

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Southern Division)

FILED
DISTRICT COURT
DISTRICT OF MARYLAND
2009 APR 16 P 12:56

S.M. REAL ESTATE, LLC
7821 Vanity Fair Drive
Greenbelt, Maryland 20770

and

SHAWNE MERRIMAN
12625 Sage Crest Highway
Poway, California 92064

Plaintiffs,

v.

Civil Action No.

CHRISTIAN LAETTNER
1041 Ponte Vedra Blvd.
Ponte Vedra, Florida 32082

RWT 09 CV 0978

and

BRIAN DAVIS
2230 Massachusetts Avenue, N.W, Ste. B-7
Washington, D.C. 20011

Defendants.

COMPLAINT FOR DAMAGES

Plaintiffs, S.M. Real Estate, LLC and Shawne Merriman, by and through their attorneys, Roy I. Niedermayer, Arthur G. House, and Paley, Rothman, Goldstein, Rosenberg, Eig & Cooper, Chtd., sue Christian Laettner and Brian Davis and state:

JURISDICTION; PARTIES; VENUE.

1. Plaintiff S.M. Real Estate, LLC ("LLC") is a sole member limited liability company established under the laws of the State of Maryland with its principal place of business in Maryland. LLC is a citizen of the State of Maryland.

2. Shawne Merriman ("Merriman") is an adult person and a citizen of the state of California.

PALEY, ROTHMAN,
GOLDSTEIN,
ROSENBERG,
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3. Defendant Christian Laettner ("Laettner") is an adult person and a citizen of the State of Florida.

4. Defendant Brian Davis ("Davis") is an adult person and a citizen of the District of Columbia.

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because this case involves a controversy between citizens of different states and the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000).

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(a)(2) and (3) because the contracts giving rise to this action were entered into in Maryland and the parties have consented in writing to personal jurisdiction and venue in this District and Division.

CLAIM.

7. On or about August 3, 2007, LLC, Merriman, BD Ventures, LLC ("BDV"), Laettner and Davis entered into an investment transaction (the "Transaction") whereby Merriman would contribute the sum of Three Million Dollars (\$3,000,000) to LLC and (a) LLC, of which Merriman is the sole member, would loan BDV the entire \$3 million (the "Loan") in two installments reflected by two separate promissory notes and (b) Merriman in his individual capacity would obtain an ownership interest in real estate development projects owned and developed by BDV.

8. BDV is a limited liability company established under the laws of the District of Columbia and with its principal place of business is the District of Columbia.

9. The Notes bear interest at the rate of ten percent (10%) per annum with all accrued interest and principal due and payable in full on August 3, 2009.

10. Concurrent with the Loan, Laettner and Davis in their individual capacities each executed separate unconditional guaranties of payment of the Loan (referred to respectively as the "Laettner Guaranty" and the "Davis Guaranty").

11. Merriman, though LLC, made the Loan to BDV in accordance with the terms of the transaction.

12. The parties evidenced the Loan by (a) a revolving loan promissory note in the principal amount of Two Million Seven Hundred Fifty Thousand Dollars (\$2,750,000) and (b) a second promissory note in the principal amount of Two Hundred Fifty Thousand Dollars (\$250,000) (collectively, the "Notes").

13. As part of the Transaction, Merriman, Laettner and Davis in their individual capacities and as guarantors also entered into a Memorandum of Understanding (the "MOU") containing additional agreements concerning, among other matters, the Transaction, the Loan, its disbursement and repayment, and the acquisition of the ownership interest by Merriman. and performance of the other obligations contained in the MOU.

14. About December 1, 2008, Merriman, Laettner and Davis, the latter jointly and severally, entered into a First Amendment to the MOU (the "Amended MOU") modifying the payment schedule for the Notes, changing the maturity date of the Notes to March 30, 2009, and adding additional obligations of BDV, including, inter alia, the requirement of a payment of Seventy-two Thousand Dollars (\$72,000) on December 15, 2008.

15. LLC was a third-party beneficiary of the MOU and the Amended MOU.

16. Neither BDV nor Laettner or Davis made the December 15, 2008 payment.

17. Laettner and Davis defaulted in performance of their obligations under the Amended MOU including, inter alia, failing to make the payment of amounts due in accordance with the Amended MOU.

18. Laettner and Davis further failed to pay the Notes on the new maturity date of March 30, 2009.

COUNT I

Breach of Amended MOU-Laettner and Davis

19. LLC realleges and incorporates herein by reference paragraphs 7-18 *supra* as if fully set forth in this Count I.

20. The actions of Laettner and Davis constitute material breaches of the Amended MOU.

21. By their actions and statements, Laettner and Davis have defaulted on and breached the terms of the Amended MOU.

22. The defaults and breach of Laettner and Davis have proximately caused LLC to suffer substantial harm and damages.

WHEREFORE, LLC demands judgment against Laettner and Davis in the amount of Three Million One Hundred Thirty-nine Thousand Six Hundred Seventy-two and 54/100 Dollars (\$3,139,672.54) through March 30, 2009, plus accrued interest thereafter, costs and expenses incurred in this action, reasonable attorneys' fees as provided in the Notes and such other and further relief as this Court deems just and proper.

COUNT II

Specific Performance

23. Merriman realleges and incorporate by reference paragraphs 13, 17 and 18 *supra* as if fully set forth in this Count II.

24. In accordance with the MOU and Amended MOU, Merriman was to receive ownership interests in real estate development projects being built and sold by BDV, Laettner and Davis (the "Projects").

25. Laettner and Davis controlled BDV.

26. Laettner and Davis were to cause BDV to give Merriman the ownership interests in the Projects.


27. Merriman performed all his obligations and duties under the MOU and Amended MOU and has earned and is entitled to his ownership interests in the Projects.

28. Laettner and Davis have failed or refused to convey, or cause BDV to convey, his ownership interests in the Projects to Merriman.

29. The ownership interests in the Projects are unique because the Projects are for the development and ownership in real estate.

WHEREFORE, Merriman prays that the Court enter an order for specific performance of the Amended MOU and to order Laettner and Davis to convey, or cause BDV to convey, to Merriman his ownership interests in the Projects, plus interest, costs and expenses incurred in this action, reasonable attorneys' fees incurred herein and such other and further relief as this Court deems just and proper.

PALEY, ROTHMAN, GOLDSTEIN,
ROSENBERG, EIG & COOPER, CHTD.

By: 
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