

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

THE SANCHEZ GROUP, INC.

333 Champions Court
Avon Lake, OH 44012

Plaintiff,

v.

CHRISTIAN D. LAETTNER

1041 Ponte Vedra Beach Boulevard
Ponte Vedra Beach, FL 32082

and

BRIAN DAVIS

2330 Massachusetts Ave., NW
Washington, DC 20008

and

THOMAS M. NIEMANN

3816 Dover Rd.
Durham, NC 27707

and

BLUE DEVIL VENTURES, LLC

c/o Thomas M. Niemann, Statutory Agent
604 West Morgan Street, Suite B3
Durham, NC 27701

and

) CASE NO. _____

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) JUDGE _____

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) **COMPLAINT FOR MONEY DAMAGES**

) **AND DECLARATORY JUDGMENT**

) (Plaintiff Requests A Trial By Jury)

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BDV III, LLC)
c/o Thomas M. Niemann, Statutory Agent)
604 West Morgan Street, Suite B3)
Durham, NC 27701)
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)
Defendants.)

Plaintiff The Sanchez Group, Inc. ("TSG"), for its Complaint against Defendants Christian Laettner ("Laettner"), Brain Davis ("Davis"), Thomas Niemann ("Niemann"), Blue Devil Ventures, LLC ("BDV") and BDV III, LLC ("BDV III" and collectively "Defendants"), alleges and states as follows:

PARTIES

1. TSG is an Ohio corporation with its principal place of business located at 333 Champions Court, Avon Lake, Ohio. TSG provides consulting services for real estate development and commercial construction.
2. Laettner, Davis and Niemann are individuals residing at 1041 Ponte Vedra Beach Boulevard, Ponte Vedra Beach, Florida, 2330 Massachusetts Ave., NW, Washington, DC and 3816 Dover Rd., Durham, North Carolina respectively.
3. BDV is a North Carolina limited liability company with its principal place of business located at 604 West Morgan Street, Durham, North Carolina. Upon information and belief, BDV is in the business of developing real property for commercial use in Baltimore, Maryland. Upon information and belief, Laettner and Davis are members, as well as the managers, of BDV.
4. BDV III is a North Carolina limited liability company with its principal place of business located at 604 West Morgan Street, Durham, North Carolina. Upon information and belief, BDV III is in the business of developing real property for commercial use in Durham,

North Carolina and Defendants Laettner, Davis and Niemann are members, as well as the managers of this entity.

JURISDICTION AND VENUE

5. TSG incorporates by reference all the preceding paragraphs of this Complaint as though fully rewritten herein.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a)(2), since a substantial part of the events and omissions giving rise to the claims occurred in this district.

7. Personal jurisdiction is proper in this Court because Defendants, through their agent, Anthony Delfre (“Delfre”), regularly conduct business within this district. In addition, Delfre is a citizen of Ohio and the TSG / BDV Contract indicates that it is “drawn to be effective in and shall be construed in accordance with the laws of the State of Ohio.” Finally, a substantial portion of the events and omissions giving rise to the claims occurred within this district.

8. Subject matter jurisdiction is proper under 28 U.S.C. § 1332(a), since complete diversity of citizenship exists between TSG and Defendants, and the amount in controversy between them exceeds \$75,000, exclusive of interest and costs.

FACTS

The TSG / BDV Contract

9. TSG incorporates by reference all of the preceding paragraphs of this Complaint as though fully rewritten herein.

10. TSG and BDV entered into a contract whereby TSG was to provide professional consulting services for the management of real estate construction projects. TSG was to be paid \$15,000 per month, plus a bonus of \$40,000 if an assigned project came in ahead of schedule and

an additional bonus of \$40,000 if an assigned project came in under budget. TSG was also to be reimbursed for its reasonable expenses as approved by BDV's agent, Delfre.

11. The TSG / BDV Contract is attached hereto as Exhibit A.

12. TSG began work under this contract in approximately September of 2004.

13. At all times relevant, Delfre held himself out as the agent of BDV. In addition, the TSG / BDV Contract authorizes Delfre to make decisions regarding TSG's expense reimbursement requests on behalf of BDV.

14. TSG submitted regular invoices beginning in approximately September of 2004.

15. Although BDV made sporadic payments, BDV has now, without justification, failed and refused to make payments to TSG for services that were timely and properly rendered. BDV has offered no explanation for its failure to make payments. To the contrary, BDV, through its agent Delfre, repeatedly assured representatives of TSG and others, including Joe Lombardo of Prim Advisors, Inc. and his accountant Tom Kusak, that TSG would be paid for its work and that Delfre simply "hadn't gotten around to doing it yet."

16. TSG provided professional services under the TSG / BDV Contract in good faith and in reliance on Delfre's repeated assurances to TSG and others that it would be paid for the work it was continuing to perform under the Contract.

17. BDV has wrongfully retained the benefit of TSG's professional services without providing compensation, in breach of the Contract.

18. There is no legitimate excuse for BDV's failure to pay TSG for services rendered.

COUNT I
(Breach of Contract)

19. TSG incorporates by reference all of the allegations contained in the preceding paragraphs as though fully rewritten herein.

20. TSG substantially complied with all the terms and obligations of the TSG / BDV Contract.

21. TSG performed its work under these contracts in a professional, timely and workmanlike manner.

22. BDV substantially and materially breached the TSG / BDV Contract by failing to pay TSG the sum of \$202,500 in professional fees and \$11,171.49 in expenses, plus accrued interest. This amount remains due and payable.

23. Throughout the course of performance, Defendants, through their agent, Delfre, induced TSG to continue performance by promising payment for services rendered, and Defendants should be estopped from denying liability for the balance due under the Contract.

24. As a direct and proximate result of BDV's substantial and material breach, TSG has incurred damages in an amount exceeding \$213,671.49, plus interest.

25. TSG has demanded payment from BDV for the damages it has incurred as a result of this breach of contract, but BDV has failed and/or refused to make payment.

26. TSG has satisfied all conditions precedent to payment under the Contract.

27. As a direct and proximate result of BDV's breach of contract, TSG has been damaged, and TSG is entitled to recover damages from BDV, in an amount exceeding \$213,671.49, plus interest at the statutory rate, fees and costs. These damages continue to escalate as the TSG / BDV Contract has not been terminated.

28. Defendants Laettner and Davis are personally liable as the alter egos of BDV. Upon information and belief, BDV does not observe corporate formalities, commingles funds and is controlled by Laettner and Davis to the extent that BDV has no separate mind, will, or existence of its own.

COUNT II
(Unjust Enrichment)

29. TSG incorporates by reference all of the allegations contained in the preceding paragraphs as though fully rewritten herein.

30. The Defendants have benefited and been unjustly enriched by virtue of having received the benefit of the professional consulting services provided by TSG, and by their repeated failure and refusal to pay for these professional consulting services.

31. The benefit conferred upon Defendants by virtue of TSG's work exceeds \$213,671.49, plus interest.

32. As a direct and proximate result of Defendant's unjust enrichment, TSG has been damaged in an amount exceeding \$213,671.49, plus interest at the statutory rate.

33. Defendants Laettner and Davis are personally liable as the alter egos of BDV. Defendants Laettner, Davis and Niemann are personally liable as the alter egos of BDV III. Upon information and belief, BDV and BDV, III do not observe corporate formalities, commingle funds and are controlled by the individually named Defendants to the extent that BDV and BDV III have no separate mind, will, or existence of their own.

COUNT III
(Declaratory Judgment)

34. TSG incorporates by reference all of the preceding paragraphs of this Complaint as though fully rewritten herein.

35. TSG contends that BDV and the other Defendants must indemnify it against the damages and losses occasioned by Defendants failure to pay TSG for services rendered.

36. Paragraph 6 of the TSG / BDV Contract states that the Owner, BDV, will indemnify TSG “against any claims, losses, damages, liabilities, obligations, deficiencies or injuries of any kind (including, without limitation, attorney’s fees and costs of defense) resulting from or arising out of any act or omission of the Owner, its agents or employees.”

37. There exists between TSG and Defendants a genuine controversy regarding whether BDV and/or the other Defendants are required to indemnify TSG for its losses and damages, including TSG’s attorneys’ fees, caused by Defendants’ wrongful failure to pay.

38. TSG also seeks a declaration that no event of termination has occurred under Paragraph 2(b) of the TSG / BDV Contract.

39. There exists a genuine controversy between TSG and the Defendants regarding whether the Contract has been terminated.

40. Pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201, TSG is entitled to a declaration from this Court that: (a) TSG is entitled to recover its damages as alleged in Counts I and II above; (b) TSG is entitled to indemnification from the Defendants, including payment of TSG’s attorneys’ fees; and (c) No event of termination has occurred with respect to this Contract.

COUNT IV
(Fraud and Misrepresentation)

41. TSG incorporates by reference all of the preceding paragraphs of this Complaint as though fully rewritten herein.

42. Defendants, through their agent Delfre, willfully, knowingly, and/or wrongfully misrepresented or concealed material facts with the intent to induce TSG's continued performance under the Contract, including representations that TSG would be paid for the work performed under these contracts.

43. TSG relied to its detriment on these misrepresentations by continuing to provide professional consulting services, but Defendants failed and/or refused to pay for these services.

44. Defendants never intended to perform as promised when their agent, Delfre, made multiple and continuous misrepresentations that TSG would be paid, upon which TSG detrimentally relied.

45. Defendants, through their agent Delfre, also misrepresented or failed to disclose to TSG material facts relating to the poor financial condition of these entities and their likely inability to pay for the services being rendered.

46. TSG relied to its detriment on these concealments and material misrepresentations of fact.

47. As a direct and proximate result of Defendants' material misrepresentations and concealments, TSG has been damaged in an amount exceeding \$200,000.00, to be established more particularly at trial.

48. Defendants' material misrepresentations and concealments were done with malice, ill-will and/or reckless disregard for the rights of TSG. In the alternative, Defendants'

misrepresentations and concealments constitute egregious fraud.

49. As a direct and proximate result of the malice, ill-will, reckless disregard, or egregious fraud of Defendants, TSG is entitled to punitive damages in excess of \$75,000 against each of them.

WHEREFORE, with respect to Counts I and II, plaintiff TSG demands and prays for money judgment against Defendants in an amount exceeding \$213,671.49, to be proven at trial. On these Counts, TSG also requests an award of costs, expenses, prejudgment interest, and attorneys' fees. With respect to Count III, TSG requests declaratory judgment in its favor affirmatively establishing: (a) its right to indemnification from Defendants under the Contract, including TSG's right to recoup its attorneys' fees; and (b) that no event of termination has taken place. With respect to Count IV, TSG prays for an award of compensatory and punitive damages against Defendants, in an amount exceeding \$75,000 each, to be proven at trial, plus interest, costs and attorneys' fees. Finally, TSG further prays for such other legal and equitable relief against Defendants as the Court deems just and proper.

Respectfully submitted,

/s/ Marc A. Sanchez
Marc A. Sanchez, Esq. (0063998)
FRANTZ WARD LLP
2500 Key Center
127 Public Square
Cleveland, Ohio 44114-1230
(216) 515-1660
(216) 515-1650 (Fax)
msanchez@frantzward.com
Attorneys for Plaintiff The Sanchez Group, Inc.