner in the company and that his sons, Mikel D. Peaslee and Jason Peaslee no longer have an ownership interest. Similarly, Mike D. Peaslee and Jason Peaslee claim to still be owners of the Service Center with their mother, Peaslee at the percentages provided above.

The West Virginia Secretary of State's Office still recognizes the Service Center as an active company that 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. See Exhibit F.

On May 25, 2022, Peaslee, pursuant to West Virginia Code § 55-13-1, *et seq.*, brought a Declaratory Judgment action before this Court asking it to declare who are the legal owners of the Service Center.

On July 6, 2023, the depositions of Mikel D. Peaslee and Jason Peaslee were taken by the parties.

LEGAL STANDARD

1. Summary Judgment

Under Rule 56(c) of the West Virginia Rules of Civil Procedure, summary judgment is proper where the moving party shows there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Aetna Casualty and Surety Company v. Federal Insurance Company of New York, 148 W. Va. 160, 133 S.E.2d 770 (1963). A court's task at the summary judgment stage is not to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial. Conrad v. ARA Szabo, 198 W. Va. 362, 480 S.E.2d 801 (1996). Accordingly, summary judgment must be granted if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Aetna, at 777.

When making a summary judgment determination, the Court must draw any permissible inference of the underlying facts in a light most favorable to the non-moving party. Matsushita Electric Indust. Co., Ltd. v. Zenith Radio Corporation, 475 U.S. 574 (1986); Andrick v. Town of Buckhannon, 187 W. Va. 706, 421 S.E.2d 247 (1992). However, to withstand the motion, the nonmoving party must show there will be enough competent evidence available at trial to enable a finding favorable to the nonmoving party. Williams v. Precision Coil, 194 W. Va. 52, 60-61, 459 S.E.2d 329, 337 (1995). Therefore, the party opposing summary judgment must satisfy the burden of proof by offering more than a "scintilla of evidence." Anderson v. Liberty Lobby, Inc., 477 U.S. 422 (1986).

2. West Virginia Code Sections Providing for a Partner and/or Member's Dissociation from a Limited Liability Company and/or a Partnership.

a. West Virginia Limited Liability Company

a. W. Va. Code § 31B-6-601. Events causing member's dissociation.

A member is dissociated from a limited liability company upon the occurrence of any of the following events:

(1) The company's having notice of the member's express will to withdraw upon the date of notice or on a later date specified by the member;

(2) An event agreed to in the operating agreement as causing the member's dissociation;

(3) Upon transfer of all of a member's distributional interest, other than a transfer for security purposes or a court order charging the member's distributional interest which has not been foreclosed;

(4) The member's expulsion pursuant to the operating agreement;

(5) The member's expulsion by unanimous vote of the other members if:

(i) It is unlawful to carry on the company's business with the member;

(ii) There has been a transfer of substantially all of the member's distributional interest, other than a transfer for security purposes, or a court order charging the member's distributional interest, which has not been foreclosed;

(iii) Within ninety days after the company notifies a corporate member that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the member fails to obtain a revocation of the certificate of dissolution or a reinstatement of its charter or its right to conduct business; or

(iv) A partnership or a limited liability company that is a member has been dissolved and its business is being wound up;

(6) On application by the company or another member, the member's expulsion by judicial determination because the member:

(i) Engaged in wrongful conduct that adversely and materially affected the company's business;

(ii) Willfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under section 4-409 [§ 31B-4-409]; or

(iii) Engaged in conduct relating to the company's business which makes it not reasonably practicable to carry on the business with the member;

(7) The member's:

(i) Becoming a debtor in bankruptcy;

(ii) Executing an assignment for the benefit of creditors;

(iii) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver or liquidator of the member or of all or substantially all of the member's property; or

(iv) Failing, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver or liquidator of the member or of all or substantially all of the member's property obtained without the member's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated;

(8) In the case of a member who is an individual:

(i) The member's death;

(ii) The appointment of a guardian or general conservator for the member; or

(iii) A judicial determination that the member has otherwise become incapable of performing the member's duties under the operating agreement;

(9) In the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, distribution of the trust's entire rights to receive distributions from the company, but not merely by reason of the substitution of a successor trustee;

(10) In the case of a member that is an estate or is acting as a member by virtue of being a personal representative of an estate, distribution of the estate's entire rights to receive distributions from the company, but not merely the substitution of a successor personal representative; or

(11) Termination of the existence of a member if the member is not an individual, estate or trust other than a business trust.

b. W. Va. Code § 31B-7-701. Company purchase of distributional interest.

(a) A limited liability company shall purchase a distributional interest of a:

(1) Member of an at-will company for its fair value determined as of the date of the member's dissociation if the member's dissociation does not result in a dissolution and winding up of the company's business under section 8-801 [§ 31B-8-801]; or

(2) Member of a term company for its fair value determined as of the date of the expiration of the specified term that existed on the date of the member's dissociation if the expiration of the specified term does not result in a dissolution and winding up of the company's business under section 8-801.

(b) A limited liability company must deliver a purchase offer to the dissociated member whose distributional interest is entitled to be purchased not later than thirty days after the date determined under subsection (a) of this section. The purchase offer must be accompanied by:

(1) A statement of the company's assets and liabilities as of the date determined under subsection (a) of this section;

(2) The latest available balance sheet and income statement, if any; and

(3) An explanation of how the estimated amount of the payment was calculated.

(c) If the price and other terms of a purchase of a distributional interest are fixed or are to be determined by the operating agreement, the price and terms so fixed or determined govern the purchase unless the purchaser defaults. If a default occurs, the dissociated member is entitled to commence a proceeding to have the company dissolved under section 8-801 [§ 31B-8-801] (b)(5)(iv).

(d) If an agreement to purchase the distributional interest is not made within one hundred twenty days after the date determined under subsection (a) of this section, the dissociated member, within another one hundred twenty days, may commence a proceeding against the limited liability company to enforce the purchase. The company at its expense shall notify in writing all of the remaining members, and any other person the court directs, of the commencement of the proceeding. The jurisdiction of the court in which the proceeding is commenced under this subsection is plenary and exclusive.

(e) The court shall determine the fair value of the distributional interest in accordance with the standards set forth in section 7-702 [§ 31B-7-702] together with the terms for the purchase. Upon making these determinations, the court shall order the limited liability company to purchase or cause the purchase of the interest.

(f) Damages for wrongful dissociation under section 6-602 [§ 31B-6-602] (b), and all other amounts owing whether or not currently due, from the dissociated member to a limited liability company, must be offset against the purchase price.

b. West Virginia Partnership

a. W. Va. Code § 47B-6-1. Events causing partner's dissociation.

A partner is dissociated from a partnership upon the occurrence of any of the following events:

(1) The partnership's having notice of the partner's express will to withdraw as a partner or on a later date specified by the partner;

(2) An event agreed to in the partnership agreement as causing the partner's dissociation;

(3) The partner's expulsion pursuant to the partnership agreement;

(4) The partner's expulsion by the unanimous vote of the other partners if:

(i) It is unlawful to carry on the partnership business with that partner;

(ii) There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;

(iii) Within ninety days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(iv) A partnership that is a partner has been dissolved and its business is being wound up;

(5) On application by the partnership or another partner, the partner's expulsion by judicial determination because:

(i) The partner engaged in wrongful conduct that adversely and materially affected the partnership business;

(ii) The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section four [§ 47B-4-4], article four of this chapter; or

(iii) The partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;

(6) The partner's:

(i) Becoming a debtor in bankruptcy;

(ii) Executing an assignment for the benefit of creditors;

(iii) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or

(iv) Failing, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated;

(7) In the case of a partner who is an individual:

(i) The partner's death;

(ii) The appointment of a guardian or general conservator for the partner; or

(iii) A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;

(9) In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or

(10) Termination of a partner who is not an individual, partnership, corporation, trust or estate.

b. West Virginia § 47B-7-1. Purchase of dissociated partner's interest.

(a) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under section one [§ 47B-8-1], article eight of this chapter, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (b) of this section.

(b) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under subsection (b), section seven [§ 47B-8-7], article eight of this chapter if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership being wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.

(c) Damages for wrongful dissociation under subsection (b), section two [§ 47B-6-2], article six of this chapter, and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

(d) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under section two [§ 47B-7-2], article seven of this chapter.

(e) If no agreement for the purchase of a dissociated partner's interest is reached within one hundred twenty days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (c) of this section.

(f) If a deferred payment is authorized under subsection (h) of this section, the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (c) of this section, stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(g) The payment or tender required by subsection (e) or (f) of this section must be accompanied by the following:

- (1) A statement of partnership assets and liabilities as of the date of dissociation;
- (2) The latest available partnership balance sheet and income statement, if any;

(3) An explanation of how the estimated amount of the payment was calculated; and

(4) Written notice that the payment is in full satisfaction of the obligation to purchase unless, within one hundred twenty days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection (c) of this section, or other terms of the obligation to purchase.

(h) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

(i) A dissociated partner may maintain an action against the partnership, pursuant to paragraph (ii), subdivision (2), subsection (b), section five [§ 47B-4-5], article four of this chapter, to determine the buyout price of that partner's interest, any offsets under subsection (c) of this section, or other terms of the obligation to purchase. The action must be commenced within one hundred twenty days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (c) of this section, and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (h) of this section, the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection (g) of this section.

ARGUMENT

During a hearing on Tuesday, August 9, 2022, this Court found that there are material questions as to who the legal owners are of the Service Center. See Order from August 9, 2022, Hearing. The Court then established deadlines for the parties to litigate who are the legal owners of the Service Center with a final hearing scheduled on February 21, 2023.¹ Id. **Importantly, during the hearing the Court reasoned and asked the parties if declaring who are the legal owners of the Service Center would be determined by the West Virginia Code, to which the parties responded, without objection, “yes”.** Accordingly, this Court has acknowledged that the West Virginia Code establishes the legal standard for the dissociation of members from a limited liability company and a partner from a partnership.

When this Court applies the West Virginia Code’s litmus test to the material facts, it can only declare that since 2001, when the Defendant Peaslee has claimed a 50% ownership in the Service Center, that neither he nor the Service Center have followed the directives of West Virginia’s statutory law to (a) remove Jason Peaslee and/or Mikel D. Peaslee as 24% owners in the company; nor (b) take 2% of Peaslee’s ownership interest in the Service Center. Accordingly, this Court should declare that the ownership of the Service Center remains Peaslee at 52%, Jason Peaslee at 24%, and Mikel D. Peaslee at 24%. Finally, this Court after finding that no material facts are in dispute regarding the Service Center’s ownership that summary judgment is appropriate.

¹ The Final Hearing is currently scheduled for Wednesday, January 10, 2024, at 1:00.

A. Jason Peaslee's Deposition

As provided above Jason Peaslee was deposed by the parties on July 6, 2023. During Jason Peaslee's deposition he was asked questions specifically worded to comply with the West Virginia Code's litmus test. Jason Peaslee testimony established that none of the directives of the litmus test were followed by either the Defendant Peaslee or the Service Center to remove him as an owner of the company, as follows:

- That he is not aware of the Service Center ever closing after being established with the West Virginia Secretary of State's Office; See Exhibit G, July 6, 2023, Deposition Transcript, Jason Pealsee, 61:19 – 62:1.
- That he became a 24% owner in the Service Center in 1997 by (a) paying off his parents' home; (b) paying off a loan for the Service Center; (c) paying off a bankruptcy loan; and (d) through sweat equity; Id. at 64: 18-22; 65: 6-11; 65:21 – 66:2.
- That he purchased his father, the Defendant Pealsee's interest in the Service Center; Id. at 65:21 – 66:2.
- That he believes he and his brother, Jason Peaslee still own 48% of the Service Center; Id. at 67:4-15; 79:22 – 80:1; 81:16-23.
- That he believes the Defendant Peaslee does not have any ownership interest in the Service Center and that was the Defendant Peaslee's intention in 1997; Id. at 67: 16-21.
- That he does not know why he is not listed as an owner on the 2021 Service Center tax return; Id. 75: 7-10.
- That he stopped working at the Service Center after a dispute with the Defendant Peaslee; Id. at 75: 20 – 76:22.
- **Pursuant to the W. Va. Code:**
 - **He has never been asked to return his Unit Certificates;**
 - **The Defendant Peaslee has never given him any money to purchase this Unit Certificates;**

- **The Defendant Peaslee has never given him any personal property in exchange for his Unit Certificates;**
- **The Defendant Peaslee has never forgiven any debt that he allegedly owed in exchange for his Unit Certificates;**
- **He never told anyone that he was giving back his 24% interest in the Service Center;**
- **No one has ever asked him to return his 24% interest in the Service Center;**
- **He is not aware of any votes by members of the Service Center expelling him as an owner of the company;**
- **He is not aware of any court ruling that he should be expelled as an owner of the Service Center;**
- **Is not aware of his Unit Certificates ever being transferred to the Defendant Peaslee;**
- **Has never had a guardian or a conservator appointed to represent him after receiving 24% ownership in the Service Center;**
- **A court has never ruled that he was incapable of performing his duties as a member of the Service Center.**

Id. at 77:21 – 79:21.

- That he has not done anything regarding his ownership interests in the Service Center until now because he did not want to sue his parents. Id. at 81:24 – 83:3.

During the Defendant Peaslee's examination of Jason Peaslee there was no evidence presented or testimony disputing Jason Peaslee's sworn testimony above. Therefore, based on Jason Peaslee's uncontroverted testimony this Court should find that neither the Defendant Peaslee nor the Service Center have followed the directives of West Virginia's statutory law to remove Jason Peaslee as a 24% owner in the Service

Center - the Defendant Peaslee failed the litmus test - and declare that Jason Peaslee remains a 24% owner in the ownership of the company.

B. Mikel D. Peaslee's Deposition

As provided above Mikel D. Peaslee was deposed by the parties on July 6, 2023. During Mikel D. Peaslee's deposition he was asked questions specifically worded to comply with the West Virginia Code's litmus test. Mikel D. Peaslee testimony established that none of the directives of the litmus test were followed by either the Defendant Peaslee or the Service Center to remove him as an owner of the company, as follows:

- That he believes he is still a 24% owner of the Service Center; See Exhibit H, July 6, 2023, Deposition Transcript, Mikel D. Pealsee, 37: 2 – 38: 1.
- That he became a 24% owner in the Service Center in 1997 by (a) paying off his parents' home; (b) paying off a bankruptcy loan; and (c) through sweat equity; Id. at 38: 13-23; 39: 9-14; and 41:1-3
- That he believes he and his brother, Jason Peaslee still own 48% of the Service Center; Id. at 38: 3-11; 41: 1-6.
- That he stopped working at the Service Center because he could not work with the Defendant Peaslee; Id. at 43: 1-3
- **Pursuant to the W. Va. Code:**
 - **He has never been asked to return his Unit Certificates;**
 - **The Defendant Peaslee has never given him any money to purchase this Unit Certificates;**
 - **The Defendant Peaslee has never given him any personal property in exchange for his Unit Certificates;**
 - **The Defendant Peaslee has never forgiven any debt that he allegedly owed in exchange for his Unit Certificates;**

- **He never told anyone that he was giving back his 24% interest in the Service Center;**
- **That there has never been a Service Center meeting where either he or Jason Peaslee said they were giving back their interests in the Service Center;**
- **No one has ever asked him to return his 24% interest in the Service Center;**
- **He is not aware of any votes by members of the Service Center expelling him as an owner of the company;**
- **He has never physically handed back his Unit Certificates;**
- **He is not aware of any court ruling that he should be expelled as an owner of the Service Center;**
- **Is not aware of his Unit Certificates ever being transferred to the Defendant Peaslee;**
- **Has never had a guardian or a conservator appointed to represent him after receiving 24% ownership in the Service Center;**
- **A court has never ruled that he was incapable of performing his duties as a member of the Service Center.**

Id. at 50: 14 – 52: 6; 53: 8-14.

- That the Defendant Peaslee knew he was becoming a 24% owner in the Service Center in 1997; Id. at 53: 15-24; 54: 1-4.
- That he does not know why he is not listed as an owner on the 2021 Service Centern tax return; Id. at 54: 11-14.
- That he believes he has been an owner of the Service Center since 1997 and that his ownership interest has never ended; Id. at 54:15-22.
- That he has not done anything regarding his ownership interests in the Service Center until now because he did not want to sue his parents. Id. at 54: 23 – 55: 22; 56: 13 – 18.

During the Defendant Peaslee's examination of Mikel D. Peaslee there was no evidence presented or testimony disputing his sworn testimony above. Therefore, based on Mikel D. Peaslee's uncontroverted testimony this Court should find that neither the Defendant Peaslee nor the Service Center have followed the directives of West Virginia's statutory law to remove Mikel D. Peaslee as a 24% owner in the Service Center - the Defendant Peaslee failed the litmus test - and declare that Mikel D. Peaslee remains a 24% owner in the ownership of the company.

C. The Defendant Peaslee's Discovery Responses

On October 27, 2022, Peaslee sent discovery requests to the Defendant Peaslee asking him to produce any documents supporting his claimed ownership in the Service Center pursuant to the West Virginia Code's litmus test:

"REQUEST FOR PRODUCTION NO. 7: Please produce a legible copy of every document related in any way to the West Virginia Code sections below that relates in any way to every current and former owner(s) of the Service Station:

1. West Virginia Code § 47B-6-1, Events causing partner's dissociation;
2. West Virginia Code § 47B-6-2, Partner's power to dissociate; wrongful dissociation;
3. West Virginia Code § 47B-7-1, Purchase of dissociated partner's interest;
4. West Virginia Code § 47B-7-4, Statement of dissociation;
5. West Virginia Code § 31B-7-701, Company purchase of distributional interest;
6. West Virginia Code § 31B-6-601, Events causing member's dissociation;
7. West Virginia Code § 31B-6-602, Member's power to dissociate; wrongful dissociation; and

8. West Virginia Code § 31B-7-704. Statement of dissociation.

RESPONSE:"

See Exhibit I.

On December 15, 2022, the Defendant Peaslee provided his verified discovery response to Request for Production No 7. See Exhibit J.

RESPONSE: Objection. This interrogatory is unclear as to what is being requested and calls for speculation. Without waiving this objection, Mikel Peaslee states that when he worked for U Haul, the majority of the business being done by the service station was from working U Haul vehicles, and Mikel Peaslee was told that in order for him to continue to direct this work for U Haul vehicles to the service station, he needed to get the business out of his name. The Peaslee family of seven (7) needed the income from this U Haul work being done at the service station and Mikel Peaslee's U Haul income, so Mikel Peaslee spoke to his accountant seeking the accountant's assistance. Thereafter the accountant contacted an attorney and arranged for the attorney to fill out the 2 page Articles of Organization form, filed them with the Secretary of State, and received the Certificate of an LLC. The LLC was listed in the names of Anita Peaslee, Jason Peaslee and Mikel D. Peaslee. Copies of both documents are provided. The Articles of Organization and Mikel Peaslee and Anita Peaslee referred to above, effective January 1, 1997. In the tax returns filed for tax years 1997, 1998, 1999 and 2000 Anita Peaslee was listed on the partnership returns as a partner with 52% and Mikel D. Peaslee and Jason Peaslee with 24% interest each. Jason Peaslee was 19 years of age and Mikel D. Peaslee was 21 years of age. After leaving U Haul, Mikel Peaslee and Anita Peaslee resumed filing their tax returns and other documents jointly. At the time the LLC form was sent into the Secretary of State, no assets were transferred from Mikel Peaslee when the LLC was created, no payment was paid either at the time of creation of the LLC or after Mikel Peaslee left U Haul and he and Anita Peaslee began reporting that they were equal partners in the business.

In the Defendant Peaslee's verified response he did not reference nor provide any documents supporting his alleged ownership interest in the Service Center that corresponded to the West Virginia Code. Id. Instead, he claims that he never received any payments from Jason Peaslee, Mikel D. Peaslee, or Anita Peaslee for his ownership interests in his business when the Service Center was formed in 1997.² Accordingly, it appears the Defendant Peaslee is alleging that because he never received consideration

² During Jason Peaslee and Mikel D. Peaslee's depositions they testified to the consideration they provided the Defendant Peaslee for his interests in the business. To date, the Defendant Peaslee has not presented any evidence disputing his son's claims.

from for his ownership interests in the Service Center that Jason Pealsee, Mikel D. Peaslee, and Pealsee were never legal owners.

However, curiously in the Defendant Peaslee's verified response he claims that an accountant and an attorney formed the Service Center by filing documents with the West Virginia Secretary of State's Office. He then further writes that an accountant filed tax returns from 1997 to 2000 listing Jason Peaslee and Mikel D. Peaslee as 24% owners and Peaslee as a 52% owner in the company. *So, based on the totality of the Defendant Peaslee's verified response is he claiming that because he allegedly never received consideration for his interests in the business that in 1997 the Service Center was "improperly" or "incorrectly" formed by the accountant and attorney despite the documents they created and filed with the West Virginia Secretary of State and taxing agencies...? Has the statute of limitations run on the Defendant Peaslee's alleged professional malpractice claims against the accountant and attorney...? Or is this another example of the Defendant Peaslee throwing baseless arguments against the wall to see what sticks...?*

What is clear from the Defendant Peaslee's verified response is that he cannot produce any documents evidencing that either he or the Service Center followed the dictates of the West Virginia Code and removed Jason Peaslee and Mikel D. Peaslee as owners of the Service Center and reduced Peaslee's ownership interest to 50%. The Defendant Peaslee failed the litmus test. Accordingly, this Court should declare that both Jason Peaslee and Mikel D. Peaslee own 24% and Peaslee 52% of the Service Center.

D. The Defendant Peaslee's Expert Witness, Jena Martin

On June 16, 2023, the Defendant Peaslee provided a Corrected Supplemental Summary of Expert Opinion: Jena Martin. See Exhibit K. In Professor Martin's opinion when a company cannot produce an Operating Agreement (such is the case with the Service Center) a court can weigh a *state's default rules* and governmental filings when determining who are the owners of the company. Id. at ¶ 12. In Professor Martin's opinion (admits) the owners of the Service Center beginning in 1997 were Mikel D. Peaslee and Jason Peaslee at 24% each and Peaslee at 52%. Id. at ¶ 17.

However, Professor Martin opines that *tax returns* filed beginning in 2001 provides that the Defendant Pealsee has a 50% ownership in the Service Center thereby divesting Mikel Peaslee and Jason Pealsee of their ownership interests and 2% of Anita Pealsee's ownership interests in the company. Id. at ¶ 17-18. Professor Martin claims that the tax returns evidence the intention of the parties. However, nowhere in Professor Martin's opinion does she reference any documents that she reviewed corresponding to *West Virginia's default rules*, i.e., *the West Virginia Code provided above*, divesting Mikel D. Pealsee and Jason Peaslee of their 24% ownership interest and Peaslee's 2% ownership interest in the Service Center. Professor Martin ignores West Virginia's default rules when opining on ownership of the Service Center. Instead she only relies on tax returns, drafted, and filed by an accountant without any supporting documentation that the ownership structure in the Service Center actually legally changed.

However, this Court cannot ignore West Virginia's default rules, i.e., the West Virginia Code, when determining who owns the Service Center. As provided above there are no material facts in dispute that the directives provided in the West Virginia Code

were not followed by the Defendant Peaslee or the Service Center divesting Mikel D. Peaslee, Jason Peaslee, and Peaslee of their ownership interests – regardless of how an accountant created tax returns beginning in 2001.

As this Court has learned during this case, the Defendant Peaslee does whatever he wants regarding the Service Center, even ignoring this Court's Orders. Undisputedly, the Defendant Peaslee did the same in 2001, by strong arming his way back into the Service Center and claimed an ownership interest not predicated on the default laws of the State of West Virginia. He simply did not bargain for his family standing up to his bullying, albeit twenty (20) years later, and reasserting their full ownership interests.

CONCLUSION

In conclusion, pursuant to Rule 56 of the West Virginia Rules of Civil Procedure, West Virginia Code §§ 31B-6-601, 31B-7-701, § 47B-6-1, and 47B-7-1, and the above-mentioned argument this Court should find that there are no genuine issue of material facts in dispute regarding the ownership of the Peaslee Service Center, LLC, and declare that the legal owners are as follows: Mikel D. Peaslee: 24%; Jason Peaslee: 24%; and Anita Peaslee: 52%.

Respectfully submitted,
INTERVENOR PLAINTIFF
ANITA PEASLEE
By Counsel,

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IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

AMY S. PEASLEE,

Plaintiff,

v.

Civil Action No. 22-C-11

**PEASLEE SERVICE CENTER, LLC and
MIKEL PEASLEE,**

Defendants

and

**ANITA PEASLEE,
PEASLEE SERVICE CENTER, LLC,
JASON PEASLEE, and
MIKEL D. PEASLEE,**

**Intervenor Plaintiffs and
Third-Party Plaintiffs,**

v.

MIKEL PEASLEE,

**Intervenor Defendant and
Third- Party Defendant.**

CERTIFICATE OF SERVICE

I, David M. Jecklin, certify that on December 28, 2023, I served the “**The Intervenor Plaintiff, Anita Peaslee’s Motion for Summary Judgment and Notice of Hearing**” by electronically filing the following:

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