

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**BRYAN H. SIMMS**  
32 Hitchcock Rd.  
Westport, CT 06880,

**Plaintiff,**

v.

**BALL STREET VENTURES, LLC**  
1000 Wisconsin Ave., N.W., Suite g-100  
Washington, D.C. 20007;

**BALL STREET PARTNERS, LLC**  
1000 Wisconsin Ave., N.W., Suite g-100  
Washington, D.C. 20007;

**BALL STREET FUND, LLC**  
1000 Wisconsin Ave., N.W., Suite g-100  
Washington, D.C. 20007;

**CHRISTIAN LAETTNER**  
1041 Ponte Verda Blvd.  
Ponte Verda Beach, FL 32082; and

**BRIAN K. DAVIS**  
2230 Massachusetts Ave., N.W.  
Washington, D.C. 20008,

**Defendants.**

Civil Action No.:

**COMPLAINT**

Plaintiff Bryan H. Simms, by and through his undersigned counsel, brings this action against Defendants and in support thereof avers as follows:

**PARTIES**

1. Plaintiff Bryan H. Simms is a natural person, domiciled at the address set forth in the caption, and a citizen of the state of Connecticut.

2. To the best of Plaintiff's knowledge, information and belief, Defendant Ball Street Ventures ("BSV") is a Delaware limited liability corporation with its principal place of business in the District of Columbia at the address set forth in the caption. Also to the best of Plaintiff's knowledge, information and belief, Defendant Ball Street Ventures is registered to conduct business in the District of Columbia and has Corporation Service Company, 1090 Vermont Ave., N.W., Washington, DC 20005 ("CSC") as its registered agent for service in the District of Columbia. Also to the best of Plaintiff's knowledge, information and belief, Defendant Ball Street Ventures is not registered to conduct business, and has no registered agent for service, in the Commonwealth of Virginia.

3. To the best of Plaintiff's knowledge, information and belief, Defendant Ball Street Partners ("BSP") is a Delaware limited liability corporation with its principal place of business in the District of Columbia at the address set forth in the caption. Also to the best of Plaintiff's knowledge, information and belief, Defendant Ball Street Partners is not registered to conduct business, and has no registered agent for service, in the District of Columbia. Also to the best of Plaintiff's knowledge, information and belief, Defendant Ball Street Partners is not registered to conduct business, and has no registered agent for service, in the Commonwealth of Virginia.

4. To the best of Plaintiff's knowledge, information and belief, Defendant Ball Street Fund ("BSF") is a Delaware limited liability corporation with its principal place of business in the District of Columbia at the address set forth in the caption. Also to the best of Plaintiff's knowledge, information and belief, Defendant Ball Street Fund is registered to conduct business, and has CSC as its registered agent for service, in the District of Columbia. Also to the best of Plaintiff's knowledge, information and belief, Defendant Ball Street Fund is

not registered to conduct business, and has no registered agent for service, in the Commonwealth of Virginia.

5. Defendants BSV, BSP, and BSF shared and co-determined matters governing essential terms and conditions of employment and were Mr. Simms' joint employers.

6. Defendant Christian Laettner is a natural person who, to the best of Plaintiff's knowledge, information and belief, is domiciled at the address set forth in the caption and a citizen of the state of Florida.

7. Defendant Brian K. Davis is a natural person who, to the best of Plaintiff's knowledge, information and belief, is domiciled at the address set forth in the caption and a citizen of the District of Columbia.

### **JURISDICTION**

8. The Court has original jurisdiction of this civil action because the matter in controversy exceeds \$75,000, exclusive of interest and costs, and is between citizens of different states. 28 U.S.C. § 1332.

### **VENUE**

9. Venue is proper because some of the Defendants reside, and a substantial part of the events giving rise to the claims occurred, in this judicial district. 28 U.S.C. § 1391(b).

### **FACTUAL ALLEGATIONS**

10. Defendants BSV and BSP entered into a valid and enforceable Employment Agreement with Mr. Simms effective September 10, 2007, engaging him as BSV's Chief Executive Officer ("Employment Agreement").

11. Mr. Davis took the lead in recruiting Mr. Simms away from at Lehman Brothers of New York ("Lehman"). Mr. Davis and Mr. Simms had been friendly for approximately

eighteen (18) years, having met in college and remaining in contact during that time, through which Mr. Davis acquired knowledge of Mr. Simms' career as it developed.

12. After recruiting Mr. Simms for some time, Defendants made him an offer sufficient to lure him away from the lucrative and successful career he had built at Lehman.

13. In offering Mr. Simms employment, Defendants acknowledged that Mr. Simms was resigning from his position as Senior Vice President with Lehman to accept their offer of employment.

14. Defendants further acknowledged that Mr. Simms would have an obligation to repay Lehman a loan in the principal amount of \$742,847.16, plus interest at Lehman's margin rate of interest ("Lehman Loan"), which loan would have been forgiven had Mr. Simms not left Lehman to accept Defendants' employment offer.

15. In the process of recruiting and hiring Mr. Simms,

- a. Defendants did not request or receive a resume from Mr. Simms;
- b. Defendants did not request or receive an employment application from Mr. Simms;
- c. Defendants did not formally interview Mr. Simms or inquire about his duties with Lehman or any other prior employer;
- d. Defendants did not request or receive a list of professional references from Mr. Simms; and
- e. Defendants did not, to the best of Plaintiff's knowledge, information and belief, contact any person to whom Mr. Simms had reported at Lehman, or at Mr. Simms' other prior employers, to inquire of his duties or responsibilities while employed there.

16. Each and every representation of material fact that Mr. Simms made to Defendants, or any of them during the process of Defendants' recruiting and hiring him was truthful.

17. To lure Mr. Simms away from Lehman, Defendants offered him:

- a. The position of Chief Executive Officer;
- b. An initial annual base salary of \$1,200,000;
- c. An immediately vested 15% interest in BSP;
- d. Reimbursement for payments on the Lehman Loan;
- e. Reimbursement for business travel and entertainment expenses;
- f. Participation in all employee health and pension benefit plans; and
- g. In the event Defendants terminate Mr. Simms without cause, one year's salary paid over six months; payment of COBRA premiums for Mr. Simms and his family; and \$15,000 for outplacement services, due on the first day of the first month following termination.

18. On October 30, 2007, Mr. Simms offered and BSV accepted a loan from Mr. Simms in the amount of \$200,000.00, which BSV agreed to repay with interest at the rate of 10 percent ("BSV Loan").

19. At no time did Defendants have "Cause," as defined in the Employment Agreement, to terminate the Employment Agreement.

20. Mr. Simms has remained at all times ready, willing, and able to perform his duties under the Employment Agreement.

21. On or about December 5, 2007, Defendants informed Mr. Simms by email that they considered the Employment Agreement null and void.

22. Defendants have failed and refused to honor their obligations to Mr. Simms under the Employment Agreement, including without limitation, by:

- a. Failing and refusing to pay Mr. Simms' salary pursuant to the Employment Agreement for and after October 2007;
- b. Failing and refusing to reimburse Mr. Simms pursuant to the Employment Agreement for travel and entertainment expenses;
- c. Failing and refusing to provide Mr. Simms pursuant to the Employment Agreement employee welfare and pension benefits;
- d. Failing and refusing to repay the BSV loan or any interest accruing thereon; and
- e. Anticipatorily refusing to honor their obligations under the Employment Agreement to pay reimbursement on the Lehman Loan, to pay Mr. Simms severance, to pay Mr. Simms \$15,000 for outplacement services, and to pay COBRA premiums for Mr. Simms and his family; and
- f. Anticipatorily refusing to repurchase, or make arrangements to calculate and repurchase, Mr. Simms' 15% equity interest in BSP pursuant to the Employment Agreement.

**COUNT I  
BREACH OF EXPRESS CONTRACT**

23. Plaintiff incorporates by reference the allegations of Paragraphs 1 through 22.

24. Through the acts and omissions alleged in this Complaint, Defendants have breached the Employment Agreement.

25. As a result of Defendants' breach, Mr. Simms has suffered and will continue to suffer damages in an amount to be proven at trial.

26. Defendants have withheld, and continue to withhold, benefits to which Mr. Simms is patently entitled and have done so in bad faith, vexatiously, wantonly, and for oppressive reasons.

27. As de facto general partners of BSV, BSP, and BSF, Defendants Davis and Laettner are jointly and severally liable for all damages assessed against BSV, BSP, and/or BSF.

WHEREFORE, Plaintiff demands judgment against all Defendants for an amount to be proven at trial, reasonable attorney's fees and costs, and such other and further relief as the Court deems proper and just.

**COUNT II  
TORTIOUS BREACH OF CONTRACT**

28. Plaintiff incorporates by reference the allegations of Paragraphs 1 through 27.

29. Defendants' breach of the Employment Agreement and the BSV Loan merged with and assumed the character of a willful tort because it was calculated, flagrant, and in disregard of obligations of trust.

30. Defendants have withheld, and continue to withhold, benefits to which Mr. Simms is patently entitled and have done so in bad faith, vexatiously, wantonly, and for oppressive reasons.

31. As de facto general partners of BSV, BSP, and BSF, Defendants Davis and Laettner are jointly and severally liable for all damages assessed against BSV, BSP, and/or BSF.

WHEREFORE, Plaintiff demands judgment against all Defendants for an amount of damages to be proven at trial, plus punitive damages, reasonable attorney's fees and costs, and such other and further relief as the Court deems proper and just.

**COUNT III  
BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

32. Plaintiff incorporates by reference the allegations of Paragraphs 1 through 31.

33. The Employment Agreement and BSV Loan included an implied covenant of good faith and fair dealing that prohibited Defendants from acting or failing to act in any way that would have the effect of destroying or injuring Plaintiff's right to receive the fruits of the agreements.

34. Through the acts and omissions alleged in this Complaint, Defendants have breached the implied covenant of good faith and fair dealing.

35. As a result of Defendants' breach of the implied covenant of good faith and fair dealing, Mr. Simms has suffered and will continue to suffer damages in an amount to be proven at trial.

36. Defendants' conduct was willful, calculated, flagrant, and in disregard of obligations of trust.

37. Defendants have withheld, and continue to withhold, benefits to which Mr. Simms is patently entitled and have done so in bad faith, vexatiously, wantonly, and for oppressive reasons.

38. As de facto general partners of BSV, BSP, and BSF, Defendants Davis and Laettner are jointly and severally liable for all damages assessed against BSV, BSP, and/or BSF.

WHEREFORE, Plaintiff demands judgment against all Defendants for an amount of damages to be proven at trial, plus punitive damages, reasonable attorney's fees and costs, and such other and further relief as the Court deems proper and just.

**COUNT IV  
ANTICIPATORY BREACH OF CONTRACT**

39. Plaintiff incorporates by reference the allegations of Paragraphs 1 through 38.

40. Pursuant to the Employment Agreement, Plaintiff is entitled to ongoing payments and benefits, including without limitation, severance payments equivalent to one year's salary



paid over six months, reimbursement on the Lehman Loan, \$15,000 for outplacement services, and payment of COBRA premiums throughout the COBRA period for Mr. Simms and his family.

41. Defendants have confirmed that they do not intend to honor their obligations to Mr. Simms under the Employment Agreement, including those that have accrued and those that will accrue.

42. As a result of Defendants' anticipatory breach of contract, Mr. Simms has suffered and will continue to suffer damages in an amount to be proven at trial.

43. Defendants have withheld, and continue to withhold, benefits to which Mr. Simms is patently entitled and have done so in bad faith, vexatiously, wantonly, and for oppressive reasons.

44. As de facto general partners of BSV, BSP, and BSF, Defendants Davis and Laettner are jointly and severally liable for all damages assessed against BSV, BSP, and/or BSF.

WHEREFORE, Plaintiff demands judgment against all Defendants for an amount to be proven at trial, reasonable attorney's fees and costs, and such other and further relief as the Court deems proper and just.

**COUNT IV - BREACH OF IMPLIED CONTRACT  
(ASSERTED IN THE ALTERNATIVE)**

45. Plaintiff incorporates by reference the allegations of Paragraphs 1 through 44.

46. Mr. Simms rendered valuable services to Defendants at their request, which services were accepted by them under circumstances that reasonably notified them that Mr. Simms expected Defendants to pay him, and that would make it unjust for them to retain the services without paying for them. The parties reached agreement as to all the material terms,

including Mr. Simms' compensation, as expressed in precise terms in the Employment Agreement.

47. Through the acts and omissions alleged in this Complaint, Defendants have breached the contract implied in law.

48. As a result of Defendants' breach, Mr. Simms has suffered and will continue to suffer damages in an amount to be proven at trial.

49. Defendants' conduct was willful, calculated, flagrant, and in disregard of obligations of trust.

50. Defendants have withheld, and continue to withhold, benefits to which Mr. Simms is patently entitled and have done so in bad faith, vexatiously, wantonly, and for oppressive reasons.

51. As de facto general partners of BSV, BSP, and BSF, Defendants Davis and Laettner are jointly and severally liable for all damages assessed against BSV, BSP, and/or BSF.

WHEREFORE, Plaintiff demands judgment against all Defendants for an amount of damages to be proven at trial, plus punitive damages, reasonable attorney's fees and costs, and such other and further relief as the Court deems proper and just.

Respectfully submitted,

DRINKER BIDDLE & REATH LLP

By:

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*(Motions Pro Hac Vice to be filed presently)*

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