

MONROE COUNTY CLERK'S OFFICE

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No. Pages: 13

Instrument: COMPLAINT

Control #: 202106210205

Index #: E2021000959

Date: 06/21/2021

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Return To:
ANTHONY J. ADAMS JR.MONROE COMMUNITY SPORTS CENTRE
CORPORATIONEND 2 END SPORTS ROCHESTER (SC) LLC
GONZALES, JOHN A
CAREY, MICHAEL
BRANOVAN, SCOTT

Total Fees Paid: \$0.00

Employee:

State of New York

MONROE COUNTY CLERK'S OFFICE
WARNING – THIS SHEET CONSTITUTES THE CLERKS
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

JAMIE ROMEO

MONROE COUNTY CLERK



STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

MONROE COMMUNITY SPORTS
CENTRE CORPORATION,

Plaintiff,

COMPLAINT

vs.

Index No. E2021000959

END 2 END SPORTS ROCHESTER (SC) LLC,
JOHN A. GONZALEZ, MICHAEL CAREY and
SCOTT BRANOVAN,

Defendants.

Monroe Community Sports Centre Corporation ("MCSCC" or "Plaintiff") by and through its attorneys, Adams Leclair, LLP, complain of the Defendants as follows:

1. Plaintiff MCSCC is a domestic not-for-profit corporation incorporated on November 26, 1997, organized and existing for charitable purposes under the laws of the State of New York, with its principal place of business in Monroe County.
2. Defendant End 2 End Sports Rochester (SC) LLC ("E2E Rochester" or "Manager") is a domestic limited liability company, formed on September 13, 2012, with its principal place of business in Monroe County.
3. At all times relevant E2E Rochester acted through "managers," including Defendants Branovan, Gonzalez and Carey.
4. Upon information and belief, Defendant Scott Branovan has at all times relevant been a resident of Ontario County, New York.
5. Upon information and belief, Defendant John A. Gonzalez is a resident of Monroe County and at all times relevant was Chief Executive Officer of Bill Gray's, Inc.

6. Upon information and belief, at all times relevant Defendant Michael Carey was a principal of Hawkeye Investments LLC and a de facto manager of E2E Rochester, and in those capacities he transacted business in New York, out of which Plaintiff's claims arise. Upon further information and belief, Carey committed tortious acts outside New York that foreseeably injured Plaintiff within New York, while deriving substantial revenue from interstate commerce.

7. At all times relevant, MCSCC has been exempt from state and federal income taxation pursuant to Internal Revenue Code §501(c)(3).

BACKGROUND

8. On or about March 1, 1998, Monroe County, as trustee for Monroe Community College, leased the property at 2700 Brighton-Henrietta Town Line Road, Henrietta, New York (the "Property") to Plaintiff's predecessor in interest, Community Sports Development Properties, Monroe, Inc. ("CSD Monroe") for the purpose of developing a multi-purpose sports complex (the "Facility"). On or about the same date, CSD Monroe leased its interest in the Property to the County of Monroe Industrial Development Agency ("COMIDA"), in connection with COMIDA's issuance of \$11,375,000 worth of tax-exempt bonds and \$1,225,000 of taxable bonds (collectively the "Facility Bonds") to help finance construction of the Facility, to be managed by CSD Monroe pursuant to the terms of a sub-lease from COMIDA back to CSD Monroe.

9. Plaintiff subsequently succeeded to CSD Monroe's interests in the foregoing agreements.

10. On March 1, 1998, COMIDA also entered into an Indenture of Trust (the “Indenture”) with Manufacturers and Traders Trust Company (“M&T”) as trustee for the holders of the Facility Bonds.

11. After the Facility was constructed, Plaintiff engaged Empire Ice, LLC (“Empire Ice”) to manage the Facility, and also subleased to Empire Ice that portion of the Facility that was constructed using the proceeds from COMIDA’s taxable bonds. Thereafter, Empire Ice entered into a commercial sub-sublease with Bill Gray’s, Inc. and several subleases and related agreements with various users of the Facility (the “Third-party Agreements”).

12. Subsequently, differences arose between Plaintiff and Empire Ice concerning the latter’s management of the Facility. Upon information and belief, in September 2012 Empire Ice assigned some or all its rights under its contract with Plaintiff to E2E Rochester.

THE MANAGEMENT AGREEMENTS

13. On or about September 28, 2012, Plaintiff MCSCC entered into a Management Agreement with Defendant E2E Rochester whereby the latter undertook to perform certain management services in connection with the Facility. That agreement was superseded by an Amended and Restated Management Agreement on or about February 21, 2013 (the “First Amended Agreement”). See **Exhibit A**.

14. From at least February 21, 2013 until sometime in 2018 the Defendants exercised and maintained control over Plaintiff’s finances and bookkeeping in connection with the Facility.

15. On April 3, 2013 Plaintiff executed (a) an agreement with Empire Ice mutually terminating the latter's relationship with the Facility, (b) an Assignment and Assumption agreement with E2E Rochester, for a term co-terminus with that of the First Amended Agreement, assigning to the latter Plaintiff's rights in the Empire Ice sublease with Bill Gray's, Inc. as well as various other subleases and licensing agreements, and (c) a Sponsorship Agreement whereby Plaintiff surrendered certain naming rights to Bill Gray's, Inc.

16. On or about December 31, 2015, Plaintiff and E2E Rochester entered into a Second Amended and Restated Management Agreement ("Second Amended Agreement"). A copy is attached hereto as **Exhibit B**.

17. Section 2 of both the First Amended Agreement and the Second Amended Agreement provided as follows:

MCSCC hereby designates and appoints Manager as the sole and exclusive management agent of the Facility and Manager hereby accepts such designation and appointment.

18. Section 3 of both the First Amended Agreement and the Second Amended Agreement provided, in part, as follows:

(a) Method of Operation. On behalf of MCSCC, for as long as MCSCC continues to exist, Manager will operate the Facility consistent with the charitable public purposes of MCSCC and in compliance with the terms and conditions of the Ground Lease and the Financing Documents (as defined in a certain indenture of trust relating to the Bonds by and between Issuer [IDA] and Manufacturer and Traders Trust Company, as trustee (the "Trustee") dated as of March 1, 1998 (the Indenture))...Manager will establish procedures for the management and operation of the Facility in accordance with the stated charitable purposes of MCSCC, the Ground Lease and the Financing Documents. It will establish accounting procedures and controls in accordance with generally accepted accounting procedures for similar facilities.

...

(b) Operating Standard. Manager will operate the Facility in accordance with the methods, procedures and rules of operation generally established at other recreational facilities in accordance with the stated charitable purposes of MCSCC, the Ground Lease and the Financing Documents. ...

19. Section 5 of both the First Amended Agreement and the Second Amended

Agreement provide, in relevant part, as follows:

...The authority, powers and duties that Manager shall exercise or perform include, but are not limited to, the following:

...

(e) Collect and account to MCSCC all gross revenues generated by Facility, pay all operating expenses of the Facility and maintain all financial records pertaining to the operation of the Facility in accordance with MCSCC's policies and guidelines and generally accepted accounting principles.

...

(h) Pay all Operating Expenses on behalf of MCSCC out of monies collected or other funds made available by MCSCC to cover such items.

...

(o) Establish accounting and bookkeeping systems to be followed by employees of the Facility and to coordinate all accounting matters; ...

20. Section 10 of both the First Amended Agreement and the Second Amended

Agreement provided as follows:

10. **Covenant of Diligence.** Manager agrees to perform all functions and to exercise all authority, powers and duties hereunder in a professional and diligent manner and to use its best judgment and efforts to operate the Facility as efficiently and profitably as possible. Manager warrants all funds handled or controlled by it and its employees and agents will be accurately accounted for and Manager hereby agrees to indemnify MCSCC for any loss of funds collected by Manager and directly attributable to the negligence of Manager shall not be liable for loss of funds handled by MCSCC's employees unless directly attributable to Manager's negligence or malfeasance.

21. Section 14 of both the First Amended Agreement and the Second Amended Agreement provide, in relevant part, as follows:

14. **Manager's Indemnification.** Notwithstanding anything to the contrary in this Agreement, in consideration of an indemnification of MCSCC by Manager for any and all claims, liabilities and responsibilities arising from or related to the operation of the Facility, which Manager hereby acknowledges and agrees to provide to MCSCC, MCSCC hereby agrees to allow Manager full operational control of Facility including the ability to make all business decisions without interference from or approval by MCSCC, provided however, that (a) no such decision shall result in the loss of MCSCC's tax-exempt status; (b) MCSCC reserves the right to require Manager to explain in detail any business decision or operational practice relating to the Facility; and (c) Manager agrees to consider in good faith incorporating any recommendations of MCSCC on such business decision and operational matters.

22. Section 15 of both the First Amended Agreement and the Second Amended Agreement provide as follows:

15. **Collections and Payments.** Manager shall cause all income from the Facility to be collected and deposited in a separate checking account maintained and controlled by Manager relating to the Facility operations so that no funds collected on behalf of MCSCC are commingled with any other funds under Manager's control. From this account, Manager will make disbursements each month to pay all Operating and Fixed Expenses in such order and priority that is in Manager's discretion.

23. Section 16 of both the First Amended Agreement and the Second Amended Agreement provide as follows:

16. **Accounting.** Manager agrees to keep accurate records and books of account of the operation of the Facility and to keep said records and books of account available for inspection at any reasonable time and upon prior notice by MCSCC or its designee. Books and records shall be separate as to Manager and MCSCC. On the 15th day of the following month or as soon thereafter as reasonably possible, Manager shall render to

MCSCC a complete accounting of receipts and disbursements, both for the then current month and on a cumulative year-to-date basis. The monthly accounting to be submitted to MCSCC pursuant to this paragraph shall include a monthly profit and loss statement, trial balance and check register. MCSCC may at any time and at MCSCC's expense have Manager's records and books of account examined by an independent certified public accountant of MCSCC's choosing. If, as a result of said examination, material omissions or inaccuracies are disclosed, then Manager shall reimburse MCSCC for the cost of the audit. "Materiality" or omissions or inaccuracies shall be defined as a variance of five (5%) percent or more in overall results (i.e., profits or losses) that is adverse to the MCSCC.

**DEFENDANTS' REPAYMENT OF PERSONAL LOANS
WITH PLAINTIFF'S FUNDS**

24. Upon information and belief, between April 2013 and March 5, 2018, Defendant E2E Rochester borrowed millions of dollars from M&T Bank and others for its own purposes.

25. Thereafter, between May 2013 and August 2018 E2E Rochester, aided and abetted by Defendants Branovan, Gonzalez and Carey, used more than \$4 million in Plaintiff's funds to make periodic payments in partial satisfaction of the foregoing loans.

26. Defendants failed to disclose, in any of E2E Rochester's financial reports to Plaintiff or otherwise, that they had used Plaintiff's funds to repay E2E Rochester's indebtedness.

27. As a result of the misapplication of Plaintiff's funds as alleged, Plaintiff became unable to pay its bills as they became due or to properly maintain the Facility.

28. Upon information and belief, Defendants deliberately concealed their use of Plaintiff's funds to repay financial obligations of the E2E Rochester.

29. Upon information and belief, to make up in part for the cash shortfalls they caused Plaintiff to suffer, Defendants caused Plaintiff to borrow funds from Bill Gray's Inc. and Hawkeye Investment, LLC, for which Plaintiff was caused to pay substantial interest.

30. In 2018 Plaintiff engaged the public accounting firm of EFPR Group to examine Plaintiff's books and records pursuant to §16 of the Second Amended Agreement. It was only as a result of that examination that Plaintiff became aware of E2E Rochester's misuse of Plaintiff's funds as alleged above.

**FIRST CAUSE OF ACTION,
BREACH OF FIDUCIARY DUTY**

31. Plaintiff incorporates all prior allegations by reference.

32. Defendant E2E Rochester undertook in the First Amended Agreement and the Second Amended Agreement to act as Plaintiff's agent and fiduciary with respect to the management, operation and funds of the Facility.

33. In addition, Gonzalez, Carey and Branovan, as managers of E2E Rochester, owed fiduciary duties to Plaintiff with respect to all assets of the Plaintiff that came within their possession or control.

34. By using Plaintiff's funds to repay loans owed by E2E Rochester, profiting from loans made to Plaintiff to hide the cash shortfalls created, and then concealing and failing to account to Plaintiff for those transactions, Defendants breached their fiduciary duties to the Plaintiff.

35. Moreover, upon information and belief, Defendants' conduct as alleged has jeopardized Plaintiff's legal status as a tax-exempt entity.

36. Plaintiff has been substantially harmed by Defendants' breaches of fiduciary duties as alleged above.

37. Upon information and belief, the Defendants' breach of their fiduciary duties was willful, wanton and directed not only to Plaintiff but also to those members of the public who are served by Plaintiff's charitable purposes.

38. As a consequence of the foregoing, Defendants are jointly and severally liable to Plaintiff for breach of fiduciary duty, for all damages Plaintiff has sustained thereby, and for punitive damages.

**SECOND CAUSE OF ACTION,
AIDING AND ABETTING BREACH
OF FIDUCIARY DUTY**

39. Plaintiff incorporates all prior allegations by reference.

40. Upon information and belief, Defendants Gonzalez, Carey and Branovan were, at all times relevant, the persons who arranged the loans to E2E Rochester, caused them to be repaid with Plaintiff's funds, arranged for Plaintiff to borrow funds from Bill Gray's inc. and Hawkeye Investment LLC and to pay substantial interest on those loans, and caused E2E Rochester to conceal and fail to account for such transactions.

41. Defendants Gonzalez, Carey and Branovan engaged in the foregoing conduct with knowledge that, in doing so, they were causing E2E Rochester to breach its contractual and fiduciary duties to Plaintiff.

42. Upon information and belief, these Defendants' participation in E2E Rochester's breach of its fiduciary duties was willful, wanton and directed not only to

Plaintiff but also to those members of the public who are served by Plaintiff's charitable purposes.

43. As a consequence of the foregoing, Plaintiff has been damaged and its tax-exempt status has been jeopardized.

44. As a consequence of the foregoing, Defendants are jointly and severally liable to Plaintiff for E2E Rochester's breaches of fiduciary duty, for all damages Plaintiff has sustained thereby, and for punitive damages.

**THIRD CAUSE OF ACTION,
BREACH OF CONTRACT**

45. Plaintiff incorporates all prior allegations by reference.

46. Defendant E2E Rochester breached the First Amended Agreement and the Second Amended Agreement by, among other things:

(a) Using Plaintiff's funds to repay principal and interest on loans taken out for its own purposes and for the purposes of its principals.

(b) Failing to operate the Facility in a manner consistent with Plaintiff's charitable public purposes.

(c) Failing to operate the Facility in compliance with the terms of the Ground Lease and the Financing Documents.

(d) Failing to establish accounting procedures and controls in accordance with generally accepted accounting principles.

(e) Concealing and failing to account to Plaintiff for its diversion of Plaintiff's funds to repay its own loan obligations.

(f) Failing to perform its duties to Plaintiff in a professional and diligent manner and failing to operate the Facility as profitably as possible.

(g) Failing to indemnify Plaintiff for E2E Rochester's diversion of Plaintiff's funds; and

(h) Failing to assure that Plaintiff's funds did not get commingled with other funds.

47. Plaintiff has been damaged by E2E Rochester's breach of contract as alleged, and its tax-exempt status has been jeopardized thereby.

48. Defendant E2E Rochester is liable to Plaintiff for all damages consequently incurred, in an amount to be determined, and for the cost and expense associated with Plaintiff's engagement of an accountant to examine E2E Rochester's books and records.

WHEREFORE, Plaintiff respectfully request judgment against the Defendants as follows:

(a) Upon the First Cause of Action, judgment directing Defendants to account to Plaintiff and surcharging the Defendants for all losses caused to the Plaintiff by their breach of fiduciary duty, with interest and punitive damages.

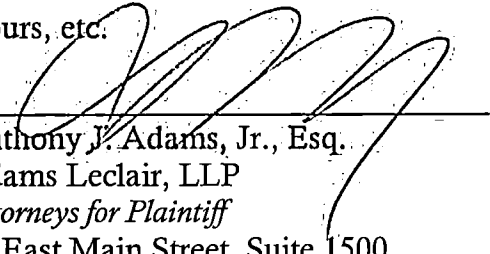
(b) Upon the Second Cause of Action, judgment against Defendants Gonzalez, Carey and Branovan for all losses caused to the Plaintiff by their procuring and participation in breaches of fiduciary duty by E2E Rochester, with interest and punitive damages.

(c) Upon the Third Cause of Action, judgment against Defendant E2E Rochester in an amount to be determined, with interest.

(d) all together with the costs and disbursements of this action as to this Court may seem just and proper.

Dated: June 18, 2021

Yours, etc.



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